



KWAZULU-NATAL PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

**POLICY ON THE DISPOSAL OF
DEPARTMENTAL SITES FOR
RELIGIOUS, COMMERCIAL AND
WELFARE USE**

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DEFINITIONS

Sale: is a contract in which one person promises to deliver a certain thing to another with the latter agreeing to pay a determined price.

Lease: A written agreement in which the owner of property (either real estate or some object example a vehicle) allows use of the property for a specified period of time (term) for specific periodic payments (rent) and other terms and conditions.

Religious site: refers to any church, synagogue mosque, temple or religious cemetery or other religious property, which may include fixtures or religious objects contained within a place of worship or real property either owned or leased for a religiously affiliated purpose.

Commercial sites: means any site that is used for the sale of retail items, food or beverages to the general public, for the sale of wholesale items, and for the sale or dispensing of services, including professional, trade, contracting, banking, property management and other services.

Out of Hand: refers to a decision undertaken without reservation or deeper conversation/consideration.

Rezoning: refers to the classification assigned for the use of a piece of land, which is then adjusted to permit the desired new purpose.

Fair Market Value: refers to the price an asset would sell for on the open market when certain conditions are met.

MEC: refers to Member of Executive Council responsible for Human Settlements

1. INTRODUCTION

Land and immovable property are one of the most extensive assets that are administered by the KwaZulu-Natal Department of Human Settlements. There are on a regular basis, requests from interested parties for the allocation of sites for religious, commercial and welfare purposes. Disposal of land and property whether for religious, welfare or commercial use must be disposed of in terms of national and provincial legislation. A policy for the disposal of such assets is therefore necessary to give clear and concise direction on the appropriate procedures that must be utilized when undertaking such disposals to ensure fairness, equity and transparency of the process.

2. OBJECTIVES

The following are the main objectives of the policy:

- a) create a credible and transparent system for land/property allocation and applicant selection
- b) to address diverse or different land needs
- c) ensure an equitable, flexible and clear policy which enables the efficient utilization of land and the related land transactions therein
- d) ensure a mechanism for consulting with role players and interested parties and further coordinating land transactions

3. APPLICATION OF THE POLICY

The policy is applicable to:

- a) land and property owned by the KZN Department of Human Settlements
- b) land owned by the Department which is non-viable and therefore cannot be developed in accordance with the envisioned human settlements programmes
- c) property owned by the Department which is no longer utilized for the intended purpose as envisioned by the various human settlements programmes, and
- d) Property registered in the name of the Provincial Government of KwaZulu-Natal and are administered by the Department by virtue of General Power of Attorney No.540/1997

NB. Land and property owned by municipalities will be disposed of at their discretion in terms of its Municipal Finance Management Act of 2003 and legislative framework governing disposals., The Department thus has no authority and jurisdiction over such land and property as provided for in Section 1 of the KwaZulu-Natal Land Administration and Immoveable Assets Management Act of 2014.

4. LEGISLATION

4.1 Housing Act of 1997

S14 Housing Act of 1997

Subsection 3:

- (a) (i) Any undeveloped land which has passed to a Provincial Government must be utilised for housing development in accordance with national housing policy and a housing development project approved by the MEC.
(ii) Any such land which, in the opinion of the Provincial Government, is not or will not in the future be suitable for such utilization, must be sold by such board at a fair market value or, if it is not possible to so sell it, such land must be sold in the best interests of the State at a price approved by the MEC.
- (b) Any dwelling or residential erf which has passed to a Provincial Government which is-
 - (i) suitable for letting or sale in terms of any national housing programme, must be let or sold by such Provincial Government in accordance with such programme;
 - (ii) not suitable for letting or sale in terms of any national housing programme be let or sold by such board at a fair market value or, if it is not possible to so let or sell it, be leased or sold in the best interests of the State at a rental or price approved by the MEC
- (c) Any business premises or business erf, which has passed to a Provincial Government, must be sold by such Provincial Government at a fair market value or, if it is not possible to so sell it, such business premises or erf must be sold in the best interests of the State at a price approved by the MEC.

