



**LONDON FIRE
AND EMERGENCY
PLANNING AUTHORITY**

**CODE OF PRACTICE ON
DISPOSAL OF LAND**

May 2015

CODE OF PRACTICE ON THE DISPOSAL OF LAND

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INTRODUCTION

1. Under section 123 of the Local Government Act 1972 the Authority may dispose of land (otherwise than by leases for seven years or less, including weekly and other periodic tenancies) **only** for the best consideration that can reasonably be obtained unless the consent of the Secretary of State is first obtained. This requirement as to best consideration applies to any form of disposal except those specified and to any interest in, or right over, land. In order to ensure that the provisions of section 123 are complied with it will, in all cases, be necessary for appropriate professional valuation advice to be taken.
2. This code lays down principles and procedures to be observed in the arrangements to be made leading to the disposal of freehold and long leasehold interests in land (including buildings) in the Authority's ownership. The Authority's financial regulations provide (regulation 19) that the disposal of land shall be in accordance with this code of practice.
3. It is inherent in the code that strict impartiality shall be maintained and shall be shown to be maintained in consideration of all offers for the purchase of Authority property.
4. Nothing in this code of practice shall be construed as derogating from the Authority's responsibilities in respect of the administration of offers and forms of agreement or its statutory responsibilities.

DEFINITIONS

'Authority' - means the London Fire and Emergency Planning Authority or other relevant body authorised to carry out the Authority's functions.

'Land' - includes buildings.

'Disposal' - relates to freehold interest of the granting of a long lease in land.

'Tender' - means a form of sale in which it is intended that upon acceptance of an offer, a contract will be established between the parties. It is implicit that the offer document will describe precisely the terms and conditions of the proposed sale, including the deposit required.

'Sealed offer' - means an invitation to offer based on simple documentation. Offerors, who almost always couch their offer 'subject to contract', are free to include such other qualification as they see fit. Acceptance of an offer by the Authority does not constitute a contract nor is a deposit taken.

'Head of department' - shall be deemed to be to the following officers - Commissioner for Fire and Emergency Planning, Directors, each Assistant Commissioner, Head of Information and Communications Technology, Head of Human Resources and Development, Head of Procurement, Head of Strategy and Performance, Head of Communications, Head of Legal and Democratic Services, Strategic Advisor to the Commissioner and Head of Health & Safety.

'Special purchaser' - means a person or organisation approaching the Authority, like an adjacent owner or sitting tenant, who seeks to purchase land owned by the Authority and which has not been declared surplus.

NOTES

1. This code is the responsibility of the Authority and was approved by the Authority on 20 July 2000. Any departure from the code requires the approval of the Authority.
2. This code is prepared as an internal document for the guidance of officers and consultants working for the Authority. However, it is a public document and requests from outside organisations for a copy of the code should be forwarded to the Head of Legal and Democratic Services.

(I) GENERAL PRINCIPLES

Compliance with standing orders, financial regulations and the code of practice

D1 All disposals of property by the Authority to which this code relates shall comply with -

- (a) standing orders and financial regulations; and
- (b) this code of practice as amended from time to time by the Authority;

and any departure from this code will need the approval of the Authority.

Scope of the code of practice

D2 The code shall apply generally to those circumstances where outright disposal is intended including a disposal necessary for the exchange of lands. This normally means the sale of the freehold but also includes the grant of a long leasehold - typically 99 years or more. This code is not intended to regulate the creation of lesser interests where the Authority intends to reoccupy land at a future date. It therefore does not apply to the letting of residential properties owned by the Authority or business tenancies which may be renewable pursuant to the provisions of the Landlord and Tenant Act 1954. In these circumstances, the Assistant Commissioner (Technical and Service Support) shall act under the directions and within such delegated authority as from time to time may be granted to him/her (or other appropriate officer) by the Authority.

Responsibility for disposal

D3 The Assistant Commissioner (Technical and Service Support) is responsible for all matters concerning the disposal of land. No head of department shall enter into negotiations for the disposal of land.

Professional advice

D4 At various points in this code there is the requirement to secure appropriate professional advice. This shall be the responsibility of the Assistant Commissioner (Technical and Service Support) and can be done using any appropriate officer of the Authority or by engaging an appropriate external consultant, adviser or agency. In the latter case, the Assistant Commissioner (Technical and Service Support) shall be responsible for engaging any consultant in accordance with the code of practice on tenders and contracts.

