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MANUAL 500-2

SECTION 02.10

SALES

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BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

1. Purpose

The purpose of this procedure is to provide the steps to be followed for the sale of property under the jurisdiction of the New York State Thruway Authority (Authority).

2. Applicable Law and/or Guidance

New York State Public Authorities Law, Article 2, Title 9, New York State Thruway Authority, Article 9, Title 5-A

New York State Finance Law §139-j, §139-k

New York State Public Authorities Accountability Act of 2005

Thruway Real Property Management Policy (25-6-02)

Executive Instruction entitled Inappropriate Lobbying Influence In Authority/Corporation Procurements

3. Introduction

The Authority is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In accordance with the provisions of Title 9 of Article 2 of the Public Authorities Law, the Authority has the power to acquire and hold real property necessary for its corporate purposes and dispose of real property not necessary for its corporate purposes or whenever the Authority Board shall determine that it is in the interest of the Authority and thus, the interest of the State.

The Authority may receive inquiries for purchasing an interest in Authority real property (e.g., easement, fee) or may determine on its own that real property or a partial interest in the real property (e.g., easement) under the jurisdiction of the Authority is no longer needed for Authority purposes. Sales are considered disposals under the Thruway Real Property Management Policy and are also subject to the Public Authorities Accountability Act of 2005.

Real property shall not be disposed of for less than fair market value as determined by appraisals or other means, except in limited circumstances. The Authority shall use a competitive process open to the public for all real property disposals, except in limited circumstances as described in SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1).

Where a sale is contemplated, as determined by the completion and approval of the THRUWAY TRANSACTION ANALYSIS/RECOMMENDATION (TTAR) form (TA-N5516), unless otherwise authorized by the Executive Director, a permit will not be issued in advance of completion of the sale. See SOP-OCCUPANCY PERMITS (500-2-02.5) and SOP-WORK PERMITS (500-2-02.6).

The Board shall approve all sales of real property under the Authority's jurisdiction, except as otherwise delegated. Sales of real property may need to be resubmitted to the Board in the following circumstances:

- If the sale is not completed within one year of Board authorization, the proposed sale will be resubmitted to the Board.
- If the circumstances change following Board action and the approved terms and conditions cannot be followed, the proposed sale must be resubmitted to the Board for reconsideration.
- If the background information about the sale presented to the Board changes in any material way, the Executive Director, in consultation with the Contracting Officer, will determine whether the item should be resubmitted to the Board.
- If a Board approved sale cannot be progressed, a report must be provided to the Board detailing the reasons that the item is not being progressed. In limited circumstances, as determined by the Executive Director in consultation with the Contracting Officer, an item may be submitted to the Board withdrawing the prior authorization.

4. Procedure

4.1. Processing the Proposed Sale from an Applicant Inquiry

If the proposed sale is initiated by the Authority and there is no applicant, go to Section 4.2.

- 4.1.1. Upon receipt of an inquiry for the sale of real property under the jurisdiction of the Authority, the Division Permit Coordinator (DPC) will follow SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1) to record the inquiry and send out the application package.

Upon receipt of the completed application, the DPC will assign a Transaction Reference Number, forward the application fee and appraisal and survey deposit to Finance for deposit, and send a receipt to the applicant.

Note: Once a Transaction Reference Number has been assigned, it should be indicated on all subsequent correspondence associated with the proposed sale (e.g., transmittal forwarding checks to Finance, receipt sent to applicant, etc.).

