



Republic of the Philippines  
DEPARTMENT OF FINANCE  
BUREAU OF CUSTOMS  
Office of the Commissioner

CUSTOMS MEMORANDUM ORDER  
NO. 59-90

TO : All District Collectors  
Service/Division/Section Chiefs, and  
All Others Concerned

SUBJECT : Rules and Regulations Implementing CAO No. 5-90  
dated July 17, 1990, in the Disposition of  
Forfeited Cargoes and Other Cargoes under  
Customs Custody as Enumerated in Section 2601  
of the Tariff & Customs Code of the Philippines,  
as Amended.

Pursuant to, and in order to effectively implement, Customs Administrative Order No. 5-90 dated July 17, 1990 relative to the disposition of forfeited cargoes and other properly under Customs custody as enumerated in Section 2601 of the Tariff and Customs Code of the Philippines, as amended, the following rules and regulations are hereby prescribed:

Section 1. OBJECTIVES

1. To maximize collection of government revenue thru the sale of forfeited and other goods under Customs custody.
2. To provide protection to local industries adversely affected by undue competition from the disposition of forfeited and other goods under Customs custody which are identical or similar to those locally manufactured.
3. To prevent market disruptions.
4. To provide a smooth, orderly and efficient system of disposition of forfeited goods and other goods under Customs custody.

Section 2. COVERAGE

This Order shall cover the disposition of goods forfeited in favor of the Government and other property under Customs custody subject to sale as enumerated in Section 2601 of the Tariff and Customs Code of the Philippines, as amended.

*Joselyn M. Lim*

Section 3. AUCTION & CARGO DISPOSAL COMMITTEE (ACDC)

1. Composition - An Auction & Cargo Disposal Committee is hereby constituted in each Collection District which shall be composed of the following:

- Chairman ..... The Chief, Auction & Cargo Disposal Division (or equivalent unit)
- Vice-Chairman.... The Head, Auction & Cargo Disposal Monitoring Division, Port Operations Service, or his representative
- Members..... The Chief, Law Division  
                             Representative, Customs Intelligence & Investigation Service  
                             Representative, Enforcement & Security Service

The Resident Auditor, Commission on Audit, representatives from the Department of Finance, the Department of Trade & Industry, and the Economic Intelligence & Investigation Bureau, shall act as witnesses during the proceedings of the Committee and/or in the conduct of disposition of goods pursuant to this Order.

2. Functions and Responsibilities. - The ACDC shall have the following functions and responsibilities:

- 2.1. To provide certain formalities and procedures consistent with, and in pursuance of CAO No. 5-90 dated July 17, 1990, and this Order, pertaining to, and in connection with, auction sales and other modes of disposition of property under Customs custody as provided for under the Tariff and Customs Code of the Philippines, as amended.
- 2.2. To impose, administer and/or recommend to the District Collector the imposition of administrative and/or such other sanctions as may be appropriate against any bidder, person or entity found to have committed disorderly act or any acts prejudicial or inimical to the interest of the Government or violated any law, rules and regulations, in connection with an auction sale, negotiated sale or any disposition of property subject of this Order and in which such bidder,

*Jabwala M. Miram*

person or entity has participated directly or indirectly.

- 2.3. To reject any or all bids/offers or any part thereof, waive any required formalities, and accept bids/offers most advantageous to the interest of the government conformably and consistent with the objectives of this Order.
- 2.4. To recommend to the Commissioner of Customs, thru the District Collector, any and all such matters as will promote the attainment of the objectives of this Order.
- 2.5. To supervise the preparation and conduct of the sale/disposition of property subject of this Order and implement and enforce the provisions of CAO No. 5-90 dated July 17, 1990 and this Order.

3. Secretariat - The ACDC shall be assisted by a Secretariat to be headed by a Customs official/employee designated by the Deputy Commissioner for Assessment and operations, and which shall have the following functions:

- 3.1. Preparing the Agenda and Minutes of the Committee meetings.
- 3.2. Timely disseminating/publishing of Notices of Sale and/or lists of commodities for determination of the reasonable prices thereof to all concerned.
- 3.3. Conducting the auction sales and in the preparation of the report of proceedings thereof.
- 3.4. Collating of comments submitted on time relative to lists of commodities by observers.
- 3.5. Maintaining and managing of records related to the functions/activities of the Committee.