(II) PROPERTY SURPLUS TO OPERATIONAL REQUIREMENTS

Approach to the Authority to purchase land

D5 In the event of an approach by an adjoining owner, other persons or bodies to purchase land owned by the Authority, the head of department concerned shall refer the matter to the Assistant Commissioner (Technical and Service Support). Before steps can be taken to dispose of such land the requirements of this section of code must be complied with.

Notification of potential surplus property

- D6** When land or property has been identified by a head of department as being surplus to his/her operational requirements he/she shall notify the Assistant Commissioner (Technical and Service Support).

Responsibility for surplus property

- D7** Until such time as the property has been sold the head of department shall remain responsible for the property and the Assistant Commissioner (Technical and Service Support) shall keep him/her informed of progress with the disposal. The head of department shall be responsible for any measures to keep the property secure from intruders, etc.

Consultations on potential surplus property

- D8** The Assistant Commissioner (Technical and Service Support) shall undertake consultations in respect of potential surplus property in accordance with guidance or procedure notes issued from time to time.

Implications of disposal of surplus property

- D9** If the head of department controlling the property identifies any relocation works that would result from disposal he/she shall, in consultation with the Director of Finance and Contractual Services and the Assistant Commissioner (Technical and Service Support), identify the costs involved, how such costs could be funded (e.g., by the Authority before disposal, by the purchaser as a condition of disposal, by the Authority after disposal, etc.) and the effect, if any, that these requirements will have on the timing of disposal and receipt of the financial consideration.

Constraints on disposal

- D10** If from the consultations undertaken under Article D8 above any constraints are identified which may inhibit the way in which a property may be disposed of, the Assistant Commissioner (Technical and Service Support) shall ascertain how such constraints can be overcome, the estimated costs involved and how these might be financed and the effect, if any, on the timing of the disposal. No commitment is to be entered into whereby the Authority is obliged to expend monies on overcoming such constraints until the decision has been sought of the Authority.

Obtaining approval to declare a property surplus

- D11** The Assistant Commissioner (Technical and Service Support), with the head of department as appropriate, shall submit a report to the Authority seeking approval to the property being declared surplus to operational requirements and identifying -
- (a) the need for any accommodation work/replacement accommodation and how such work is to be financed;
 - (b) any constraints on disposal;
 - (c) when the property will actually become surplus;
 - (d) the anticipated sale price;
 - (e) the likely form of disposal proposed (e.g., freehold, leasehold, etc.); and
 - (f) the appointment of any agent to advise on the disposal method, development potential to any prospective purchaser, etc.

D12 No action will be taken to dispose of a property until the necessary approval has been given by the Authority.

(III) DISPOSING OF SURPLUS PROPERTY

General principles

D13 All disposals shall normally be effected by public advertisement inviting competitive sealed offers or tenders and, except when time is of the essence, sealed offers are to be preferred.

Exceptions to the need to invite tenders

D14 Subject to appropriate professional advice disposal may be undertaken by sale to a special purchaser or at public auction where -

- (a) there is a limited market or substantial advantage to the Authority;
- (b) other Authority objectives would be best served;
- (c) the ability to secure the occupation of the property would be frustrated by the time inherent in seeking competitive tenders or sealed offers; or
- (d) a statutory right to continued occupation exists.

Professional valuations

D15 The Assistant Commissioner (Technical and Service Support) shall secure a professional valuation of the land for sale and its anticipated sale price and the acceptability or otherwise of offers received. Additionally, such professional advice shall include –

- (a) the best method of disposal taking account of the purpose of the disposal and state of the property market;
- (b) how the property should be marketed; and
- (c) any latent development potential to a prospective purchaser.

Obtaining approval to dispose of surplus property

D16 The Assistant Commissioner (Technical and Service Support), in consultation with the Director of Finance and Contractual Services and the Head of Legal and Democratic Services, will report to the Authority to secure approval to dispose of the property and agreement to any of the matters outlined in Article D15 above. The Assistant Commissioner (Technical and Service Support) may, as appropriate, combine the two stage reporting process outlined in Article D11 and this article into a single report to the Authority.