- 4.1.2. The DPC, in consultation with the Division Real Estate Specialist, will complete the TTAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1). If the proposed sale is rejected at any point during the review and approval process, the Division Director (DD) will send a REJECTION LETTER¹ notifying the applicant and will coordinate with Finance, the refund of the appraisal and survey deposit. The DD will send a copy of the letter and the original TTAR to the Bureau of Real Property Management (BRPM) for the Transaction Record and copies of each will be placed in the Division file. Procedure stops here.
- 4.1.3. Following approval by the Contracting Officer on the TTAR form, a SALE REVIEW LETTER² will be sent to the applicant from BRPM stating that the sale will be progressed through a negotiated process or that a competitive process is required.
- 4.1.4. For a sale where the estimated property value is greater than \$15,000, see Executive Instruction INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS for requirements.
 - 4.1.4.1. For negotiated sales, the SALE REVIEW LETTER shall identify the “official contacts” for the Authority and shall indicate that the “restricted period” will commence upon the date the applicant receives the SALE REVIEW LETTER.
 - 4.1.4.2. For a competitive process, the SALE REVIEW LETTER will indicate that the “restricted period” will begin with the request for proposal (RFP) or auction advertisements and that the “official contacts” for the Authority during the disposal process will be identified in the RFP or auction advertisement.

1 Exhibit 1

2 Exhibit 2

4.2. Processing an Authority Initiated Sale

Where the proposed sale is Authority initiated and there is no applicant, the DPC, in consultation with the Division Real Estate Specialist, will complete the TTAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1). If rejected, the DD will send BRPM the original TTAR and a note for the Transaction Record and keep a copy of both for the Division file. Procedure stops here. If the proposal to dispose of the real property via a sale is approved by the Contracting Officer on the TTAR form, BRPM will coordinate the necessary processes for completing the transaction.

4.3. Review of the Proposed Sale

- 4.3.1. Where a survey and/or appraisal are required, BRPM will follow SOP-APPRAISALS AND SURVEYS (500-2-02.2). In most cases, the survey should be completed prior to the appraisal.
- 4.3.2. BRPM will provide the Thruway Real Property Management Committee (TRPMC) with a complete sale application package that includes materials listed in the TRPMC SALES PACKAGE CHECKLIST¹. The TRPMC will review the proposed sale and will make a recommendation, including any modifications and/or conditions. BRPM will review and as appropriate, incorporate any modifications or conditions recommended by the TRPMC.
- 4.3.3. If the TRPMC rejects the proposed sale, BRPM will send a letter notifying the applicant and will coordinate with Finance the refund of any deposit and/or the appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and a copy of the letter to the DD for the Division file. Procedure stops here.
- 4.3.4. If the TRPMC recommends that the sale be progressed, the Contracting Officer will keep the Board apprised of the proposed sale, including when an Explanatory Statement is required. If an Explanatory Statement is required for a negotiated sale, BRPM will coordinate the preparation and distribution of the Explanatory Statement using the EXPLANATORY STATEMENT² form.
- 4.3.5. If a competitive process is required for the sale, the procurement policies and procedures would be followed, or for a sale by auction, see Section 4.4.

1 Exhibit 3

2 Exhibit 4

- 4.3.6. For a sale where the property value exceeds \$10,000, a determination of responsibility for the proposed awardee is required. BRPM will coordinate the responsibility determination. The process for a negotiated sale continues in Section 4.5.

4.4. Real Property Auctions

4.4.1. Developing Auction Conditions and Terms of the Sale

- 4.4.1.1. BRPM, the Bureau of Purchasing, the Contracting Officer, and the Legal Department will develop the Auction Plan including the terms and conditions of the sale, registration and deposit requirements, auction bid package, and Advertising Plan based on considerations in this section. The auction process may include a voice bid auction (where all bids are made orally in a competitive manner), sealed bids, “live” internet auctions or other means.
- 4.4.1.2. The Contracting Officer will approve the Auction Plan prior to implementation.
- 4.4.1.3. This procedure describes the typical voice bid auction process. If external auctioneers are to be used, the auctioneers will be hired in conformance with procurement contracting procedures.