4.2 State Land Disposal Act of 1961

2. (1) The State President may, on such terms and conditions as he may deem fit, sell, exchange, donate or lease any State land on behalf of the State.

5. (1) If the State President has (a) sold, exchanged or donated any State land, he shall either issue an appropriate deed of grant or cause to be registered in a deeds registry such other deed as may be appropriate (b) leased any State land, he shall sign or cause to be signed on behalf of the State an appropriate lease.

6. (2) If the State President so assigns to the Minister any power conferred on him by section two, the Minister shall have the powers and be subject to the duties conferred or imposed upon the State President by section five in connection with the exercise of the power so assigned.

4.3 KwaZulu-Natal Land Administration and Immoveable Assets Management Act of 2014

The act enables provincial government to administer the process of disposal of state land, expropriation and acquisition of state property. Section 5 provides that the minister may dispose

of state land that is in the interest of public administration and give notice of intention to dispose in the government gazette.

4.4 Public Finance Management Act of 1999

Section 38 and 45 of the Act deals with general responsibilities of the accounting officers. The said responsibilities include:

- Effective, efficient, economic and transparent use of the resources of the Department
- Taking effective and appropriate steps in collecting all money due to the Department
- Responsibility for the management, including the safeguarding and maintenance of the assets and for the management of the liabilities of the Department

4.5 Government Immovable Asset Management Act 19 of 2007

Provides a framework for the management of immovable assets that are held or used by national and provincial departments. It also seeks to ensure coordination of the use of immovable assets with the service delivery objectives of both the national and provincial departments.

5. FACTORS TO CONSIDER PRIOR TO LAND DISPOSAL/TRANSFER

As per Section 13 and 14 of the Government Immovable Asset Management Act 19 of 2007, prior to any transfer or disposal, the Department must consider the following factors when identifying land for religious, commercial or welfare purposes:

- a) annual cost of maintenance
- b) current use
- c) cultural or historical significance
- d) current state of property
- e) alternate future use
- f) current market value
- g) development potential
- h) restrictions on disposal/transfer

6. REZONING OF LAND AND PROPERTY

During the disposal process there may be a need to rezone the land for the specific use of religious, commercial and welfare purposes. The process must consider the following:

- a) The framework for land use and management is regulated by the Spatial Planning and Land Use Management Act 2013 (SPLUMA) and sets out the different uses for land, which includes business purposes, industrial purposes and residential purposes.

- b) SPLUMA, however, under Section 23 thereof delegates the authority to 'provide general policy and other guidance' relating to land use, to the executive authorities of the various municipalities so concerned. As such, each municipality has developed its own set of provisions and by-laws for the zoning, rezoning and objection to rezoning processes.
- c) Thus, majority of municipalities have such by-laws in place and often publish them as part of their online resources. This would include the applicable by-law, an explanatory document or guideline and prescribed forms that would allow the public to make use of such by-laws.
- d) An application for rezoning is usually made where the landowner wants his/her property to legally be recognised for a different purpose from that which it is currently recognised for. This application requires placing a notice of intention of application in the Government Gazette calling on parties whose rights will be affected to submit objections, if any exist. Such notice must also be distributed to all interested parties, including neighbours or potentially affected parties to ensure transparency.
- e) Thereafter the municipal town planning committee will consider such an application. Where such objections are submitted, it must be within the period prescribed or allowed for by the municipality's by-law and show with good cause why such application should be rejected.
- f) These submissions, along with the comments in replication by the applicant are then considered by the committee who will either make their considered decision known in terms of an allowed period or a reasonable one considering the complexities of the application and objections.