Section 4. APPRAISAL/VALUATION GROUP (AVG)

For the proper and speedy determination and setting of reasonable prices of the items/lots subject of sale, an Appraisal/Valuation Group is hereby constituted which shall be composed of the following:

- Chairman . . . . . The Chief, Valuation & Classification Division
- Members . . . . . The Assistant Chiefs, Auction & Cargo Disposal Division/equivalent unit, Port of Manila, Manila International Container Port and Ninoy Aquino International Airport

*Jawad M. Mian*

The Assitant Chief, Formal Entry Div./  
equivalent unit, Port of Manila, Manila  
International Container Port and Ninoy  
Aquino International Airport

Determination of Prices. - The Auction and Cargo Disposal Division or equivalent unit shall be incharge of the inventory, examination, appraisal, and initial determination by canvass of the prices of the articles/lots for sale/disposition. The appraisal report/result of canvass undertaken by the Auction and Cargo Disposal Division (ACDD)/equivalent unit of the wholesale domestic value in the usual wholesale quantity shall be submitted to the AVG which shall review the same for approval, taking into consideration the following:

1. The estimated wholesale value based on the HCV as available and/or any pricing structure/information that an industry sector/association may furnish relative to the item/s subject of sale;
2. Obsolescence, condition and/or reasonable depreciation, with the necessary allowance therefor to be provided; and
3. Such other factors/information necessary in arriving at a reasonable pricing/valuation of the item/s subject of sale.

Within five (5) working days after the submission by the Auction and Cargo Disposal Division/equivalent unit concerned of the appraisal/canvass report covering the items/sale lots, the AVG shall submit its report indicating the recommended floor prices of said items/sale lots to the ACDC thru the District Collector.

Uniform Applicability. - The prices/values established by the AVG (entral office) shall be uniformly applicable in all Collection Districts. Toward this end, the AVG shall maintain a data filing/recording system and a listing of the items/lots with duly established prices/values which shall be kept constantly updated for dissemination to all Collection Districts.

Section 5. PRE/EXAMINATION

Prospective bidders, upon their request duly made, shall be afforded an opportunity to examine/inspect all the items/lots put up for auction or negotiated sale and on the date/time fixed by the ACDC or as indicated in the Notice of Sale.

*Jabador M. Nisom*

For the convenience of, and in order to facilitate such pre-examination by any prospective bidder, the ACDC shall ensure that the items/lots and properly arranged, displayed, segregated and distinctly and clearly identified/marked. For this purpose, the ACDC shall, as feasible, maintain a separate security warehouse that shall not be used for any other purpose.

Section 6. SEALED BID SYSTEM

In order to ensure competitive bidding and maximize the proceeds, the sealed bid system shall apply to both auction and negotiated sales, subject to the following procedures and requirements.

1. Notice of Sale. - A Notice of Auction or Negotiated Sale, as the case may be, of the items/lots put up for sale shall be posted in the bulletin board maintained for the purpose by the Collection District concerned, at least ten (10) days prior to the date of the sale and, as necessary, advertised in a newspaper of general circulation as follows:

- 1.1. For non-perishable goods, at least ten (10) days prior to the date of the sale; and
- 1.2. For perishable goods, not exceeding three (3) days prior to the date of sale;

Provided that, a Notice of Negotiated Sale shall, in every case, be published in a newspaper of general circulation in accordance with the above time schedule.

2. Offer on "As Is Where Is" Basis. Unless otherwise indicated, articles subject of auction or negotiated sale shall be offered for sale on an "AS IS WHERE IS" basis with no warranty given as to their condition nor shall such offer be deemed, in any manner, binding upon the Bureau of Customs.

The quantity, number, weight or measurement of the articles subject of sale and/or as listed in the Notice of Sale shall be deemed subject to proper determination by the ACDC prior to delivery. In case any excess is thereby discovered, the winning bidder/awardee shall be required to pay for the difference in his bid price, otherwise the excess shall not be deemed included in the sale and shall not likewise be included in the delivery.

*Jawad M. Nizam*

In case any shortage is discovered, a proportionate allowance/adjustment may be authorized; Provided that, immediately upon discovery of the shortage, the winning bidder indicates in the logbook maintained for the purpose his intention to claim such allowance/adjustment, and he follows it up within forty-eight (48) hours after the discovery by a formal written request indicating the particulars therein.

Non-inspection by the prospective bidder of the article/s offered for sale shall not be a ground for refusal of the award.

3. Tamper Proof Drop Boxes. - The ACDC shall provide tamper proof drop boxes with appropriate security padlocks. There shall be as many such drop boxes as there are sale lots put up for auction or negotiated sale.

All bids/offers shall be contained in an envelop which shall be properly sealed before the same are dropped in the drop boxes.

4. Observers. - In all auction or negotiated sales, particularly, where such sale covers articles that would adversely affect identical or similar articles locally manufactured, representatives from the industry sector/association concerned shall be authorized to be present as observers.

