



BUREAU OF CUSTOMS

Professionalism Integrity Accountability

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Date: 09 OCT 2020

CUSTOMS MEMORANDUM ORDER
No. 26-2020

SUBJECT: RULES AND REGULATIONS IN THE DISPOSITION OF GOODS UNDER CUSTOMS CUSTODY THROUGH NEGOTIATED SALE

Section 1. Scope. This Customs Memorandum Order (CMO) prescribes the rules and regulations further implementing Section 1149 of the CMTA, Customs Administrative Order (CAO) 03-2020 detailing the procedures governing the disposition of abandoned and forfeited goods through negotiated sale.

Section 2. Objectives.

- 2.1. To provide for a uniform procedure and specific requirements in the conduct of negotiated sale;
- 2.2. To ensure the integrity and transparency in the negotiated sale process by establishing a detailed procedure in the conduct thereof; and
- 2.3. To expedite the disposition of goods through negotiated sale.

Section 3. Negotiated Sale Committee. A Negotiated Sale Committee is hereby created to be composed of the following:

Chairperson	:	Deputy Commissioner, RCMG
Vice-Chairperson	:	Deputy Commissioner, AOCG
Members	:	Director, Legal Service Director, Financial Management Office OCOM Representative
Secretariat	:	To be designated by the Chairperson

Section 4. Duties and Functions of the Negotiated Sale Committee. The Committee shall have the following duties and functions:

- 4.1. Implement the provisions of CAO 03-2020 relative to the conduct of negotiated sale;
- 4.2. Conduct an ocular inspection of the sale lots or items;
- 4.3. Reject any or all offers or any part thereof and consider offer/s most advantageous to the interest of the government;
- 4.4. Recommend to the Secretary of Finance the acceptance of the offer/s most advantageous to the interest of the government; and
- 4.5. Issue orders necessary to implement CAO 03-2020.

Section 5. Goods Subject to Negotiated Sale. Goods which remain unsold after at least two (2) failed biddings, that are not suitable either for official use or donation may be may sold through a negotiated sale subject to the approval of the Secretary of Finance and executed in the presence of a Commission on Audit (COA) representative.

Section 6. Documents Required in the Indorsement of Lots to the Negotiated Sale Committee. In indorsing lots that have undergone at least two (2) failed biddings, the Ports shall submit the following documents:

- 6.1. Abstract of Bids per sale lot indicating the floor price, name of bidders and reason for the failed auction;
- 6.2. Proof of Publication;
- 6.3. District Collector's Certification of two (2) failed auction conducted on the said lots;
- 6.4. In case the goods are perishable, the District Collector's certification to that effect;
- 6.5. Decision or Order;
- 6.6. Certificate of Finality of Decision or Order;
- 6.7. Examination Report;
- 6.8. Appraisal Report;

- 6.9. Certification from the regulating agency that goods are still fit for human consumption, for food items;
- 6.10. Any other Certification issued by any regulating agency for other goods;
- 6.11. Pictures; and
- 6.12. Such other requirements as may be required by the Committee.

Section 7. Notice of Negotiated Sale. A Notice of Negotiated Sale shall be prepared by the Committee which shall contain the following information:

- 7.1. Time, date, and place of submission and opening of offers;
- 7.2. Time, date, and place for the pre-offer conference;
- 7.3. Time, date, and place for the public viewing of sale lots;
- 7.4. Description of goods being offered for negotiated sale;
- 7.5. Location of the goods;
- 7.6. Consignee, if any;
- 7.7. Decision or Order;
- 7.8. Terms and conditions for the negotiated sale;
- 7.9. Additional requirements for the sale of the goods;
- 7.10. Container number, if any; and
- 7.11. Such other information deemed by the Committee to be included in the Notice of Negotiated Sale.

Section 8. Publication of the Notice of Negotiated Sale. The Notice of Negotiated Sale shall be published in a newspaper of general circulation and posted in the BOC website at least ten (10) calendar days prior to the scheduled date of negotiated sale.

Section 9. Public Viewing. Interested offeror/s shall be given an opportunity to personally view the items/goods on the date indicated in the Notice of Negotiated Sale. In this regard, the Collection District/s concerned shall make the necessary

arrangement for the actual viewing. Pictures of the items/goods shall likewise be posted in the BOC website.