(IV) DISPOSAL BY SEALED OFFER

Offer documents

D17 Where the Authority agrees to disposal by sealed offer the description of the property in question shall be prepared by the Assistant Commissioner (Technical and Service Support) in conjunction with the Head of Legal and Democratic Services.

Instructions to offerors

D18 The following advice shall be given to offerors -

- (a) the extent of the interest available in the property;

- (b) the form in which the offer must be submitted, including any markings required on the envelopes;
- (c) a description of the property and any conditions upon which the property is offered for sale (having regard to the fact that offerors should be free to make any assumptions and include any qualifications they see fit);
- (d) the latest date and time for receipt of sealed offers and the exact place to which they should be delivered;
- (e) that the Authority does not bind itself to accept the highest or any offer;
- (f) where the acceptance is likely to be delayed by more than 60 days, the period for which the offer must be held valid by the tenderer/offeror; and
- (g) the need for the offer document to be properly authenticated and for strict compliance with the following undertaking which shall be incorporated in the form of the offer -

'I/we undertake that I/we have not communicated and will not communicate to any person other than the Authority the amount of this offer and that I/we have not adjusted the amount of the offer in accordance with any agreement between me/us and any other person, firm and/or company'.

(V) SALE BY COMPETITIVE TENDER

Tender documents

D19 Where the Authority has agreed to disposal by tender the following procedures shall be followed

- (a) description of the property in question and the conditions upon which the property is being offered for sale shall be proposed by the Assistant Commissioner (Technical and Service Support) and cleared with the Head of Legal and Democratic Services;
- (b) proportion of the proposed purchase price to be paid by way of deposit (normally 10% - unless the Head of Legal and Democratic Services advises otherwise); and
- (c) the form of the proposed contract shall be prepared by the Head of Legal and Democratic Services.

Instructions to tenderers

D20 The following advice shall be given to tenderers -

- (a) the form of the proposed contract;
- (b) the proportion of the proposed purchase price to be paid by way of deposit;
- (c) a description of the property and the conditions upon which the property is offered for sale;
- (d) any markings required on the envelope containing the tender;
- (e) the latest date and time for receipt of tenders and the exact place to which they should be delivered; and
- (f) the need for the tender document to be properly authenticated and for strict compliance with the following undertaking which shall be incorporated in the form of the tender -

'I/we undertake that I/we have not communicated and will not communicate to any person other than the Authority the amount of this tender and that I/we have not adjusted the amount of the tender in accordance with any agreement between me/us and any other person, firm and/or company'.

(VI) DEALING WITH TENDERS/OFFERORS RECEIVED

Revised valuation of the land

- D21** The Assistant Commissioner (Technical and Service Support) shall decide whether the valuation of the property provided to the Authority needs to be re-examined (due to time or other factors), if so, then the person or agency providing the original valuation (Article D15) shall be asked to confirm or revise the original figure before any tenders or offers are opened.

General principles for the receipt, opening and custody of tenders/offers

- D22** Tenders and sealed offers invited in competition shall be received and opened by the Assistant Commissioner (Technical and Service Support) in accordance with the following arrangements. Where a nominated agent invites and receives tenders/offers on behalf of the Authority they shall be passed unopened to the Assistant Commissioner (Technical and Service Support) after the expiry of the latest time for receipt. When not being opened or examined, all tenders/offers must be kept secure in a locked cupboard which is under the control of a responsible officer.
- D23** On receipt, at the place of delivery, all tenders/offers shall be date and time stamped and kept secure until the latest time for receipt.
- D24** After expiry of the latest time for receipt, they shall be passed unopened to the officer nominated by the Assistant Commissioner (Technical and Service Support) who will enter all tenders/offers received in a book, kept for that purpose, and be responsible for their safe custody until they are opened.
- D25** Two people, nominated by the Assistant Commissioner (Technical and Service Support), must be present when the tenders/offers are opened, one of whom must be of at least grade MG8 or equivalent. The two people must not have or have had any involvement in the acceptance or recommendation for acceptance of tenders/offers, nor any involvement in the process leading to the invitation of tenders/offers.
- D26** Each person shall initial and date each tender/offer on the page or pages which contain the tender/offer amount and the signature of the tenderer/offeror. All accompanying letters and qualifications shall be initialled.
- D27** A complete list shall be made of all tenders/offers received including the name of each tenderer/offeror, the terms and the amount of his/her tender/offer, the name of the professional valuer and the amount of the valuation (as provided to the Authority and, where necessary, revised under Article D21).
- D28** If a tender/offer is returned, the name of the tenderer/offeror and the amount should be included as a footnote on the list with the reason for return (see also Article D30).
- D29** The list should be signed and dated by those opening the tenders/offers. As soon as possible after the tenders/offers have been opened they shall be passed to the officer responsible for the detailed examination of the tenders/offers who will countersign a copy of the list which shall be retained by the Assistant Commissioner (Technical and Service Support) for five years from the completion of sale.