4.4.2. Developing the Auction Bid Package

The auction bid package should contain at a minimum the following information:

- Auction time, date and location (including directions)
- Inspection information (if applicable)
- Property information such as location, size, site map, survey map, the legal description, any known environmental issues
- Pre-auction terms, conditions and general information
- Terms and conditions of the auction including the minimum bid

- Post-auction terms and conditions
- Copy of the agreement for sale
- Bidder registration form
- Required disclosures
- Lobbying Law requirements

4.4.3. Developing the Sale Notice and Advertising Plan

4.4.3.1. The Authority will publicly advertise for bids, unless otherwise approved by the Contracting Officer. When publicly advertising for bids, the following requirements apply:

- The advertisement for bids shall be made prior to the auction, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;
- All bids shall be publicly disclosed at the time and place stated in the advertisement; and
- The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State and the Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

4.4.3.2. If public advertising for bids is not done, the disposal must meet one of the exceptions described in SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1) and an Explanatory Statement is required to be submitted at least 90 days before the auction for real property that exceeds \$100,000 in fair market value.

4.4.3.3. For disposals of real property with a value greater than \$15,000, the “restricted period” will begin with the auction advertisements. The official contact during the procurement process will be identified in the RFP or auction advertisement.

4.4.3.4. The Sale Notice should include at a minimum the following information:

- Time, place and location of the auction
- Registration time
- A description of the property being auctioned including address, description and other property information
- Other relevant information and pertinent provisions of the terms of sale
- Requirement for deposits, registration and payment
- Any inspection hours
- Contact information for the auction bid package and further information
- Notice that all bids may be rejected when it is in the public interest to do so, such as when the minimum bid is not met

4.4.3.5. The Advertising Plan will be developed based on the fair market value and potential interest in the property. The Authority’s goal is to identify and reach as many potentially interested parties as possible to permit full and free competition consistent with the value and nature of the property.

The Advertising Plan must include:

- Advertisements in newspapers in the county or locality in which the property is located

- Letters to individuals or others who have expressed interest in the property

The Advertising Plan may also include:

- Placing information on the Authority's website
- Advertisements in trade journals or other publications including the NYS Contract Reporter
- Letters to neighboring properties, the local municipality, and other agencies with an interest in development or that have property in the area
- "For Sale" signs on the property
- Brochures
- News releases

4.4.4. Distributing the Auction Bid Package to Interested Parties

BRPM will coordinate the mailing of the auction bid package, which will be sent to all who contact the Authority requesting a package, as well as any other party the Authority has reason to believe may have an interest in seeing it.

4.4.5. Conducting the Auction

- 4.4.5.1. All prospective bidders (or their authorized agents upon presentation of a duly executed power of attorney in full force and effect) will register on the date and at the place of the auction, unless otherwise decided. A bidder must complete a registration form, and present for inspection a bank or certified check payable to the bidder that is no less than the required earnest-money deposit. No cash and/or uncertified checks will be accepted. An identification number will be assigned to each bidder.
- 4.4.5.2. The registration forms will contain the Lobbying Law requirements and the bidder must sign acknowledging their understanding and compliance with the requirements.

4.4.5.3. The auction will be conducted.

4.4.6. Conducting Post Auction Activities

4.4.6.1. Immediately at the conclusion of the bidding, the Authority representative will have the highest bidder sign the sale agreement with the highest acknowledged bid. A photo identification should be shown by the bidder. The sale agreement shall make clear that the sale is contingent upon a responsibility determination, authorization of the Board, and where applicable, the Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC).

4.4.6.2. The highest bidder will pay the Authority representative the required earnest-money deposit. The Authority representative at the auction will be responsible for forwarding the deposit to Finance for processing.

4.5. Authorizing the Sale

4.5.1. Once a proposed buyer has been identified via a competitive process, or for a negotiated sale, 90 days after any required Explanatory Statement has been distributed and upon receipt of any required determination of responsibility, the proposed sale can be presented to the Board for their review and authorization to proceed with the preparation of sale documents. The Contracting Officer, assisted by BRPM, will prepare a Board Agenda Item to place the proposed sale on the agenda of the Board.

4.5.2. The Contracting Officer will provide the Board with a brief overview of the application and the process of review, including any recommendations from Division, TRPMC, local, regional or State agencies, comments received in response to an Explanatory Statement where applicable, the result of any competition, and responsibility determinations where required.