7. PROVISIONS FOR THE SALE AND LEASE OF DEPARTMENT LAND/PROPERTY FOR THE RELIGIOUS COMMERCIAL AND WELFARE USE

- a) Where any immovable property is offered for sale or lease by public tender any remaining immovable property may be sold or leased out of hand by the Department at a realistic price. This price must be established in such a way that it corresponds with a reasonable market value based on a valuation undertaken by an independent professional valuer and must include the recoverable development costs (if any) such as municipal services, advertising and survey costs.
- b) In the case of the out-of-hand lease of immovable property to social care organisations/institutions, the Department shall determine the rental based on negotiations with the said institute ideally the price should be set at market value or a less will depend on the circumstances and as approved by the MEC.
- c) Immovable properties may be sold out of hand to existing tenants who have leased such premises on a long-term basis on condition that the immovable property is sold at market value.
- d) Immovable property may be sold/leased out of hand in exceptional cases where the Department is of the opinion that public tender would not serve a useful purpose or that it is in the interest of the community and the Department. The full reasons for preferring such out-of-hand sales or leases shall be discussed with the Departments

Land Legal Contracts, Legal Services and Integrated Planning Directorates. Thereafter the sale or lease may proceed once the MEC has assented to same.

- e) Immovable property acquired by a Department for public purposes or in the community's interest, may be leased out of hand to any applicant for temporary use until such time as the property is required for development.

7.1 SALE BY ADVERTISED INVITATION TO BID (PUBLIC TENDER)

- a) After the MEC's approval has been received, the Departments Supply Chain Directorate processes are applicable and dictates the steps that must be followed in calling for bids by way of an advertisement. The existing documentation used by the department relating to the bidding process must be used. The relevant directorate must prepare the bid documentation and submitted to Bid Specification Committee and then the bid documentation approved/amended by the Bid Specification Committee and has to be passed to the Bid Evaluation Committee and/ or the Bid Adjudication Committee for approval to advertise. The bid advertisement must be gazetted. The advertisement must also be published in at least two local newspapers in the relevant language in the area of jurisdiction of the property. This will ensure the comprehensive broadcasting and intention to dispose of the property.
- b) The date on which the bids close will be specified in the advertisement. This is the date by which bids must be physically delivered to and placed in a "Tender Box / Bid Box" in a place specified in the advertisement. Once the time specified for the closing of bids has passed, the bid box is either locked or physically taken away. The date on which the bids are opened is also specified in the advertisement and anyone can attend. The envelopes in which the bids were submitted are publicly opened and the contents taken out. The official in charge of this public opening of bids then reads out aloud – the identity of the person / body submitting the bid and the purchase price offered.
- c) Once the details of all of the bids have been read aloud to the spectators they must be advised that bids will now be adjudicated and submitted to the MEC for approval. The submission must include:
 - i. where and when the invitation to bid was advertised
 - ii. the bid closing date
 - iii. how many bids were received
 - iv. whether and if so when were the offered premises inspected
 - v. an explanation on how the final three bids were accepted
- d) Once MEC decides which bid to accept then a letter of acceptance must be sent to the successful bidder, confirming that his/her bid has been accepted.

- e) The sale agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;
 - i. **Date of occupation:** when the purchaser can physically move into and start using the property
 - ii. **Occupational rental:** Should the buyer take occupation before the deed of transfer is registered and ownership passes onto him/her and prior to the purchase price being paid, he/she will be liable to pay occupational rent. Similarly, if the deed of transfer is registered before the buyer is allowed to move in, the department will be required to pay him/her occupational rental
 - iii. **Method of payment:** how will the purchase price be paid
 - iv. **Conveyancer:** The department should appoint their own conveyancer to attend to the registration of transfer. However, the purchaser will bear all of the costs of taking title to the land and thus can use a conveyancer of his choice

- f) When the registration of the transfer has been completed, the conveyancer will notify the Department of the date of transfer. Thereafter the disposal must be noted in the Property Register.

