



MAR 17 2003

**CUSTOMS MEMORANDUM ORDER**  
NO. 5-2003

**Rules and Regulations in the Disposition of  
Goods by Public Auction/Negotiated Sale**

**I - OBJECTIVES**

1. To institutionalize the mechanics/system in the disposition of goods by way of public auction/negotiated sale
2. To optimize revenues from public auction/negotiated sale by institutionalizing the system in setting up the floor price and in advertising such sale to generate the widest participation
3. To provide the mechanism such that said sales would not pose undue competition to local industries or disrupt market conditions

**II - SCOPE**

This Order covers the disposition of property in Customs custody by way of public auction/negotiated sale pursuant to the Tariff and Customs Code of the Philippines, as amended.

**III - GENERAL PROVISIONS**

1. Pursuant to Sec. 2601 of the TCCP, the following property shall be subject to public auction/negotiated sale:
  - a. abandoned articles
  - b. articles entered under warehousing entry not withdrawn nor the duties and taxes paid thereon within the period described under Sec. 1908 of this Code
  - c. seized property, other than contraband, after liability to sale shall have been established by proper administrative or judicial proceedings in accordance with law

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- d. any article subject to a valid lien for customs duties, taxes or other charges collectible by the Bureau of Customs, after the expiration of the period allowed for the satisfaction of the same
2. Articles subject to sale at public auction shall be sold at a floor price not less than the wholesale domestic market value of the same, identical and similar articles in the usual wholesale quantities and in the ordinary course of trade, as herein determined.
3. Every public auction/negotiated sale shall be covered by a Notice of Public Auction/ Negotiated Sale.
4. A Notice of Auction/Negotiated Sale shall be subject to clearance from the Commissioner of Customs. Where any sale lot carries a floor price of PHP50 Million or more, the same shall also be subject to clearance from the Office of the President through the Secretary of Finance.
5. The Notice of Auction/Negotiated Sale shall be posted/advertised at least ten (10) calendar days prior to the date of auction/negotiated sale, or in the case of perishable goods, three (3) calendar days.
6. Only qualified bidders shall be allowed to participate in an auction/negotiated sale.
7. The sealed bid system shall be adopted to ensure competitive bidding, except when clustering occurs and/or an open negotiated sale ensues as herein provided.
8. After a second failed bidding, the sale lot shall be subjected to a re-appraisal and the same may be disposed of, subject to the approval of the Commissioner of Customs, in any of the following modes:
  - a. negotiated sale;
  - b. donation;
  - c. re-exportation pursuant to Section 2610 of the TCCP;
  - d. official use by the Bureau of Customs or by the National Government pursuant to Section 2610, TCCP; and/or
  - e. such other modes of disposition under existing laws. *W*

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**IV - OPERATIONAL PROVISIONS**

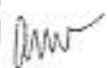
**A. SETTING THE FLOOR PRICE**

The concerned examiner/appraiser, subject to the approval of the Chief, ACDD, shall set the floor price on the basis of any of the following, whichever is higher:

1. The price at which the same, like or similar item was bought in a public auction/negotiated sale not more than three (3) months ago;
2. The price recommended by the concerned industry sector;
3. The average of at least three canvassed domestic wholesale prices;
4. The domestic wholesale price arrived at through backward computation using as basis the average of three canvassed retail prices;
5. The total landed cost of the article plus taxes and 25% mark-up.

**B. NOTICE OF PUBLIC AUCTION/NEGOTIATED SALE**

1. The Notice of Public Auction/Negotiated Sale shall be prepared by the Chief, Auction Cargo Disposal Division (ACDD) or its equivalent unit and approved by the District Collector.
2. The Chief, ACDD, or its equivalent, shall ensure that such notice shall contain the following information:
  - a. Sale Lot No. per sale lot
  - b. Sufficient description of the goods covered by every sale lot, including their quality and volume. In the case of motor vehicles, the notice shall specify the Vehicle Identification No. (VIN) or the Chassis No.
  - c. Floor price per sale lot
  - d. Specific times, dates and places for public viewing and of auction/negotiated sale of the covered sale lots, which should be scheduled at least two (2) days apart upon securing the required clearance from the Commissioner of Customs or the Secretary of Finance.
  - e. The terms and conditions of the Public Auction/Negotiated Sale, such as, the registration requirements, sealed bid system, clustering, failed



bidding, second auction, re-offering of the unsold lots, awarding and payment.