Receipt of late tenders/offers

- D30** The advice of the Assistant Commissioner (Technical and Service Support) and the Head of Legal and Democratic Services shall be sought on any tender/offer received after the specified time.

Disqualification at opening stage

D31 Any tender/offer submitted in competition shall not be considered if the tender/offer itself was not properly authenticated unless in the opinion of the Assistant Commissioner (Technical and Service Support) it is an obvious oversight, in which case the tenderer/offeror shall be asked immediately to authenticate it.

Examination of tenders/offers

D32 After the tenders/offers have been opened the Assistant Commissioner (Technical and Service Support) shall secure appropriate professional advice as to the acceptability of the tenders/offers received.

Evidence of value

D33 The person/agent providing professional advice shall certify in writing that it is his/her opinion that the figure recommended for acceptance is the best that can reasonably be obtained and this will normally be under the hand of a Fellow of the Royal Institute of Chartered Surveyors (RICS).

Disqualified tenders/offers

D34 On examination by the Assistant Commissioner (Technical and Service Support) any tender/offer submitted in competition shall not be considered if -

- (a) the tender/offer price is not ascertainable from the tender/offer document itself; or
- (b) in the case of a tender only (not a sealed offer) any alteration or qualification has been inserted in, or made to, the tender document which is unacceptable to the Assistant Commissioner (Technical and Service Support) on advice of the Head of Legal and Democratic Services.

Acceptance of tenders/offers

D35 Subject to the provisions of Article D32 (Examination of tenders/offers) the Assistant Commissioner (Technical and Service Support) may accept a tender or sealed offer for disposal provided this is the highest received and is comparable with the figure of the professional valuation reported to the Authority when approval to dispose was obtained (or any higher valuation received under Article D21) and represents the best price reasonably obtainable. The Assistant Commissioner (Technical and Service Support) shall seek the directions of the Authority where -

- (a) the highest tender/offer is less than the valuation reported to the Authority but represents the best price reasonably obtainable;
- (b) he/she is not satisfied with the validity of the highest tender/offer;
- (c) the disposal in question presents any unusual or controversial features; and
- (d) a revised valuation (under Article D21) is less than the original valuation reported to the Authority.

D36 Notwithstanding the authority to the Assistant Commissioner (Technical and Service Support) to accept a tender/offer the directions of the Authority shall be sought in any case which presents unusual features.

D37 In the case of a decision in relation to a tender, notice that a tenderer has been successful shall be by formal letter of acceptance which shall be in the form prescribed by the Head of Legal and

Democratic Services and which shall be signed by the Assistant Commissioner (Technical and Service Support) or the Head of Legal and Democratic Services (or other officer authorised to sign and seal documents).

D38 In the case of a decision in relation to a sealed offer, notice that an offer has been successful shall be by formal letter of acceptance, which shall be cleared with the Head of Legal and Democratic Services, signed by the Assistant Commissioner (Technical and Service Support) or Head of Legal and Democratic Services (or other officer authorised to sign and seal documents) and marked 'subject to contract'.

D39 After a tender/offer has been accepted, all unsuccessful tenderers/offers shall be notified as soon as possible that they have not been successful. Written reasons for rejection of a tender/offer should not be given unless in a form agreed with the Head of Legal and Democratic Services.

Disposal of unsuccessful tenders/offers

D40 All unsuccessful tenders/offers shall be sent to the Assistant Commissioner (Technical and Service Support) (who is responsible for the custody of tenders/offers for the disposal of land) and they shall be retained for a period of two years from the completion of the sale.