7.2 OUT OF HAND SALE

- a) Usually all sales are conducted on the basis of public competitive bids. However, there are a few instances where the sale of property at either market value or less than market value can be undertaken with an identified purchaser without inviting bids from the public.
- b) As a general rule and as per section 5(1) f of the Government Immovable Asset Management Act 19 of 2007, the following qualify to acquire state land/property on an out-of-hand basis:
 - i. Other state departments
 - ii. Municipalities
 - iii. Registered educational institution
 - iv. Registered welfare organisations
 - v. Recognised religious/church bodies
 - vi. Provincial and national youth organisations
 - vii. Statutory bodies
 - viii. Agricultural unions and co-ops
 - ix. Farmers' associations
 - x. NGOs where their operations are not for profit and are for the benefit of the community as a whole (e.g. Hospice)
 - xi. Regularising encroachments
 - xii. Providing access to an adjoining property

- c) The resolution as to whether the proposed out-of-hand sale is necessary and if the price should be set at market value or a less will depend on the circumstances and

- merits of each case and the discretion of the MEC together with supporting documents by the valuer.
- d) After the approval by the MEC for the proposed disposal, the prospective purchaser should be approached to confirm in writing his acceptance of the proposed conditions of disposal and the stipulated purchase price. Once the prospective purchaser has confirmed his acceptance of the proposed conditions of sale and the purchase price must be included in the submission to the MEC seeking final approval. Once acceptance of the bid has been approved by the MEC, the purchaser should be advised by phone and via a registered letter. An agreement of sale must then be entered into and concluded by the Department with the purchaser.
 - e) The sale agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;
 - i. **Date of occupation:** when the purchaser can physically move into and start using the property
 - ii. **Occupational rental:** Should the buyer take occupation before the deed of transfer is registered and ownership passes onto him/her and prior to the purchase price being paid, he/she will be liable to pay occupational rent
 - i. Similarly, if the deed of transfer is registered before the buyer is allowed to move in, the department will be required to pay him/her occupational rental
 - iii. **Method of payment:** how will the purchase price be paid
 - iv. **Conveyancer:** The department should appoint their own conveyancer to attend to the registration of transfer. However, the purchaser will bear all of the costs of taking title to the land and thus can use a conveyancer of his choice.
 - f) When the registration of the transfer has been completed, the conveyancer will notify the Department of the date of transfer. Thereafter the disposal must be noted in the Property Register.

7.3 LEASE BY ADVERTISED INVITATION TO BID (PUBLIC TENDER)

- a) After the MEC's approval has been received, the Departments Supply Chain Directorate processes are applicable and dictates the steps that must be followed in calling for bids by way of an advertisement. The existing documentation used by the department relating to the bidding process must be used. The relevant directorate must prepare the bid documentation and submitted to Bid Specification Committee and then the bid documentation will be approved/amended by the Bid Specification Committee. Thereafter the documentation must be passed to the Bid Evaluation Committee and/ or the Bid Adjudication Committee for approval to advertise. The bid advertisement must gazetted. The advertisement must also be published in at least two local newspapers in the relevant language in the area of jurisdiction of the property This will ensure the comprehensive broadcasting and intention to dispose of the property.

- b) The date on which the bids close will be specified in the advertisement. This is the date by which bids must be physically delivered to and placed in a “Tender Box / Bid Box” in a place specified in the advertisement. Once the time specified for the closing of bids has passed, the bid box is either locked or physically taken away. The date on which the bids are opened is also specified in the advertisement and anyone can attend. The envelopes in which the bids were submitted are publicly opened and the contents taken out. The official in charge of this public opening of bids then reads out aloud – the identity of the person / body submitting the bid and the lease price offered. After the details of all of the bids have been read aloud to the spectators, they must be advised that the bids will now be adjudicated and submitted to the MEC for approval. The submission must include:
- i. where and when the invitation to bid was advertised
 - ii. the bid closing date
 - iii. how many bids were received
 - iv. if and when were the offered premises inspected
 - v. an explanation on how the final three bids were accepted
- c) Once the MEC decides, which of the bid to accept then a letter of acceptance must be sent to the successful bidder confirming that his/her bid has been accepted.

