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Republic of the Philippines
Department of Finance
Bureau of Customs
1099 Manila

NOV 28 2007

CUSTOMS ADMINISTRATIVE ORDER
NO. 10-2007

**SUBJECT: Rules and Regulations In the Conduct of
Public Auction and Negotiated Sale**

SECTION 1. COVERAGE. – This Order shall cover the disposition of articles under customs custody as enumerated in Section 2601 of the TCCP, as amended, through public auction or negotiated sale pursuant to Section 2610 of the same Code.

SECTION 2. PUBLIC AUCTION. – In the absence of any special provision of law, articles under customs custody shall be disposed of through sale by public auction.

SECTION 3. FLOOR PRICE IN AUCTION SALE. – Articles subject to sale at public auction shall be sold at a price not less than the wholesale value or the canvassed domestic wholesale price of same, like or similar articles and in the usual wholesale quantities and in the ordinary course of trade, as determined by the concerned examiners/appraisers subject to the approval of the Chief, ACDD and the District Collector, provided, however, that the recommended floor price shall not be less than the sum of the total landed cost based on the published/circularized VRIS-OCOM test value plus taxes, taking into consideration the obsolescence, condition and/or reasonable depreciation.

SECTION 4. NOTICE OF PUBLIC AUCTION. – The Notice of Public Auction shall be prepared by the Chief, ACDD or its equivalent unit and approved by the District Collector containing the following information:

- a. Specific time, date and place for the auction sale.
- b. Lot No. per sale lot (SI / AP No(s); name(s) of consignee).
- c. Specific description of the goods, as mandated by CAO 8-2007, per sale lot, including their quality, condition, volume / quantity and date of arrival. In no case shall the goods be described in general terms, e.g., "Various Goods." In case of motor vehicles, the Notice shall specify the Year Model, Make / Brand, Vehicle Identification No. (VIN), Chassis and Engine Nos. As to perishable items, the expiry date shall be stated.
- d. Floor price per sale lot.
- e. Specific date, time and place for the inspection of all the items / lots which shall be 2 days prior to the auction date.

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- f. The terms and conditions of the Public Auction, such as, the registration requirements, sealed bid system, clustering, failed bidding, second auction, awarding and payment.

SECTION 5. SUBMISSION OF THE NOTICE OF SALE TO THE COMMISSIONER FOR MONITORING PURPOSES. – Upon approval of the Notice of Sale by the District Collector, the Chief, ACDD shall furnish the Commissioner of Customs a copy of the Notice and submit the following documents:

- a. Inventory of each sale lot covered by the Notice of Public Auction.
- b. Certificate of Finality of Forfeiture/Declaration of Abandonment or an Order of the District Collector to sell in public auction in satisfaction of a tax lien and/or to place the proceeds thereof under escrow.
- c. In the case of perishable items, a Certification from the assigned examiner/appraiser attesting to the fact that the goods are perishable and approved by the Chief, ACDD.

SECTION 6. PUBLICATION AND POSTING OF NOTICE OF SALE. – The Notice of Auction Sale, regardless of the aggregate amount of the covered sale lots, shall be published in at least two (2) newspapers of general circulation and posted at the Bureau of Customs website and/or at a conspicuous place/bulletin board within the premises of the Port, at least ten (10) calendar days prior to the date of auction sale or in the case of perishable goods at least three (3) calendar days. Except for Manila, Cebu, Cagayan de Oro and Davao, the Notice of Auction Sale shall also be posted at the bulletin board of the city/municipal hall where the port is located.

SECTION 7. CONDITIONS FOR REGISTRATION AND PARTICIPATION IN PUBLIC BIDDING. – The Chief, ACDD shall be responsible to ensure that only those who have complied with the following requirements shall register and participate in the public auction:

- a. Filing of the appropriate duly accomplished registration form.
- b. Payment of a non-refundable registration fee of Php2,000.00.
- c. Posting of a duly receipted bond in cash or manager's check in an amount equivalent to 20% of the floor price for each sale lot. The bond shall be refunded to the losing bidder after the closing of the auction. The bond shall not, however, be required when the floor price of a sale lot is less than Php10,000.00.
- d. In auction sales involving regulated commodities, such as, rice or sugar, the bidder shall submit to the ACDD

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proof of qualification (i.e. NFA/SRA licenses) as an importer/trader of such goods.

- e. The names, addresses, TIN and other relevant circumstances of the registrants shall be indicated in the logbook for registered bidders.
- f. Submission of the latest income and/or business tax returns duly stamped and received by the Bureau of Internal Revenue (BIR) and validated with the payment made thereon.

SECTION 8. SEALED BID SYSTEM. – The sealed bids shall be submitted and opened in public by the Auction Committee at a time, date and place specified in the Notice of Auction Sale. The highest bid shall be declared as the winner except when clustering occurs.

SECTION 9. CLUSTERING SYSTEM. – Clustering occurs when the difference between the highest and the second highest bid is within ten percent (10%) of the highest bid. In such cases, an open-bidding shall be conducted among the bidders of the particular sale lot who are present with the highest bid serving as the new floor price. Only bids raised by three percent (3%) more than the new floor price shall be considered and the highest bid in the open-bidding shall be declared as the winner. Otherwise, the highest sealed bid shall be declared as the winner.

SECTION 10. AWARDING OF SALE. – At the end of each bidding, the highest bidder shall be required to pay in cash / manager's check fifty percent (50%) of the bid price "on the spot" upon announcement of the winning bid as duly certified to by the Auction Committee and the COA representative. The remaining balance shall be paid on the succeeding business day.

