

**§ 102-38.5**

**41 CFR Ch. 102 (7-1-04 Edition)**

**Subpart E—Other Governing Statutes**

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102-38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

**AUTHORITY:** 40 U.S.C. 545 and 40 U.S.C. 121(c).

**SOURCE:** 68 FR 51421, Aug. 26, 2003, unless otherwise noted.

**Subpart A—General Provisions**

**§ 102-38.5 What does this part cover?**

This part prescribes the policies governing the sale of Federal personal property, including—

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

**NOTE TO § 102-38.5:** You must follow additional guidelines in 41 CFR parts 101-42 and 101-45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102-33 of this chapter.

**§ 102-38.10 What is the governing authority for this part?**

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

**§ 102-38.15 Who must comply with these sales provisions?**

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

**§ 102-38.20 Must we follow the regulations of this part when selling all personal property?**

Generally, yes, you must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions; and

(d) Foreign excess personal property is exempt from these provisions.

**§ 102-38.25 To whom do “we”, “you”, and their variants refer?**

Unless otherwise indicated, use of pronouns “we”, “you”, and their variants throughout this part refer to the holding agency responsible for the sale of the property.

**§ 102-38.30 How do we request a deviation from the provisions of this part?**

Refer to §§ 102-2.60 through 102-2.110 of this chapter for information on how to obtain a deviation from this part.

## Federal Management Regulation

## § 102-38.55

### DEFINITIONS

#### § 102-38.35 What definitions apply to this part?

The following definitions apply to this part:

*Bid* means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

*Bidder* means any entity that is responding to or has responded to an offer to sell.

*Estimated fair market value* means the selling agency's best estimate of what the property would be sold for if offered for public sale.

*Identical bids* means bids for the same item of property having the same total price.

*Personal property* means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

*State Agency for Surplus Property (SASP)* means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

*State or local government* means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

### RESPONSIBILITIES

#### § 102-38.40 Who may sell personal property?

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have the General Services Administration, a contractor, or another Federal agency conduct the sale for you, provided that only Federal officials authorized by your agency approve the sale and bind the United States.

#### § 102-38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

#### § 102-38.50 What must we do when we suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If you suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, you must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

#### § 102-38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102-38.100 through 102-38.125; and