7.4 OUT OF HAND LEASE

- a) Ideally, all lease agreements are conducted on the basis of public competitive bids. However, there are a few instances where the lease of property at either market value or less than market value can be undertaken with an identified lessee without inviting bids from the public.
- b) As a general rule and as per section 5(1) f of the Government Immovable Asset Management Act 19 of 2007, the following qualify to acquire state land/property on an out-of-hand basis:
- i. Other state departments
 - ii. Municipalities
 - iii. Registered educational institution
 - iv. Registered welfare organisations
 - v. Recognised religious/church bodies
 - vi. Provincial and national youth organisations
 - vii. Statutory bodies
 - viii. Agricultural unions and co-ops
 - ix. Farmers’ associations
 - x. NGOs where their operations are not for profit and are for the benefit of the community as a whole (e.g. Hospice)
 - xi. Regularising encroachments
 - xii. Providing access to an adjoining property

- c) The resolution as to whether the proposed out-of-hand lease is necessary and if the price should be set at market value or a less will depend on the circumstances and merits of each case and the discretion of the MEC together with supporting documents by the valuer.
- d) After the approval by the MEC for the proposed disposal, the prospective purchaser should be approached to confirm in writing his acceptance of the proposed conditions of disposal and the stipulated lease price. Once the prospective lessee has confirmed his acceptance of the proposed conditions of lease and the leasing price must be included in the submission to the MEC seeking final approval. Once acceptance of the bid has been approved by the MEC, the purchaser should be advised by phone and via a registered letter. An agreement of sale must then be entered into and concluded by the Department with the purchaser.
- e) The lease agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;
 - i. **Date of occupation:** when the lessee can physically move into and start using the property
 - ii. **Method of payment:** how will the rental price be paid
 - iii. **Date of payment:** the date by which the rental should be paid
 - iv. consent to jurisdiction of court: Parties must agree to the jurisdiction of the court, should any legal actions or proceedings relating to the agreement or breach thereof be instituted
 - v. **Cancellation:** The lessee may choose to cancel the lease at any time, but must give the lessor reasonable written notice. Should the lessee cancel prior to the expiration of the lease a cancellation penalty will apply
 - vi. **Breach of agreement:** should any party breach the contract the aggrieved party must advise the defaulting party of the breach and provide a minimum timeframe to rectify the breach.
 - vii. **Escalation:** The reasonable escalation of the rental amount and the frequency of same
 - viii. **Duties:** The rights and obligations of the lessor and lessee.
 - ix. **Charges:** Information on the amount of any charges payable in addition to the agreed rental amount

8. TERMINATION AND REALLOCATION

A provisional allocation or selection shall cease under the following circumstances:

- a) Written withdrawal of application by the proposed purchaser/lessee
- b) Any further circumstances outlined in the lease agreement/sale agreement
- c) Any other circumstances that the Department may feel justify the urgent
- d) termination or withdrawal of the sale/rental allocation

9. PROVISIONS FOR THE SALE AND LEASE OF PROPERTIES ADMINISTERED BY THE DEPARTMENT IN TERMS OF GENERAL POWER OF ATTORNEY NO.540/1997 FOR THE PURPOSE RELIGIOUS, COMMERCIAL AND WELFARE USE

