NATIONAL ADMINISTRATIVE REGISTER · JULY 17, 1990

RULES AND REGULATIONS IMPLEMENTING MEMORANDUM ORDER NO. 258 DATED 27 SEPTEMBER 1989, ISSUED BY THE PRESIDENT, IN THE DISPOSITION OF FORFEITED CARGOES AND OTHER CARGOES UNDER CUS...

CUSTOMS ADMINISTRATIVE ORDER NO. 5-90, July 17, 1990

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Pursuant to, and in order to implement, Memorandum Order No. 258, dated 27 September 1989, issued by the President, Republic of the Philippines, relative to the disposition of forfeited cargoes and other cargoes under Customs custody as enumerated in Section 2601 of the Tariff and Customs Code of the Philippines, as amended, the following rules and regulations are hereby promulgated.

SECTION 1. Objectives

1. To maximize collection of government revenue thru the sale of forfeited and other goods under Customs custody.

2. To provide protection to local industries adversely affected by undue competition from the disposition of goods identical or similar to those locally manufactured.

3. To prevent market disruptions.

4. To provide a smooth, orderly and efficient system of disposition of forfeited and other goods under Customs custody.

SECTION 2. Coverage

This Order shall cover the disposition of goods forfeited in favor of the government and other property under Customs custody subject to sale as enumerated in Section 2601 of the Tariff and Customs Code of the Philippines, as amended.

SECTION 3. Auction & Cargo Disposal Committee (ACDC)

There shall be created in every Collection District an Auction & Cargo Disposal Committee (ACDC) which shall be composed of a Chairman, Vice-Chairman and Members to be designated by the Commissioner of Customs.

The Resident Auditor, Commission on Audit, representatives from the Department of Finance, the Department of Trade and Industry, and the Economic Intelligence and Investigation Bureau, shall act as witnesses during the proceedings of the Committee and/or in the conduct of disposition of goods under customs custody.

The ACDC shall have the following functions and responsibilities:

1. To prescribe certain formalities and procedures consistent with, and in pursuance of, this Order and such rules and regulations as may be issued by the Commissioner of Customs pertaining to, and in connection with, auction sales and other modes of disposition of property under Customs custody as provided for under the Tariff and Customs Code of the Philippines, as amended.

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2. To impose, administer and/or recommend to the District Collector the imposition of administrative and/or such other sanctions as may be appropriate against any bidder, person or entity found to have committed disorderly act or any acts prejudicial or inimical to the interest of the government or violated any law, rules and regulations, in connection with an auction sale, negotiated sale or any disposition of property subject of this Order and in which such bidder, person or entity has participated directly or indirectly.

3. To reject any or all bids/offers or any part thereof, waive any required formalities, and accept bids/offers most advantageous to the interest of the government conformably and consistent with the objectives of this Order.

4. To recommend to the Commissioner of Customs, thru the District Collector, any and all such matters as will promote the attainment of the objectives of this Order.

5. To supervise the preparation and conduct of the sale/disposition of property subject of this Order and implement and enforce the provisions of this Order and all rules and regulations promulgated pursuant thereto by the Commissioner of Customs.

SECTION 4. Appraisal/Valuation Group (AVG)

An Appraisal/Valuation Group (AVG) under the direct control and supervision of the ACDC shall be created and will be composed of Customs officials to be designated by the Commissioner of Customs for the proper and speedy determination and setting of reasonable bid prices of the items/sale lots subject of auction/negotiated sale.

The price/value established by the AVG duly approved by the ACDC shall be uniformly applicable in all Collection Districts. For this purpose, the AVG shall maintain a centralized data filing/recording system which shall be constantly updated.

SECTION 5. Pre-Examination

Upon request duly made, any prospective bidder shall be afforded an opportunity to examine/inspect, with convenience and facility, the items/lots scheduled for auction or negotiated sale on the date/time designated by the ACDC.

SECTION 6. Sealed Bid System

In order to ensure competitive bidding and maximize the proceeds from the sale of subject articles, the sealed bid system shall be adopted.

In cases where the sealed bids are clustered and are within ten percent (10%) of the highest bid, an open bidding shall immediately be conducted among all bidders present.

SECTION 7. Procedures, Terms and Conditions

The Commissioner of Customs shall prescribe the procedures, rules and regulations as well as terms and conditions which shall govern all auction and negotiated sales, respectively.

After two (2) failed biddings as where an item/lot remains unsold for want of bidders or lack of an acceptable bid in an auction sale, a re-appraisal shall be undertaken and the subject item/lot re-bidded or be offered for negotiation.

Offers to buy in a negotiated sale must be submitted to the ACDC within the prescribed period of time indicated in the Notice of Negotiated Sale. No offer to buy shall be entertained if submitted after the said if submitted after the said period of time.

SECTION 8. Notice Of Sale

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A Notice of Auction Sale or Negotiated Sale, as the case may be, of the items/lots put up for sale shall be posted in the bulletin board maintained for the purpose by the Collection District concerned, at least ten (10) days prior to the date of the sale and, as necessary, advertised in a newspaper of general circulation as follows:

1. For non-perishable goods, at least ten (10) days prior to the date of sale; and

2. For perishable goods, not exceeding three (3) days prior to the date of sale.

SECTION 9. Offer On "As Is Where Is" Basis

Unless otherwise indicated, all articles subject of disposition pursuant to this Order shall be offered for sale on an "AS IS WHERE IS" basis, with no warranty given as to their condition. All offers for sale shall not be deemed binding, in any manner, upon the Bureau of Customs.

The quantity, number, weight, or measurement of the article/s subject of sale and/or as listed in the Notice of Sale shall be deemed subject to further determination prior to delivery; Provided that, in case any excess is discovered thereby, the awardee participant shall be required to pay for the excess, otherwise such excess shall not be deemed included in the sale and shall not be included in the delivery. In case any shortage is discovered, a proportionate allowance/adjustment may be effected/authorized.

Non-inspection by the participant of the article/s offered for sale shall not be a ground for refusal of the award.

SECTION 10. Security And Controls

Appropriate and adequate security and control measures shall be provided, particularly, for items already segregated and identified/marked for sale/disposition or already awarded pursuant to a sale and ready for delivery.

Gatepasses duly issued shall also be signed by the Resident Auditor, Commission on Audit, on a per delivery basis.

SECTION 11. Observers

In all auction or negotiated sale, representative from the industry sector/association concerned shall be authorized to be present as observes.

SECTION 12. Incidental Expenses [*]

A part/portion[*] of the proceeds from sales shall be set aside for the payment of incidental expenses as provided for under Section 2605 of the Tariff and Customs Code of the Philippines, as amended, and under other special laws.

Such amount shall be subject to review by the ACDC which shall recommend any necessary adjustment to the Commissioner of Customs for approval.

SECTION 13. Repealing Clause

CAO No. 2-77, CAO No. 3-88 and CAO No. 7-89 dated January 19, 1977, February 16, 1988 and October 25, 1989, respectively, are hereby repealed. All other Customs rules and regulations inconsistent with this Order are likewise deemed superseded and repealed accordingly.

SECTION 14. Effectivity

This Order shall take effect upon approval by the Secretary of Finance.

(SGD.) SALVADOR M. MISON

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Commissioner

APPROVED:

(SGD.) JESUS P. ESTANISLAO
Secretary of Finance

Adopted: 17 July 1990

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[*] The portion to be set aside shall not exceed 10% of the proceeds

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