4.5.3. The Board will approve or reject the proposed sale.

- 4.5.4. BRPM will notify the applicant or competitive process awardee, DD, and applicable Authority personnel of the Board's approval or rejection. If the Board rejects the sale, BRPM will send a letter notifying the applicant/awardee and will coordinate with Finance the refund of any deposit and/or appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and send a copy to the DD for the Division file. The procedure stops here.
- 4.5.5. If the Board approves the sale and the awardee is not the applicant, BRPM will coordinate with Finance the refund of any deposits and/or appraisal and survey cost to the applicant.

4.6. Executing the Sale

- 4.6.1. Upon Board approval, BRPM will enter the transaction information on the LIST OF REAL PROPERTY WITH A FAIR MARKET VALUE IN EXCESS OF \$15,000 THAT THE AUTHORITY/CORPORATION INTENDS TO DISPOSE OF IN 20XX.¹
- 4.6.2. Upon Board approval of the sale and authorization to prepare the sale documents, BRPM, in consultation with the Legal Department, will prepare the draft sale agreement.
- 4.6.3. BRPM will send a copy of the draft sale agreement to the applicant/awardee for review and comment, and with Legal approval, may make changes requested by the applicant/awardee.
- 4.6.4. Once the sale is ready for execution, BRPM will send five (5) counterparts of the sales agreement and COVER LETTER² to the applicant/awardee. For sales where the property value is over \$10,000, the Legal Department will inform the applicant/awardee that the sale is not final until approved by the AOG and OSC. The letter will direct the applicant/awardee to sign the sale agreement, and return it to the Authority.
- 4.6.5. Upon return of the five (5) counterparts of the sales agreement executed by the proposed buyer, BRPM will send the sale agreement to the Legal Department, Contracting Officer and/or the Chief Financial Officer and the Executive Director for signatures.

1 Exhibit 5

2 Exhibit 6

- 4.6.6. For sales where the contract amount is over \$10,000, the Legal Department will assist BRPM in preparing a package for submittal to the OAG and the OSC following SOP- SUBMITTALS TO THE OFFICES OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER (500-2-02.3). BRPM will transmit the package to the OAG for approval as to form.
- 4.6.7. Upon approval by the Attorney General's Office, BRPM will forward the sales package to the OSC.
- 4.6.8. If rejected by the AOG or the OSC, BRPM will send a letter notifying the applicant or competitive process awardee and will coordinate with Finance, the refund of any deposit and/or the appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and send a copy to the DD for the Division file. Upon approval by the State Comptroller, BRPM will notify the Legal Department, and the Legal Department will coordinate the closing.
- 4.6.9. After closing, the Legal Department will forward a copy of the instrument of conveyance to BRPM, Engineering Real Property Unit (ERPU) and Finance. Legal also send the payment check delivered at closing, to Finance. BRPM will maintain the original document in the Transaction Record.
- 4.6.10. BRPM will notify ERPU to update Authority maps and databases to reflect the sold property and BRPM will also notify the Division of the sale.

5. Complying with §139-j and §139-k of the State Finance Law (Lobbying Law)

Any contact (inquiry, etc.) made regarding a real property transaction following the TTAR form approval for negotiated sales and subsequent to the first notice of a competitive process for disposal of such real property (solicitation, RFP, etc.) is subject to the Lobbying Law and must be recorded. See the Executive Instruction entitled INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS.

6. Responsibilities

BRPM will coordinate the sale application approval process including contacts the preparation and distribution of any required Explanatory Statements, the abandonment process, auction process, and submittals to the Office of the State Comptroller. In consultation with the Legal Department, BRPM will draft sale agreement. BRPM will coordinate reviews by the OAG and the OSC.

The Board will authorize sales of real property under the jurisdiction of the Authority, except those under the contracts program.

The Contracting Officer is responsible for compliance with and enforcement of the Canal Real Property Management Policy as it applies to disposals, including sales. The Contracting Officer will present the proposed sale to the Board for authorization or rejection and keep the Board apprised of the progress of the sale. The Contracting Officer, Legal Department, and Executive Director will sign sale agreements on behalf of the Authority.