- a) Where any immovable property is offered for sale or lease by public tender any remaining immovable property not required for the Department' core purpose i.e. human settlement development purposes and thus cannot carry out the service delivery objectives of the Department, such immovable property may be sold or leased out of hand by the Department at market related value.
- b) The Department must obtain a valuation from an independent, Professional Valuer to determine the current market value of the property identified to be disposed of.
- c) In the case whereby immovable property is disposed in terms of by way of an out-of-hand lease to a social care organisations/institutions, the Department shall determine the rental based on market value or less depending on the circumstances of each application and as approved by the MEC
- d) In the case whereby an immovable property is disposed by way of out of hand lease of to social care organisations/institutions below the market value of the property, the Department must secure the approval of KwaZulu-Natal Provincial Treasury in terms of Item 16A7.4 of the National Treasury Regulations issued in terms of the Public Finance Management Act of 1999.
- e) Immovable property may be sold/leased out of hand in exceptional cases where the Department is of the opinion that public tender would not be in the interest of the public/ community and the Department. There must justifiable and reasonable reasons to dispose of property by deviating from the norm i.e. advertising by way of public tender. The Department will carefully and critically analyse each application upon inputs being sought from the Department's Integrated Planning, Contracts & Land Legal and Legal Services Directorates and such application is at the discretion of the MEC. Thereafter, the sale or lease of the property may proceed once the MEC has assented to same.
- f) Immovable property acquired by the Department for public purposes or in the community's interest, may be leased out of hand to any applicant for temporary use until such time as the property is required for development.
- g) In the event the property is disposed in terms of clause a) above, the applicant must be notified timeously i.e. six months' notice be issued to the applicant prior to the project being implemented in order for the applicant to vacate the property and make alternate arrangements.

9.1 SALE BY ADVERTISED INVITATION TO BID (PUBLIC TENDER)

- a) After the MEC's approval has been received, the Departments Supply Chain Directorate processes are applicable and dictates the steps that must be followed in calling for bids by way of an advertisement. The existing documentation used by the department relating to the bidding process must be used. The relevant directorate

- must prepare the bid documentation and submitted to Bid Specification Committee and then the bid documentation approved/amended by the Bid Specification Committee and has to be passed to the Bid Evaluation Committee and/ or the Bid Adjudication Committee for approval to advertise. The bid advertisement must gazetted. The advertisement must also be published in at least two local newspapers in the relevant language in the area of jurisdiction of the property This will ensure the comprehensive broadcasting and intention to dispose of the property.
- b) The date on which the bids close will be specified in the advertisement. This is the date by which bids must be physically delivered to and placed in a “Tender Box / Bid Box” in a place specified in the advertisement. Once the time specified for the closing of bids has passed, the bid box is either locked or physically taken away. The date on which the bids are opened is also specified in the advertisement and anyone can attend. The envelopes in which the bids were submitted are publicly opened and the contents taken out. The official in charge of this public opening of bids than reads out aloud – the identity of the person / body submitting the bid and the purchase price offered.
 - c) Once the details of all of the bids have been read aloud to the spectators they must be advised that bids will now be adjudicated and submitted to the MEC for approval. The submission must include:
 - i. where and when the invitation to bid was advertised
 - ii. the bid closing date
 - iii. how many bids were received
 - iv. whether and if so when were the offered premises inspected
 - v. an explanation on how the final three bids were accepted
 - d) Once MEC decides which bid to accept then a letter of acceptance must be sent to the successful bidder, confirming that his/her bid has been accepted.
 - e) The sale agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;
 - i. **Date of occupation:** when the purchaser can physically move into and start using the property
 - ii. **Occupational rental:** Should the buyer take occupation before the deed of transfer is registered and ownership passes onto him/her and prior to the purchase price being paid, he/she will be liable to pay occupational rent Similarly, if the deed of transfer is registered before the buyer is allowed to move in, the department will be required to pay him/her occupational rental
 - iii. **Method of payment:** how will the purchase price be paid
 - iv. **Conveyancer:** The department should appoint their own conveyancer to attend to the registration of transfer. However, the purchaser will bear all of the costs of taking title to the land and thus can use a conveyancer of his choice
 - f) When the registration of the transfer has been completed, the conveyancer will notify the Department of the date of transfer. Thereafter the disposal must be noted in the Property Register.

