

§ 101-45.304-2 Negotiated sales and negotiated sales at fixed prices.

(a) *Circumstances permitting negotiated sales.* While it is the policy to sell property after publicly advertising for bids, property also may be sold by negotiation, subject to obtaining such competition as is feasible under the circumstances, where:

(1) It is determined by the agency that the sale involves property:

(i) That has an estimated fair market value not in excess of \$15,000;

(ii) Where public exigency will not admit of the delay incident to advertising;

(iii) Where bid prices after advertising therefor are not reasonable (either as to all or some part of the property), or bid prices have not been independently arrived at in open competition, and it is determined that re-advertising will serve no useful purpose: *Provided*, That all responsible bidders who responded to the previous advertising shall be afforded an opportunity to submit offers for the property; or

(iv) That the disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and that the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation. (See § 101-45.304-12.)

(2) Full and adequate justification therefor has been submitted to the head of the selling agency or his designee for prior approval, and he has determined:

(i) That the public health, safety, or national security will thereby be promoted; or

(ii) That it is necessary in the public interest during the period of a national emergency declared by the President or the Congress. The authority of this subdivision shall be used only with respect to a particular lot or lots of personal property identified by the Administrator of General Services or a specifically described category or categories of property determined by the Administrator of General Services during any period fixed by the Administrator of General Services, but not in excess of three months. Declaration of a national emergency alone is not justification for use of this authority;

there must be other reasons making use of negotiation necessary in the public interest.

(3) Full and adequate justification therefor has been submitted to the Administrator of General Services for his prior approval, and he has determined that the property involved is of a nature and quantity which, if disposed of by advertising would cause such an impact on an industry or industries as to adversely affect the national economy: *Provided*, That the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation.

(4) Negotiation is otherwise authorized by the Act or other law.

(b) *Negotiated sales at fixed prices.* (1) Property may be sold at fixed prices, either directly or through the use of disposal contractors, only with prior approval by the Administrator of General Services (or designee) of the property categories to be sold.

(2) In accordance with § 101-45.304-12, prior to offering property to the public, it may be offered at fixed prices, through State agencies for surplus property, to State and local governments (States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein) which have expressed an interest in the property.

(c) *Explanatory statements.* Subject to the exceptions stated in § 101-45.304-2(c)(2), the selling agency shall prepare an explanatory statement as required by section 203(e)(6) of the Act of the circumstances of each proposed disposal by negotiation.

(1) Ten copies of each explanatory statement, mechanically reproduced, shall be submitted to the Administrator of General Services for review and transmittal by the Administrator to the appropriate committees of the Senate and House of Representatives and a copy thereof shall be preserved in the files of the selling agency. Such statements shall be submitted as early as practicable in advance of each proposal. Copies of the Administrator's transmittal letters to the committees will be furnished to the selling agency. In the absence of any action by a committee on the proposed negotiated disposal, the selling agency may consummate the sale on or after 35 days from

the date of the Administrator's letters transmitting the explanatory statement to the committees.

(2) The explanatory statement need not be:

(i) Transmitted for a disposal of personal property at fixed prices when previously authorized pursuant to § 101-45.304-2(b);

(ii) Transmitted for a disposal of personal property authorized to be made without advertising by any provision of law other than section 203(e) of the Act; or

(iii) Prepared for a disposal of personal property having a fair market value of \$15,000 or less.

(3) An outline for the preparation of the explanatory statement is shown in § 101-45.4806.

[30 FR 2930, Mar. 6, 1965, as amended at 31 FR 5001, Mar. 26, 1966; 34 FR 7329, May 6, 1969; 42 FR 40853, Aug. 12, 1977; 54 FR 38676, Sept. 20, 1989; 55 FR 17609, Apr. 26, 1990]

§ 101-45.304-3 [Reserved]

§ 101-45.304-4 Lotting.

To the extent practicable, and consistent with the types of property and usual commercial practice, property offered for sale shall be assembled in reasonably sized lots of like or similar items by make or manufacturer. Unused property shall be lotted separately from used items. Scrap and other property having scrap value only shall be lotted in accordance with established trade practice and shall generally not be included in the same sale with usable items. Determination of the size of lots shall take into consideration the buying capacities of prospective buyers and the requirement that adequate competition be obtained. Large quantities of identical items shall be lotted in such a way as to encourage bidding by small businesses and individuals.

§ 101-45.304-5 Inspection by bidders.

Sufficient time prior to the date for submission of bids shall be allowed to permit inspection by potential bidders. Such time should be a minimum of 7 or a maximum of 21 calendar days, depending upon the circumstances of the sale, the method of the sale, or the volume of property offered for sale. When-

ever the inspection period is proposed to be less than 7 days, invitations for bids, flyers, or other announcements shall be distributed to prospective bidders sufficiently in advance of the inspection period.

[31 FR 5001, Mar. 26, 1966]

§ 101-45.304-6 Reviewing authority.

(a) A "reviewing authority" is a local, regional, or departmental board of review of an executive agency. Under subpart 101-45.9, reviewing authority also includes an applicable State board of review of a State agency for surplus property.

(b) Approval by reviewing authority of the agency effecting the sale shall be required for each proposed award when the contract value (actual or estimated fair market value) for property other than scrap exceeds the dollar thresholds listed below by method of sale:

(1) Negotiated sale of surplus property—\$15,000 or more;

(2) Negotiated sale at fixed price of surplus or exchange/sale property—\$25,000 or more; and

(3) Competitive bid sale—\$100,000 or more.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.304-7 Advertising.

Adequate public notice shall be given to each offering for sale of property to be disposed of after advertising. Except where the nature or condition of the property does not permit, advertising shall be made in sufficient time previous to sale to permit full and free competition. The extent of solicitation shall have due regard to the quantity and type of property to be sold, the logical market of disposal, the type of sale contemplated, and the public interest.

(a) *Advertising media by type of sales—*

(1) *Sealed bid sales.* In the case of sealed bid sales, advertising shall be by the distribution of written invitations for bids including public posting thereof and may be supplemented by newspaper or trade journal advertising (ordered in accordance with existing law) where advisable.

(2) *Spot bid sales.* Advertising in the case of spot bid sales shall be by written invitation for bids or other appropriate notices, including public posting