#### Section 7. PROCEDURES AND REQUIREMENTS IN AUCTION SALE

1. Registration. - Upon registration, the bidder shall be required to put up a cash bond in the amount of Twenty Thousand (P20,000.00) Pesos for which the Customs Cashier shall issue a temporary receipt. Said amount shall be refunded to the losing bidder after the closing of the auction sale.

2. Bid Tender Forms. - All bids shall be indicated by and under the signature of the bidder or authorized representative in the official bid tender forms which shall be issued in such number as to correspond with the number of sale lots put up on the auction block and for which the bidder intends to submit bids.

The bidder shall fill up the bid tender form completely, indicating therein the amount of his bid offer for the particular sale lot as well as the number of the temporary receipt covering the cash bond, as soon as the Auctioneer has announced the scheduled opening time.

*J. Abdulla M. Nisam*

The bidder or authorized representative shall drop his bid offer placed in a sealed envelope in the assigned drop box for the particular sale lot; Provided that, at his option, he may drop all his bid tenders placed singly in an envelope or drop one bid tender placed in an individual envelope one at a time before the Auctioneer announces the closing time for dropping of bid tenders. After such closing time has been announced, no further bid tenders shall be allowed.

3. Tabulation. - After casting any number of bids, the bidder may leave the auction room and return only during the tabulation of the bids conducted by the Committee. The tabulation may be witnessed by the bidder or a duly authorized representative approved by the ACDC Chairman or his representative.

4. Awarding of the Sale. - After the completion of the tabulation and collation of the bids cast, the following shall be observed:

4.1. The Auctioneer announces the name of the highest bidder and amount of the bid as duly certified/signed by the ACDC and the Resident Auditor/representative.

4.2. The highest bidder pays immediately on the spot the amount equivalent to fifty (50%) percent of the bid price in cash, or in cashier's or manager's check.

4.3. The Chairman, ACDC or the Auctioneer, thereupon, awards the sale to such highest bidder.

5. Tied Bids. - In case of tied bids, the subject item/lot shall be re-bidder among the bidders involved. In case of another tie, the winner shall be determined by drawing of lots or the toss of a coin.

6. Default. - In case of default of the highest bidder to pay the required fifty (50%) percent of the bid price, the second and the third highest bidders shall be allowed, in that order, to raise their bids to an amount equal to that of the defaulting highest bidder and shall, thereby, be required to pay the fifty (50%) percent of the bid price and who will then be awarded the sale accordingly.

*J. Arwahan Jr. Nisum*

The defaulting highest bidder shall be disqualified from participating further in the auction sale authorized under this Order without prejudice to the imposition of whatever sanctions the Committee may recommend to the District Collector or the Commissioner of Customs, including but not limited to, the forfeiture in favor of the government, the amount of Twenty Thousand (₱20,000.00) Pesos cash bond.

7. Full Payment. - The winning bidder shall make full payment of all the items/lots awarded to him within forty-eight (48) hours from the time of the award.

Failure of the part of the awardee to make fully payment within said period shall cause the automatic cancellation of the award, forfeiture of the fifty (50%) percent downpayment in favor of the government as well as the cash bond in the amount of Twenty Thousand (₱20,000.00) Pesos, without prejudice to such other administrative sanctions as may be recommended by the Committee to the District Collector or Commissioner of Customs.

8. Application of Clustering Method. - In order to give bidders a second chance to offer their best and highest recovery being the primordial reason of the government, clustering method is hereby applied and adopted.

There is clustering when the bids submitted/offered are close to each other. Clustering will be defined as having the second highest bid within ten (10%) percent of the highest bid.

In the event of clustering, the highest bid submitted becomes the new floor price of the particular lot being sold. In the open re-bidding that will follow among all bidders present, the minimum "out bid" price shall be three (3%) percent more than the new floor price; otherwise, the highest bid in the sealed bidding shall be considered. The sequence shall be followed/observed everytime the bidders outbid each other.

Consequently, three (3) percent shall be added to every new bid price revealed as the open re-bidding goes on until a bidder emerges the winner.

9. Re-appraisal. - Where an item/lot remains unsold for want of bidders or for lack of an acceptable bid after two (2) biddings, a re-appraisal shall be undertaken and the subject item/lot shall be re-bidder or offered for negotiation, unless the said item/lot is designated by the Commissioner of Customs for use by the Bureau in the promotion of revenue collection or suppression of smuggling or other fraud, for the official use of another national agency, or for donation to a government charitable institution, through the Department of Social Services and Development.

*Jawad M. Miran*



10. Delivery. - The winning bidder shall have five (5) working days, excluding Saturdays, Sundays and holidays, within which to claim and receive delivery of the items/lots from the date of the sale.

Where the winning bidder fails to so claim and receive delivery of the articles/lots awarded to him within said period, a storage fee based on existing rates shall be imposed/charged accordingly.

