

Federal Management Regulation

§ 102-38.105

(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 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

§ 102-38.110

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—

(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of \$15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of \$5,000. You may submit the report electronically or manually (see § 102-38.330).

§ 102-38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may sell personal property at fixed prices when the head of your

41 CFR Ch. 102 (7-1-05 Edition)

agency, or designee, determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102-38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, see subpart G of this part.

ADVERTISING

§ 102-38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102-38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102-38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—