9.2 OUT OF HAND SALE

- a) Usually all sales are conducted on the basis of public competitive bids. However, there are a few instances where the sale of property are disposed either market value or less than market value can be undertaken with an identified purchaser without inviting bids from the public.
- b) As a general rule and as per section 5(1) f of the Government Immovable Asset Management Act 19 of 2007, the following qualify to acquire state land/property on an out-of-hand basis:
 - i. Other state departments
 - ii. Municipalities
 - iii. Registered educational institution
 - iv. Registered welfare organisations
 - v. Recognised religious/church bodies
 - vi. Provincial and national youth organisations
 - vii. Statutory bodies
 - viii. Agricultural unions and co-ops
 - ix. Farmers' associations
 - x. NGOs where their operations are not for profit and are for the benefit of the community as a whole (e.g. Hospice)
 - xi. Regularising encroachments
 - xii. Providing access to an adjoining property
- c) The above criteria is not a definitive list and it is at the discretion of the Department to determine who qualifies for an out of hand sale without inviting bids depending on the facts and circumstances of each application.
- d) The resolution as to whether the proposed out-of-hand sale is necessary and if the price should be set at market value or a less will depend on the circumstances and merits of each case and the discretion of the MEC together with supporting documents by the valuer.
- e) After the approval by the MEC for the proposed disposal, the prospective purchaser should be approached to confirm in writing his acceptance of the proposed conditions of disposal and the stipulated purchase price. Once the prospective purchaser has confirmed his acceptance of the proposed conditions of sale, the purchase price must be included in a submission to the MEC seeking final approval. Once acceptance of the bid has been approved by the MEC, the purchaser should be advised by phone and via a registered letter. An agreement of sale must then be entered into and concluded by the Department with the purchaser.
- f) The sale agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;

- i. **Date of occupation:** when the Purchaser can physically move into and start using the property
- ii. **Method of payment:** how will the purchase price be paid
- iii. **Date of payment:** the date by which the purchase price should be paid
- iv. consent to jurisdiction of court: Parties must agree to the jurisdiction of the court, should any legal actions or proceedings relating to the agreement or breach thereof be instituted
- v. **Breach of agreement:** should any party breach the contract the aggrieved party must advise the defaulting party of the breach and provide a minimum timeframe to rectify the breach.
- vi. **Duties:** The rights and obligations of the Seller and Purchaser
- vii. **Charges:** Information on the amount of any charges payable in addition to the agreed purchase price; payment of rental 3 months in advance

9.3 LEASE BY ADVERTISED INVITATION TO BID (PUBLIC TENDER)

- a) After the MEC's approval has been received, the Departments Supply Chain Directorate processes are applicable and dictates the steps that must be followed in calling for bids by way of an advertisement. The existing documentation used by the department relating to the bidding process must be used. The relevant directorate must prepare the bid documentation and submitted to Bid Specification Committee and then the bid documentation will be approved/amended by the Bid Specification Committee. Thereafter the documentation must be passed to the Bid Evaluation Committee and/ or the Bid Adjudication Committee for approval to advertise. The bid advertisement must gazetted. The advertisement must also be published in at least two local newspapers in the relevant language in the area of jurisdiction of the property. This will ensure the comprehensive broadcasting and intention to dispose of the property.
- b) The date on which the bids close will be specified in the advertisement. This is the date by which bids must be physically delivered to and placed in a "Tender Box / Bid Box" in a place specified in the advertisement. Once the time specified for the closing of bids has passed, the bid box is either locked or physically taken away. The date on which the bids are opened is also specified in the advertisement and anyone can attend. The envelopes in which the bids were submitted are publicly opened and the contents taken out. The official in charge of this public opening of bids than reads out aloud – the identity of the person / body submitting the bid and the lease price offered. After the details of all of the bids have been read aloud to the spectators, they must be advised that the bids will now be adjudicated and submitted to the MEC for approval. The submission must include:
 - i. where and when the invitation to bid was advertised
 - ii. the bid closing date
 - iii. how many bids were received
 - iv. if and when were the offered premises inspected

- v. an explanation on how the final three bids were accepted
- c) Once the MEC decides, which of the bid to accept then a letter of acceptance must be sent to the successful bidder confirming that his/her bid has been accepted.