Where the winning bidder fails to claim and receive delivery of the articles/lots awarded to him within thirty (30) days from the date of sale, he shall be deemed to have abandoned said goods and to have renounced all his rights thereto. In addition, all payments already made therein, including the fifty (50%) percent down payment shall be forfeited in favor of the government, without prejudice to such other administrative sanctions as may be recommended by the Committee to the District Collector or Commissioner of Customs.

11. Assignment Disallowed. - The ACDC may reject any or all bids/offers or any part thereof, waive any required formalities, and accept bids/offers most advantageous to the interest of the government conformably and consistent with the objectives of Order.

Section 8. PROCEDURES AND REQUIREMENTS IN NEGOTIATED SALE

Where after two (2) failed biddings, the subject articles/lots should remain unsold for want of bidders or lack of acceptable bids, such goods may be the subject of negotiated sale. The following procedures/requirements shall be complied with:

1. Registration. - The participant shall register with the ACDC.

2. Offers. - The participant shall tender his offer in a format designed for the purpose which he shall submit in a sealed envelope to the ACDC by dropping the same in the drop box-es provided for the purpose.

3. Opening of Sealed Offers. - On the date/time fixed by the ACDC, the Committee shall open all the sealed offers in the presence of the Resident Auditor.

*Jawahir M. Misra*

In the evaluation of the offers, circumstances other than the amounts may be considered, as will promote the objectives of this Order.

Thereafter, negotiation shall be undertaken in such manner as to be able to arrive at the price most advantageous to the interest of the government conformably with the objectives of this Order.

4. Earnest Money. - The participant giving the highest offer which is temporarily accepted by the ACDC shall be required to put up an amount equal to fifty (50%) percent of the offer as earnest money. Failure to pay such earnest money within twenty-four (24) hours after the negotiation shall constitute a ground for the exclusion of the defaulting participant from the list to be submitted to the Secretary of Finance, without prejudice to the imposition of such administrative sanctions as the ACDC may recommend to the District Collector or the Commissioner of Customs.

5. Approval of Offers. - All offers to buy in a negotiated sale shall be subject to the approval of the Secretary of Finance upon recommendation of the Commissioner of Customs following the report of the ACDC duly indorsed by the District Collector.

In the event an offer is disapproved by the Secretary of Finance, the earnest money shall be refunded.

6. Period of Acceptance of Offer. - The ACDC shall fix the period within which offers to buy may be accepted and beyond which no offer shall be entertained.

7. No Assignment. - No assignment of accepted/approved offer shall be allowed.

#### Section 9. SECURITY AND CONTROL MEASURES

1. Responsibility of the warehouseman - In addition to his assigned duties and responsibilities, the warehouseman concerned shall be responsible and answerable for any shortage, loss or decrease in number or quantity of the items/lots subject to sale after the same shall have been duly segregated and identified/ marked by the ACDC. The shortage, loss or decrease for which the warehouseman shall be made responsible and answerable shall be determined by the ACDC.

*Jawad L. Misa*

In order to pinpoint responsibility where there is change in the assigned warehouseman, it shall be incumbent upon the incoming warehouseman to mandatorily demand from the outgoing warehouseman proper physical turnover of the goods under custody and as already segregated and identified/marked by the ACDC.

2. Deliveries. - The loading and delivery of articles sold/awarded pursuant to this Order shall be witnessed by representatives of the Customs Intelligence & Security Service, the Enforcement and Security Service and the office of the Resident, Commission on Audit.

3. Gate Pass. - Each loading truck in the delivery of the goods sold shall be covered by a duly issued gate pass also signed by the Resident Auditor. Such gate pass shall cover only the goods loaded in the delivery truck.

4. Other Measures. - As the ACDC may deem necessary, it shall recommend to the District Collector further measures to ensure the security of the article subject of sale and/or delivery.

#### Section 10. INCIDENTAL EXPENSES

The ACDC shall set aside a portion which shall not exceed ten (10%) percent of the proceeds from all sales for the payment of incidental expenses as provided for under Section 2605 of the Tariff and Customs Code of the Philippines, as amended, and under other special laws.

The amount set aside shall be subject to review by the ACDC which shall recommend any necessary adjustment to the Commissioner of Customs duly indorsed by the District Collector for approval.

#### Section 11. REPEALING CLAUSE

This Order repeals Customs Memorandum Order No. 95-89 dated October 25, 1989 and all other Customs rules and regulations inconsistent with this Order are likewise deemed superseded and repealed accordingly.

#### Section 12. EFFECTIVITY

This Order shall take effect on September 3, 1990.

*Salvador M. Mison*  
SALVADOR M. MISON  
Commissioner