

§ 102-38.60

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102-38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102-38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

§ 102-38.70 May we abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, you may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

- (1) The personal property has no commercial value; or
- (2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102-36.305 through 102-36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

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Subpart B—Sales Process

METHODS OF SALE

§ 102-38.75 How may we sell personal property?

(a) You may sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

- (1) Inspection.
- (2) Condition and location of property.
- (3) Eligibility of bidders.
- (4) Consideration of bids.
- (5) Bid deposits and payments.
- (6) Submission of bids.
- (7) Bid price determination.
- (8) Title.
- (9) Delivery, loading, and removal of property.
- (10) Default, returns, or refunds.
- (11) Modifications, withdrawals, or late bids.
- (12) Requirements to comply with applicable laws and regulations.
- (13) Certificate of independent price determinations.
- (14) Covenant against contingent fees.
- (15) Limitation on Government's liability.
- (16) Award of contract.

(b) Standard government forms (*e.g.*, Standard Form 114 series) may be used to document terms and conditions of the sale.

(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

§ 102-38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102-38.100 through 102-38.125. You

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must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

COMPETITIVE SALES

§ 102-38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102-38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102-38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

NEGOTIATED SALES

§ 102-38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the

seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102-38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed \$15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, *e.g.*, sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102-38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102-38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—