Custody of accepted tenders/offers

D41 All successful tenders/offers shall be kept by the Assistant Commissioner (Technical and Service Support) (who is responsible for the custody of tenders/offers for the disposal of land) and retained indefinitely in safe custody.

Referral to Authority

D42 Where all tenders/offers received for a disposal are below the original valuation reported to the Authority (or any revised valuation obtained under Article D21) and none can be recommended for acceptance, the matter shall be referred to the Authority for decision and any further action that should be taken in relation to the disposal.

(VII) DISPOSAL BY PUBLIC AUCTION

General principles

D43 Where, after considering professional advice, the Authority agrees to the disposal by public auction, the following procedures shall be followed.

Description of the property being offered for sale

D44 The description of and the conditions upon which the property is being offered for sale shall be agreed with the Head of Legal and Democratic Services.

Professional valuation

D45 The reserve price shall be based on the advice of the Auctioneers. Where this is less than the valuation originally reported to the Authority, the Assistant Commissioner (Technical and Service Support), in consultation with the Director of Finance and Contractual Services, has delegated authority to agree the reserve price subject to confirmation from the Authority Valuer (or external agent) that if the reserve price is met or is exceeded at the auction, it would represent the best price reasonably obtainable.

D46 Where, at the public auction, the bidding meets or exceeds the reserve price and the property is sold, the Assistant Commissioner (Technical and Service Support) shall report the outcome to the Authority for information on the next occasion that an informative report on disposals is presented (Article D52).

Failure to reach the reserve price

D47 Where, at the public auction, the bidding fails to reach the reserve price and the property is withdrawn from sale, the Assistant Commissioner (Technical and Service Support) shall report the matter to the Authority for a decision on the further action that shall be taken in relation to the disposal. Where a written offer is received within 14 days after the auction that meets or exceeds the reserve price set for the auction, the Assistant Commissioner (Technical and Service Support), in consultation with the Director of Finance and Contractual Services and the Head of Legal and Democratic Services, has delegated authority to accept the offer made.

(VIII) DISPOSAL TO A SPECIAL PURCHASER

General principles

D48 Except where on professional advice it is clear that it would be to the Authority's advantage to sell to a special purchaser, such sales should be resisted. Where, after considering professional advice, the Authority does agree to open negotiations with a special purchaser the following procedures shall be followed.

Legal advice

D49 The advice of the Head of Legal and Democratic Services shall be taken in respect of the negotiations with a special purchaser for the sale of land on such matters as the description of and the conditions upon which the land is being offered for sale.

Professional valuation advice

D50 The Assistant Commissioner (Technical and Service Support) shall secure appropriate professional advice to negotiate a sale to a special purchaser.

Reporting to the Authority

D51 When the Assistant Commissioner (Technical and Service Support) is satisfied that the negotiations for a sale to a special purchaser have yielded the best price reasonably obtainable having regard to the professional valuation, he/she shall report to the Authority for a decision on disposal. The Assistant Commissioner (Technical and Service Support) shall require evidence of value for the purposes of section 123 of the Local Government Act 1972 as set out in Article D33.

D52 Where the price resulting from negotiations with a special purchaser fails to reach the professional valuation reported to the Authority, and is not, in the opinion of the Assistant Commissioner (Technical and Service Support) the best price reasonably obtainable, the Assistant Commissioner (Technical and Service Support) shall report to the Authority for a decision.

(IX) GENERAL

Conduct of staff

D53 In dealing with the matters referred to in this code, officers of the Authority shall have regard to the provisions of the Staff Code, particularly those relating to the undertaking of private work, pecuniary interest in contracts, canvassing and the acceptance of improper reward.

Reports to the Authority

D54 The code specifies the circumstances where it is necessary to seek a direction of the Authority concerning the disposal of property. The Authority may require the Assistant Commissioner (Technical and Service Support) to keep them informed of the progress of any specific disposal or programme of disposals. The Assistant Commissioner (Technical and Service Support) shall report to the Authority -

- (a) any action taken under delegated authority at the next available meeting; and
- (b) on the progress on all disposals in hand, giving details of what stage the disposals had reached and an indication of the timetable of the proposed disposal at each meeting.