Section 10. Pre-Offer Conference. At least two (2) calendar days prior to the date of negotiated sale, a pre-offer conference shall be held for those offerors who have signified their intent to participate to raise any questions they may have relative to the negotiated sale.

Section 11. Registration Fee. Payment of the registration fee in the amount of Two Thousand Pesos (Php 2,000) and Legal Research Fee of Twenty Pesos (Php 20.00) shall be made at the Customer Care Center, Port of Manila, South Harbor.

However, in exceptional circumstances (e.g. declaration of National Health emergencies, calamities, etc.), offeror/s who will participate online during the opening of offers shall pay the registration fee at the Collection Division of the District Ports nearest them.

Section 12. Documentary Requirements. For interested offerors, the following documentary requirements shall be submitted:

- 12.1.** Tax Identification Number (TIN);
- 12.2.** Official receipt on the payment of a non-refundable registration fee of Php 2,000.00 and legal research fee of Php 20.00;¹
- 12.3.** 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;
- 12.4.** Government issued Identification Card (ID) of the participant/offeror, or his/her duly authorized representative;
- 12.5.** Clearance or registration from the concerned government agencies in case of regulated goods;
- 12.6.** For Single Proprietorship:
 - 12.6.1** Department of Trade and Industry (DTI) registration;
 - 12.6.2** Special Power of Attorney of the person duly authorized to represent, offer, and enter into a sale

¹ CAO No. 10-2007, Section 7, Par (b)
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and execute all necessary documents in behalf of the participant/offeror;

12.6.3 Affidavit executed by the participant/offeror declaring that he or his officers are not related to any of the following:

- a) The Chairperson, member and secretariat of the Negotiated Sale Committee, within third civil degree of consanguinity or affinity; and
- b) The consignee (if applicable) of the seized and forfeited shipments.

12.7. For Partnership, Corporation, Joint Venture and Cooperative:

12.7.1. Articles of Incorporation/Partnership and General Information Sheet;

12.7.2. Special Power of Attorney (in case of partnership) or Secretary's Certificate (in case of corporation, joint venture and cooperative), evidencing authority of its representative to offer, enter into sale, and execute all necessary documents in behalf of the participant/offeror;

12.7.3. Affidavit executed by the participant/offeror, through its duly authorized representative who shall be either an officer or director, declaring that none of its officers, directors, members, stockholders, and partners, as the case maybe, are related to any of the following:

- a) The Chairperson, member and secretariat of the Negotiated Sale Committee, within third civil degree of consanguinity or affinity; and
- b) The consignee (if applicable) of the seized and forfeited shipments.

12.8. The documentary requirements and offer shall be signed in each page thereof and placed in an envelope to be sealed and signed by the participant/offeror.

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

Section 13. Submission of Offers. On the date and time for submission of offers as specified in the Notice of Negotiated Sale, the participants shall submit all the documentary requirements to be placed in one (1) main sealed long brown envelope.

On the face of the main sealed envelope, the following details must be clearly indicated:

- a) Name of the offeror;
- b) Name of the authorized representative (if applicable);
- c) Contact number;
- d) Email address; and
- e) The sale lot number/s of the good/s in which an offer is being made.

Inside the main sealed envelope mentioned above, participants shall insert separate sealed envelopes, as follows:

- a.) The first sealed envelope shall contain the eligibility requirements enumerated above; and
- b.) Succeeding sealed envelope/s shall contain the offer/s. The offer/s must be signed by the participant or the duly authorized representative indicating clearly the AMOUNT of the OFFER both in FIGURES and WORDS and the LOT NUMBER in which an offer is made.

Should the participant be interested in making an offer for more than one sale lot, each of the offers shall be made in separate sealed envelopes. The individual sealed envelope containing the offer must indicate in its outer portion, the sale lot of the goods in which an offer is being made.

Section 14. Period to Submit Offer. The Offeror shall tender his sealed offer in a format designed for the purpose in a sealed drop box within the prescribed period of time indicated in the Notice of Negotiated Sale. No offer to buy shall be entertained if submitted after the said period of time.