*C. CLEARANCE FROM THE COMMISSIONER OF CUSTOMS AND OFFICE OF THE PRESIDENT*

1. In forwarding the Notice of Auction/Negotiated Sale for clearance to the Commissioner of Customs, the District Collector shall ensure that said notice is supported by the following accompanying documents:
  - a. Inventory of each sale lot covered by the Notice of Auction/Negotiated Sale
  - b. The basis of the floor price, indicating that such is the highest arrived at from among methods employed, as provided for in Section IV (A)
  - c. Certificate of Finality of Forfeiture/Declaration of Abandonment or an Order of the District Collector to sell in a public auction in satisfaction of a tax lien and/or to place the proceeds thereof under escrow
  - d. In the case of perishable items, certification from the assigned examiner/appraiser attesting to the fact that the goods are perishable, and approved by the Chief, ACDD.
  
2. In the case of a negotiated sale, the District Collector shall forward to the Commissioner of Customs such notice supported by the following accompanying documents, in addition to the accompanying documents specified under Section IV.c.1 hereof.
  - a. Brief auction history of covered sale lot
  - b. Newspaper clippings of the Notice of Auction/Negotiated Sale, with date of issue
  - c. District Collector's Certification to the effect that there had been two failed biddings conducted for said sale lot
  - d. Commissioner's Clearance for the auction sale of covered sale lot

*D. POSTING/ADVERTISING OF NOTICE OF PUBLIC AUCTION/NEGOTIATED SALE*


1. Upon issuance of the clearance by the Commissioner of Customs and/or Secretary of Finance, the Chief, ACDD shall incorporate into/indicate in the *Ann*

Notice of Public Auction/Negotiated Sale the date and place for public viewing and for auction of the covered sale lot/s.

2. The Notice of Public Auction/Negotiated Sale shall be posted at a conspicuous place/bulletin board within the premises of the concerned port; except for Manila, Cebu, Cagayan de Oro and Davao, it shall also be posted on the bulletin board of the city/municipal hall where the port is located.
3. The Notice shall also be advertised in newspapers of general circulation except for public auctions/negotiated sales conducted outside Metro Manila ports, whose aggregate amount of the covered sale lots is one (1) million pesos or below, in which case the notice shall be advertised in any local newspaper circulated in the region where the port is located.
4. A copy of the Notice of Public Auction/Negotiated Sale submitted for actual posting/advertisement shall be furnished to the Commissioner of Customs by the Chief of the ACDD concerned at least three (3) days before the date of auction/negotiated sale.

#### E. REGISTRATION

It shall be the responsibility of the Chief, ACDD, to ensure that all participating bidders have complied with the following qualifying requirements:

1. File the appropriate, duly accomplished registration form
2. Pay a non-refundable registration fee of PHP2,000.00
3. Post a duly receipted cash bond for PHP20,000.00, which the District Collector may increase depending on the value of the goods to be auctioned. The bond shall be refunded to the losing bidder after the closing of the auction/negotiated sale. In the event that the floor price of a sale lot is less than PHP10,000.00, a cash bond shall not be required.
4. In the case of auction/negotiated sales involving regulated commodities, such as, rice or sugar, the bidder shall submit to the ACDD proof of qualifications (i.e. NFA/SRA licenses) as an importer of such goods.
5. The names, addresses, TIN and other relevant circumstances of the registrants shall be indicated in the logbook for the registered bidders. 

F. SEALED BID SYSTEM

1. The Auction Committee shall be headed by the Chief, ACDD or its equivalent unit, and composed of at least of two other members to be appointed by the District Collector from among the ranks of customs officers in his/her district.
2. 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 as described hereunder.

G. CLUSTERING SYSTEM

1. Clustering occurs when at least two of the sealed bids submitted in an auction fall within ten (10%) percent of the highest bid and these are above the floor price.
2. Those in the cluster shall immediately go into an open bidding with the highest sealed bid serving as the new floor price of the particular lot being sold.
3. In the open-bidding, the highest offer shall be declared as the winning bid, provided the same is at least three (3%) percent more than the new floor price; less than that, the highest bid in the sealed bidding shall be considered as the winner.
4. Where the floor price is PHP3Million or more, the District Collector may go lower than three (3%) percent in setting the minimum "out-bid" price.