The DPC will coordinate the review and initial processing of the sales application.

The Executive Director, Contracting Officer and/or the Chief Financial Officer, and Legal Department will sign sale agreements on behalf of the Authority.

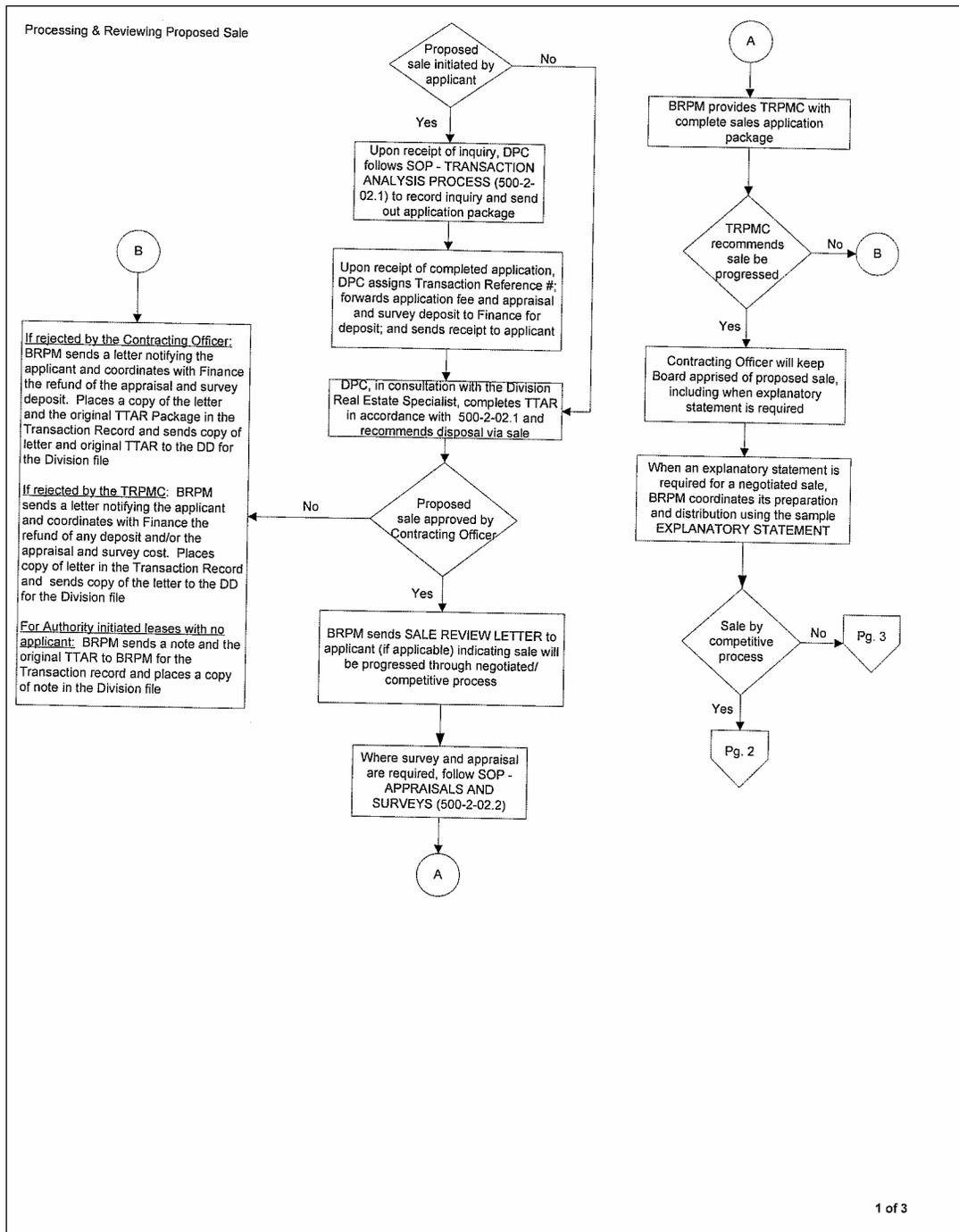
Finance will coordinate the deposit of fees and monies received from applicants and any required refunds.

