

[BOC MEMORANDUM ORDER NO. 5-2003, March 17, 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 - b. articles entered under warehousing entry not withdrawn nor the duties and taxes paid thereon within the period described under Sec. 1908 of this Code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 proper administrative or judicial proceedings in accordance with law
 - 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.

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 Notice of Public Auction/Negotiated Sale the date and place for public viewing