H. FAILED BIDDING AND SECOND AUCTION

1. A failed bidding shall be declared by the Auction Committee when any of the following circumstances occurs:
  - a. At the close of the submission of sealed bids, the number of sealed bids submitted is less than two (2);
  - b. At the time of the opening of the sealed bids, the bids higher than the floor price number less than two (2); and
  - c. the winning bidder fails to pay the initial or the final payment within the deadlines prescribed herein. *John*

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

*I. AWARDED TO WINNING BIDDER  
AND PAYMENT OF BID PRICE*

1. At the end of each bidding, the highest bidder shall be required to pay 50% of the bid price either in cash and/or manager's check before the next sale lot in the day's auction is offered, if any; provided that such payment shall be made within 30 minutes from the awarding of the won bid.
2. Where there is only one (1) lot to be auctioned for the day, or in the case of the winning bidder of the last lot, the initial payment of 50% shall be made immediately after the bidding; provided such payment is made not later than two (2) hours from the awarding of the won bid. The remaining balance of 50% of the bid price shall be paid within the next business day.
3. Should the winning bidder fail to pay within the deadlines, the bidding shall be declared a failed bid and the lot shall be re-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 advertisement. Said bidder shall then be disqualified from participating further in the sale without prejudice to the forfeiture of his cash bond and the imposition of other sanctions as may be warranted.
4. In the case of perishable goods, the second auction shall be conducted on the first business day after the first failed bidding.

*3. RE-OFFERING OF UNSOLD LOTS THROUGH NEGOTIATED  
SALE AFTER TWO FAILED BIDDINGS*

After the second failed bidding and compliance with the publication and registration requirements herein provided, a particular lot may be offered to all qualified bidders for negotiated sale, as follows:

1. For a successful negotiated sale, at least three offers shall be tendered in sealed envelopes and shall be opened in public by the Auction Committee in the presence of a COA representative at a time, date and place specified in the Notice of Negotiated Sale.

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2. The highest offer from the sealed bids shall serve as the starting amount in the open negotiation that follows among the participants of the negotiated sale. Only those who submitted sealed bids for the negotiated sale shall be admitted as participants in the open negotiation.
3. The highest offer from among the participants in the open negotiation, which shall in no way be lower than the starting amount, shall immediately be announced as the winning offer, and thereafter referred to the Commissioner of Customs and the Secretary of Finance for approval. The announcement of the winning offer by the Auction Committee shall serve to conclude the negotiated sale, after which no other offer shall be considered.
4. A guarantee deposit in cash or manager's check equivalent to 20% of the highest offer shall be paid prior to its referral for the Commissioner's approval.
5. An additional thirty percent (30%) of the offer shall be paid by the party concerned within forty eight (48) hours from receipt of the notice from ACDD, informing the concerned party of the DOF Secretary's approval. The remaining fifty percent (50%) shall be paid within seven (7) calendar days therefrom under pain of forfeiture of the initial payments.
6. The provisions of Sec. III (8) hereof, shall be applied in case of a failed negotiated sale or when the price offer is rejected by the Commissioner of Customs or the Secretary of Finance.

#### **II. ASSIGNMENT OF ACCEPTED BID**

No assignment of accepted bid or approved offer shall be allowed in all instances.

#### **V - REPORTING**

Immediately after every bidding/negotiated sale, the Chief, ACDD or its equivalent unit, shall submit to the Commissioner of Customs a report on the results of the bidding, including therein the sale lot no. and contents, floor price, the participating bidders and their respective bids, as well as the winning bidder, if any.

#### **VI - ACCOUNTABILITIES**

1. The Customs officers and personnel are directed to perform their responsibilities as required herein. *DM*



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- 2. The District Collector shall be responsible for the smooth, proper and effective implementation of this Order in all cases, under his/her district's jurisdiction, where it applies.
- 3. The Chief, ACDD shall ensure that all requirements herein for the issuance of the appropriate notices and clearance are complied with.
- 4. The Chairman and all members of the Auction Committee shall be responsible in ensuring that all participating bidders are properly qualified and that the winning bids or failed biddings are properly declared.
- 5. The examiners/appraisers shall be liable for any error caused by/emanating from their examination/appraisal.
- 6. All signatories to any certificate/report required under this Order shall be liable for any flaw/defect found therein.

**VII - REPEALING CLAUSE**

CMO 36-2002 and all other customs rules and regulations inconsistent with this Order are deemed amended and/or repealed accordingly.

**VIII - EFFECTIVITY**

This Order shall take effect immediately.

  
**ANTONIO M. BERNARDO**  
 Commissioner

Signed \_\_\_\_\_