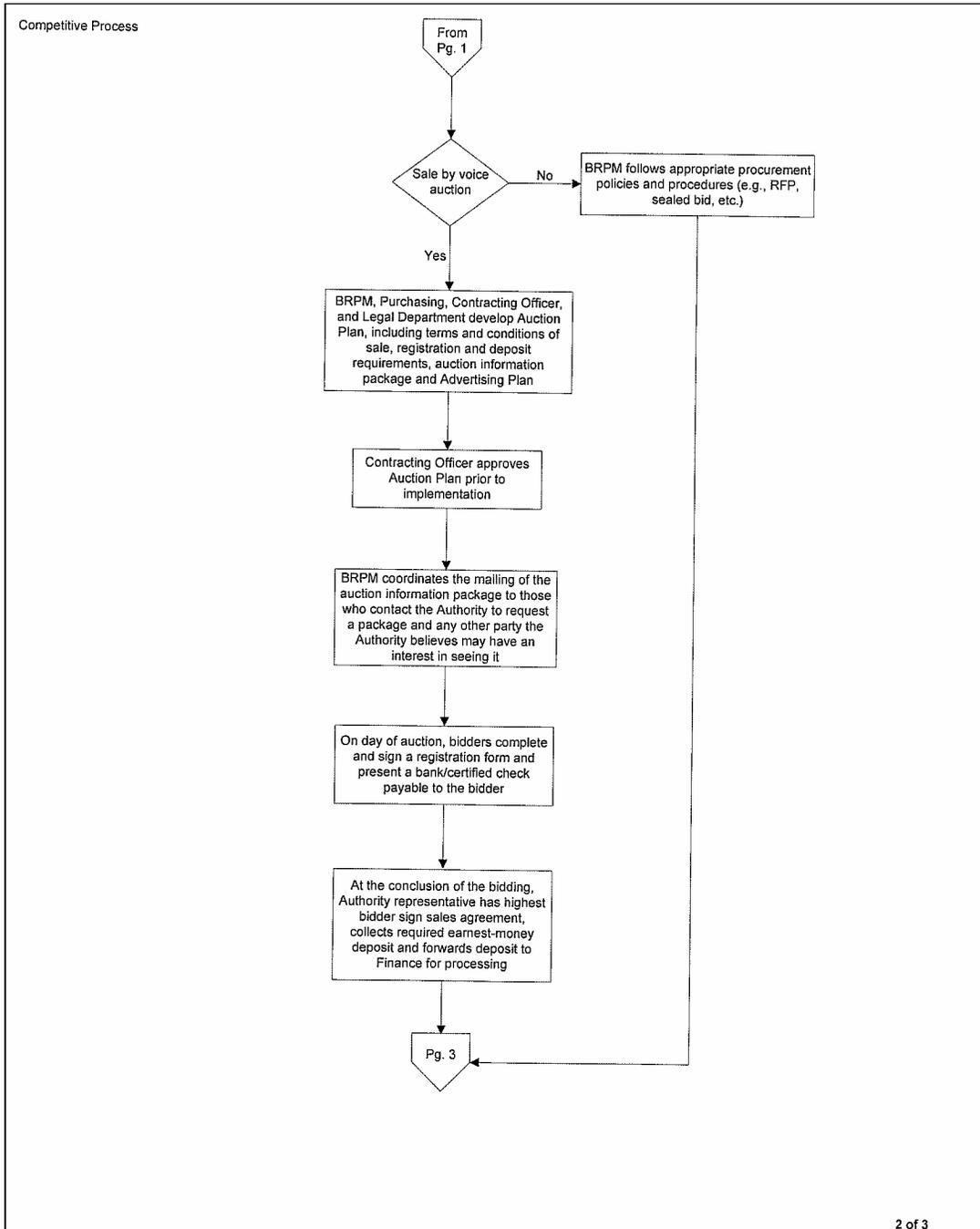
ERPU will update maps and databases following the sale.