Section 15. Evaluation of the Documents Submitted. The eligibility requirements and sealed offers shall be opened and evaluated by the Committee in the presence of a representative of COA and the participants or their duly authorized representatives on the date, time, and place indicated in the Notice, and in the manner provided below:

- 15.1. The Committee shall open the first sealed envelope containing the documentary requirements and shall then proceed to evaluate the completeness of the documents submitted by the participants. The Committee shall declare each submission as "Eligible" or "Ineligible" and inform the participants accordingly.
- 15.2. The Committee shall return the eligibility documents and sealed offer/s of a participant if it is declared "Ineligible".
- 15.3. The Committee shall then proceed to open the succeeding envelopes containing the sealed offers of participants with "Eligible" rating. The Committee shall evaluate the offers that are most advantageous to the interest of the government.
- 15.4. Only one authorized person for each participant shall be allowed to participate during the negotiated sale proceeding. He/she shall only be allowed entry into the venue at the time when his/her sealed offer, including its attachments, is the subject of evaluation by the Committee. Failure of a participant or the authorized representative to be present during the opening of the eligibility requirements and sealed offers shall automatically disqualify the participant from participating further in the negotiated sale.
- 15.5. No minimum price shall be set; however, the government reserves the right to reject any or all offers, waive and require formalities, and accept offers that are most advantageous to the interest of the government pursuant to Custom Administrative Order Nos. 03-2020 and 10-2007.

In exceptional circumstances, offerors may be allowed to join and witness remotely, through an online platform, the opening of their offers. Provided, that their duly authorized representatives are physically present at the venue at the time of the opening of the offers.

Section 16. Payment Procedure. The participants whose offer is considered the most advantageous to the interest of the government shall be required to pay a guarantee cash deposit in the amount equivalent to twenty percent (20%) of the

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South Harbor, Gate 3, Port Area, Manila 1099

Tel. Nos 527-4537, 527-1935

Website: www.customs.gov.ph Email: Boc.cares@customs.gov.ph

offer within twenty-four (24) hours from receipt of the Notice of Acceptance of the offer by the Committee, which shall be deposited in a special trust account, prior to referral to the Secretary of Finance for consideration. For this purpose, the District Collector shall open a special trust account. Non-compliance herewith shall automatically disqualify the participant from participating further in the Negotiated Sale.

The eighty percent (80%) remaining balance shall be paid in full within forty-eight (48) hours from receipt of the notice from the Committee on Negotiated Sale of the approval of the offer by the Secretary of Finance.

In case of failed negotiated sale or failure to comply with any of the payment requirement provided under Section 8.5 of CAO 03-2020, the Offeror shall automatically be disqualified from participating further in any negotiated sale and public auction without prejudice to the forfeiture of any payment/s made thereon.

When the offer is rejected by the Secretary of Finance, the guarantee cash deposit shall be refunded.

Section 17. Failed Negotiated Sale. A failed negotiated sale shall be declared by the Committee on Negotiated Sale when any of the following circumstances occurs:

- 17.1.** When there is no offer;
- 17.2.** When the highest offeror fails to comply with any of the payment required under Sec. 8.5 of CAO 03-2020, said Offeror shall be disqualified from participating further in 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; or
- 17.3.** When the Department of Finance disapproves or rejects the offer of the Offeror.

Section 18. Awarding of Sale. Upon full payment and presentation of the official receipts evidencing payments of the accepted offer price subject of negotiated sale, the Secretariat shall issue a Notice of Award and shall forward the records of the District Collector having jurisdiction over the goods.

Section 19. Approval by the Department of Finance. A Negotiated Sale shall be subject to the approval or disapproval of the Department of Finance.

Section 20. Refund of Payment. Payments made by the Offeror which has been disapproved by the Department of Finance shall be refunded within fifteen (15) calendar days from receipt of Notice of Disapproval by the Offeror.

Section 21. Disposition of Goods which have undergone Failed Negotiated Sale. In case of a failed negotiated sale, the subject sale lot may be disposed of according to the other modes of disposition available under the CAO 03-2020.

Section 22. Repealing Clause. All other rules and regulations issued by the Bureau which are inconsistent with this CMO are deemed repealed or modified accordingly.

Section 23. Separability Clause. If any part of this CMO is declared unconstitutional or contrary to existing laws, the other part not so declared shall remain in full force and effect.

Section 24. Effectivity. This Order shall take effect immediately and shall last until revoked.



REY LEONARDO B. GUERRERO

Commissioner
OCT 09 2020



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