9.4 OUT OF HAND LEASE

- a) Ideally, all lease agreements are conducted on the basis of public competitive bids. However, there are a few instances where the lease of property at either market value or less than market value can be undertaken with an identified lessee without inviting bids from the public.
- b) As a general rule and as per section 5(1) f of the Government Immovable Asset Management Act 19 of 2007, the following qualify to acquire state land/property on an out-of-hand basis:
 - i. Other state departments
 - ii. Municipalities
 - iii. Registered educational institution
 - iv. Registered welfare organisations
 - v. Recognised religious/church bodies
 - vi. Provincial and national youth organisations
 - vii. Statutory bodies
 - viii. Agricultural unions and co-ops
 - ix. Farmers' associations
 - x. NGOs where their operations are not for profit and are for the benefit of the community as a whole (e.g. Hospice)
 - xi. Regularising encroachments
 - xii. Providing access to an adjoining property
- c) The above criteria is not a definitive list and it is at the discretion of the Department to determine who qualifies for an out of hand lease without inviting bids depending on the facts and circumstances of each application.
- d) The resolution as to whether the proposed out-of-hand lease is necessary and if the price should be set at market value or a less will depend on the circumstances and merits of each case and the discretion of the MEC together with supporting documents by the valuer.
- e) After the approval by the MEC for the proposed disposal, the prospective lessee should be approached to confirm in writing his acceptance of the proposed conditions of disposal and the stipulated lease price. Once the prospective lessee has confirmed his acceptance of the proposed conditions of lease and the leasing price must be included in the submission to the MEC seeking final approval. Once acceptance of the bid has been approved by the MEC, the lessee should be advised by phone and

via a registered letter. A lease agreement must then be entered into and concluded by the Department with the lessor.

- f) The lease agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely;
- i. **Date of occupation:** when the lessee can physically move into and start using the property
 - ii. **Method of payment:** how will the rental price be paid
 - iii. **Date of payment:** the date by which the rental should be paid
 - iv. **Consent to jurisdiction of court:** Parties must agree to the jurisdiction of the court, should any legal actions or proceedings relating to the agreement or breach thereof be instituted
 - v. **Cancellation:** The lessee may choose to cancel the lease at any time, but must give the lessor reasonable written notice. Should the lessee cancel prior to the expiration of the lease a cancellation penalty will apply
 - vi. **Breach of agreement:** should any party breach the contract the aggrieved party must advise the defaulting party of the breach and provide a minimum timeframe to rectify the breach.
 - vii. **Escalation:** The reasonable escalation of the rental amount and the frequency of same
 - viii. **Duties:** The rights and obligations of the lessor and lessee
 - ix. **Charges:** Information on the amount of any charges payable in addition to the agreed rental amount

10. TERMINATION AND REALLOCATION

A provisional allocation or selection shall cease under the following circumstances:

- a) Written withdrawal of application by the proposed purchaser/lessee
- b) Any further circumstances outlined in the lease agreement/sale agreement
- c) Any other circumstances that the Department may feel justify the urgent termination or withdrawal of the sale/rental allocation

11. EFFECTIVE DATE

The effective date of this policy will be the date of signature by the MEC.

12. MONITORING AND EVALUATION

The Policy, Research and Product Development Component will undertake the monitoring and evaluation of the implementation of this policy. The policy will be reviewed after five years from the date of implementation or sooner if policy or legislative changes necessitate it.