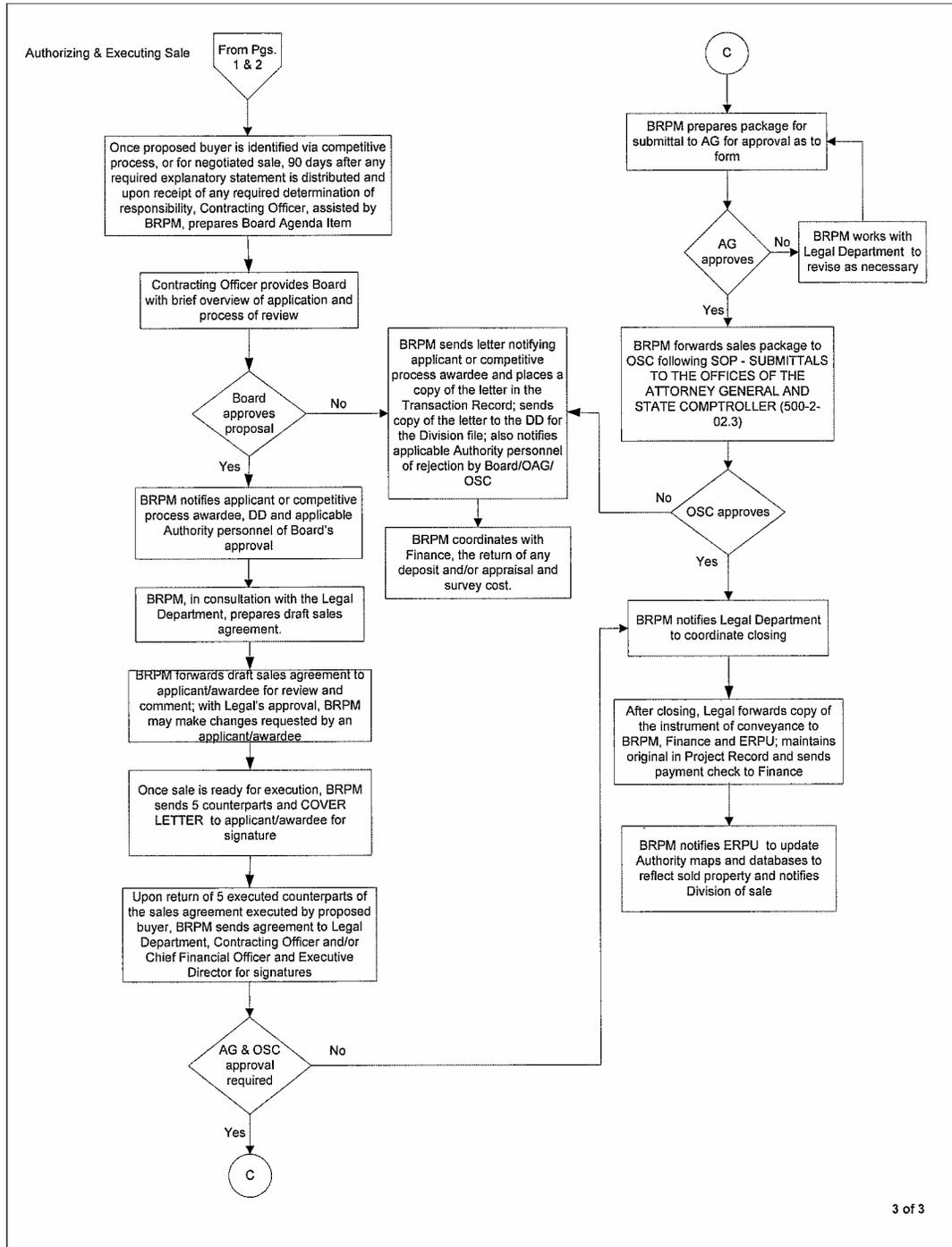
The Legal Department will assist in the development of the Auction Plan, the preparation of the sale agreements, the coordination of reviews by the OAG, and will oversee closings. The Legal Department, Contracting Officer and/or Chief Financial Officer and Executive Director will sign sale agreements on behalf of the Authority.