SECTION 11. FAILED BIDDING. – A failed bidding shall be declared by the Auction Committee when any of the following circumstances occurs:

- a. When there is only one sealed bid, the same shall not be opened.
- b. When there are two sealed bids but there is only one bid higher than the floor price.
- c. When the highest bidder fails to comply with any of the payments required in Section 9 hereof, said bidder shall be disqualified from participating further in the auction sale and when applicable, the negotiated sale thereof without prejudice to the forfeiture of the cash bond and any payment made and imposition of other sanctions as may be warranted.

SECTION 12. SECOND BIDDING. – When a failed bidding is declared, the sale lot shall be offered in a second auction to be held on the third business day after the first failed auction at the same floor price, without need of further advertisement / posting. In case of

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perishable goods, the second auction shall be conducted on the first business day following the first failed bidding.

SECTION 13. NEGOTIATED SALE. – In case of a second failed bidding, the unsold lot shall be re-offered through negotiated sale.

SECTION 14. MANDATORY REPORTING ON THE SECOND FAILED BIDDING. – After a second failed bidding, the District Collector shall submit a report to the Committee on Negotiated Sale, within forty-eight (48) hours, and in case of perishable articles, within twenty-four (24) hours with the following information:

- a. Abstract of bids per sale lot indicating the floor price, name of bidders and reason for the failed auction.
- b. Proof of Publication
- c. District Collector's Certification on the two failed biddings conducted for said sale lot.
- d. In case of perishable articles, the District Collector's Certification to that effect.
- e. Such other requirements that may be imposed by the Committee.

SECTION 15. COMMITTEE ON NEGOTIATED SALE. - A Committee on Negotiated Sale is hereby constituted which shall be composed of the following:

CHAIRMAN - Deputy Commissioner,
Internal Administration Group

MEMBERS - OCOM Representative – to be designated by the Commissioner of Customs, and

DOF Representative – to be designated by the Secretary of Finance or his duly authorized representative.

HEAD SECRETARIAT - To be recommended by the Chairman, Committee on Negotiated Sale.

The Committee shall have the following duties and functions:

- a. Implement the provisions of this Order relating to the conduct of negotiated sale.
- b. Conduct an ocular inspection of the sale lots.
- c. Reject any or all offers or any part thereof and consider offer/s most advantageous to the interest of the government.
- d. Recommend to the Secretary of Finance for acceptance of the offer/s most advantageous to the interest of the government.

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The Secretariat shall have the following duties and responsibilities:

- a. Cause the publication of the appropriate Notice in at least two (2) newspapers of general circulation specifying the date, place, and time of inspection of the lots described therein as well as the date and cut-off time for the submission of the requirements provided in Section 15 hereof. Publication shall be at least five (5) days prior to the date indicated therein and in case of perishable articles, at least two (2) calendar days.
- b. Coordinate with the ACDD of the concerned Port on the posting requirements.
- c. Prepare the Report of the Proceedings of the Committee Meetings.
- d. Maintain records related to the functions/activities of the Committee.

SECTION 16. REQUIREMENTS AND PROCEDURE IN NEGOTIATED SALE.

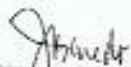
- a. The participant shall submit to the Committee on Negotiated Sale within the proscribed period of time to be indicated in the Notice, the following:
 1. Sealed offer to buy indicating the sale lot and the amount of his offer.
 2. Tax Identification Number (TIN No.)
 3. Official Receipt on the payment of a non-refundable registration fee of P2,000.00.
 4. Latest Income and/or Business Tax Returns duly stamped and received by the Bureau of Internal Revenue (BIR) and validated with the payment made thereon.
 5. In case of negotiated sale involving regulated commodities, such as, rice or sugar, proof of qualification as importer / trader of such goods.
 6. Such other requirements as the Committee may impose.


Failure to meet any of the requirements enumerated above shall automatically disqualify the participant from participating further in the negotiated sale.

- b. There shall be no minimum prices and the sealed offers to buy must be submitted within the proscribed period of time indicated in the Notice. No offer to buy shall be entertained if submitted after the said period of time. The sealed offers shall be opened in the presence of a COA representative.
- c. The participant whose offer is considered the most advantageous to the interest of the government shall be required to pay a guarantee cash deposit in an amount equivalent to twenty percent (20%) of the offer within twenty-four (24) hours from receipt of notice by the Committee prior to referral to the Secretary of Finance for consideration. Non-compliance herewith shall automatically disqualify the offeror from participating further in the negotiated sale.

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- d. An additional thirty percent (30%) of the offer shall be paid in cash / manager's check within forty-eight (48) hours from receipt of the notice from the Committee of the approval of the offer by the Secretary of Finance. The fifty percent (50%) remaining balance shall be paid in full within the succeeding business day. Non-compliance herewith shall cause the forfeiture of the deposit and any payment/s made without prejudice to the imposition of other sanctions as may be warranted.
- e. When the offer is rejected by the Secretary of Finance, the guarantee cash deposit shall be refunded and the unsold lot shall be re-bid in accordance with the herein provisions on auction or otherwise disposed of through the other permitted modes of disposal under the Tariff and Customs Code as warranted by the circumstances.

SECTION 17. **INTERIM PROVISION.** - All pending sale lots on third or more advertisements shall be referred by the District Collector to the Committee on Negotiated Sale upon effectivity of this Order.

SECTION 18. **REPEALING CLAUSE.** - CAO No. 5-90, CMO Nos. 25-2005 and 5-2003 and other customs rules and regulations or parts thereof inconsistent with this Order are hereby deemed repealed / amended accordingly.

SECTION 19. **EFFECTIVITY.** - This Order shall take effect fifteen (15) days after complete publication in two (2) newspapers of general circulation.

NAPOLEON L. MORALES
Commissioner



APPROVED:

M. B. Teves
MARGARITO B. TEVES
Secretary
Department of Finance

M. B. Teves

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