The TRPMC will review proposed sales and make recommendations to approve or reject the transaction.

7. Flowchart







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EXHIBIT 1
REJECTION LETTER

This letter will be used to notify the applicant that the proposed sale has been rejected.

Date
Name Address City, State, Zip
Re: <Location and description of property> Transaction Reference Number:
Dear <insert name>:
Thank you for your interest in the property at the above referenced location. I regret to inform you that your request has been denied at this time, because <insert appropriate text based on <u>one</u> of the choices below>.
Should you have any questions, I can be reached at <insert phone number>.
Sincerely,
Name Title Department
Option 1: the property is needed for future Thruway Authority purposes.
Option 2: the proposed use of the property is not consistent with the Thruway Authority goals.
Option 3: the Thruway Authority is not the owner of the property or the property is not under the jurisdiction of the Thruway Authority.
Option 4: If none of the above applies, insert specific details to explain the reason for the rejection.

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EXHIBIT 2
SALE REVIEW LETTER

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Sent to an applicant following approval of the proposed sale by the Contracting Officer on the TTAR form. This letter is for sales in excess of \$15,000 that will result in a public auction.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Transaction Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your sale application is being progressed and will result in a public auction. If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Any contact regarding a real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin with the initial auction advertisement and the official contact for the Thruway Authority will be identified in the auction advertisement.

Should you have any questions prior to the auction advertisement, I can be reached at < insert phone number >.

Sincerely,

Name
Title
Department

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SALE REVIEW LETTER

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Sent to an applicant following approval of the proposed sale by the Contracting Officer on the TTAR form. This letter is for sales in excess of \$15,000 that will result in a Request For Proposal (RFP).

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Transaction Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your sale application is being progressed and will result in a Request for Proposal (RFP). If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Any contact regarding a real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin with the initial RFP advertisement and the official contact for the Thruway Authority will be identified in the RFP.

Should you have any questions prior to the auction advertisement, I can be reached at < insert phone number >.

Sincerely,

Name
Title
Department

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SALE REVIEW LETTER

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Sent to an applicant following approval of the proposed sale by the Contracting Officer on the TTAR form. This letter is for sales in excess of \$15,000 that will result in a negotiated sale.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Transaction Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location and your sale application is being progressed and will result in a negotiated lease.

Any contact regarding this real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin upon your receipt of this letter and all questions concerning this sale must be addressed to the following person:

Name
Title
New York State Thruway Authority/New York State Canal Corporation
200 Southern Boulevard
Albany, New York 12209
Phone
Fax
E-mail

Please acknowledge this notification of the restricted period and the contact person, by signing and dating below and returning this letter to us.

Sincerely,

Name
Title
Department

Acknowledgement: _____ Date: _____

SALE REVIEW LETTER

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Sent to an applicant following approval of the proposed sale by the Contracting Officer on the TTAR form. This letter is for sales of \$15,000 or less that will result in a public auction without bids.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Transaction Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your sale application is being progressed and will result in an auction without public advertising for bids. If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Should you have any questions, I can be reached at <insert phone number>.

Sincerely,

Name
Title
Department

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SALE REVIEW LETTER

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Sent to an applicant following approval of the proposed sale by the Contracting Officer on the TTAR form. This letter is for sales of \$15,000 or less that will result in a negotiated sale.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Transaction Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your sale application is being progressed and if you have any questions, I can be reached at <insert phone number>.

Sincerely,

Name
Title
Department

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EXHIBIT 3
TRPMC SALES PACKAGE CHECKLIST

This checklist contains the list of information that shall be in a package submitted to the TRPMC for review.

Content under development

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EXHIBIT 4
SAMPLE EXPLANATORY STATEMENT

The form gives the information that should be contained in any required Explanatory Statement.

Content under development

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EXHIBIT 6
COVER LETTER FOR SALES AGREEMENT

The cover letter is sent to the buyer with the sales agreement for signature.

Content under development