

د افغانستان اسلامي جمهور

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جمهوری اسلامی افغانستان

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**Islamic Republic of Afghanistan
Ministry of Finance
Customs and Revenue.**

Subject: CUSTOMS AUCTION RULES.

In compliance with Article 136 read with Article 54 (3) of the Afghan Customs Act, the following procedure is hereby prescribed for the sale and disposal of goods which are ripe for auction.

Definitions. - In this chapter, unless there is anything repugnant in the subject or context,-

- (a) "Auctioneer" means an auctioneer registered with Afghan Customs Department.
- (b) "Bid" means the price offered at an auction by a bidder for goods separately or in lots or a combination of lots of goods put to auction;
- (c) "Bidder" means the person who gives a bid;
- (d) "Offer" means a private offer or tender submitted before the auction or after the completion of bidding or acceptance of the bid; and
- (e) "Reserved price (RP)" means price of auction goods which is fixed by the customs prior to auction and is inclusive of duty and taxes and approved by the Director. RP is kept confidential by customs and is not shared with the bidders or public.

2. Application for registration of auctioneer. - The Director General Customs may invite applications for registration of persons as auctioneers by giving public notice in at least two leading newspapers of the country.

3. Eligibility: - Any person who fulfills the following qualification may apply for registration as auctioneer.

4. Qualification for registration.

- A person is qualified to be registered as auctioneer if he,-

- (a) is a citizen of Afghanistan;
- (b) is not less than thirty years of age;
- (c) enjoys a good reputation for clean business;
- (d) has an established office in Afghanistan;
- (e) is certified by an established bank to be financially sound;
- (f) is a member of the Chamber of Commerce and Industry; and
- (g) is registered with the revenue department.

5. Registration of auctioneers. - All applications received in the Afghan Customs Department shall be placed before a Selection Committee consisting of the Director Tariff & Deputy Director General Customs which may recommend to the Director General not more than four persons for approval and registration as auctioneers.

6. Auctioneer to furnish bank guarantee, surety bond, etc. - A person selected for registration as auctioneer, shall furnish to the Director General a surety bond on a judicial paper for good conduct in the performance of his duties as auctioneer and shall also furnish a bank guarantee for a sum of fifty thousand Afghanese (Afs) which shall be discharged on the satisfactory termination of the term of his registration.

7. Validation of registration. - The registration shall be valid for a term of five years from the date of registration.

8. Cancellation of registration, etc. - (1) On any complaint made against an auctioneer, or where the Director General is not satisfied with the work of the auctioneer, he may after giving an opportunity of being heard to the auctioneer, withdraw any auctioneering work allotted to him or suspend such work and debar him from further registration for a specific period.

(2) An auctioneer aggrieved by an order passed under sub-rule (1) may appeal to the Customs Arbitration Administration.

(3) An auctioneer may apply for cancellation of registration after giving at least three months notice to the Director General.

9. Extension of term. - An auctioneer may be re-registered after the expiry of his term or extended term.

10. Approval of goods for auction. - (1) As soon as the goods at any place in the custody of any person have reached the stage of being sold under the Customs law, or in the opinion of such person are required to be sold by auction, shall be brought to the notice of the Director Customs concerned by that person giving a list of such goods.

(2) The Director shall, on receipt of such information or on his own motion, pass orders directing the sale of goods referred to in sub-rule (1), after giving due notice to the owner under relevant provisions of the law, by public auction either departmentally or through an auctioneer and shall cause the reserved price of the goods to be auctioned to be determined in accordance with the provisions of customs law, and any duties or taxes which would have been payable on the date of fixation of the reserve price of such goods for auction thereof shall be added to this value:

Provided that where the condition of the goods has, for any reason, deteriorated, the reserve price shall be the value as is re-appraised by the Customs. The reserve price shall consist of the appraised price, duties and taxes and other charges.

(3) The following goods shall not be put to auction and be sold or disposed off in the manner as prescribed by the Afghan Customs Department namely:-

- (i) arms and ammunition;
- (ii) liquor/narcotics and like goods;

- (iii) confiscated books, written material which is obscene, subversive, anti-state or anti-religion;
 - (iv) transit goods excluding confiscated goods; and
 - (v) diplomatic cargo excluding confiscated goods.
- (4) No goods shall be withheld from auction unless,-
- (i) a court of law issues a specified stay order against such auction;
 - (ii) the Director of Customs or the customs officer in-charge of auctions orders withholding such auction.

11. Value of goods which may be auctioned. - All goods, the aggregate appraised value or the reserve price of which does not exceed one million rupees, may be sold by public auction conducted departmentally at the discretion of the Director, and all goods, the aggregate appraised value or the reserve price of which exceeds one million rupees, shall be sold by public auction through an auctioneer:

Provided that perishable goods may be sold by the Director through public auction or a private offer irrespective of its value.

12. Nomination of auctioneer.- The Director shall, by writing nominate an auctioneer from amongst the registered auctioneers to conduct auction in respect of the goods ripe for auction, and shall give him notice of not less than fifteen days in advance of the place at which and the date on which auction of such goods shall be held.

13. Duties of nominated auctioneer. - The auctioneer nominated shall,-

- (a) make or cause to be made under his supervision and in the presence of an officer authorized by the Director a detailed inventory schedule of all the goods to be auctioned; and
- (b) notify the following by giving an advertisement in two national newspapers at least seven days in advance of the date of auction, specifying,-
 - (i) the date, time and place of auction in block letters; and
 - (ii) the general description of goods to be auctioned:

Provided that no advertisement or public notice in newspapers shall be required in respect of left over of any schedule or goods already notified which may be put to re-auction on display of notice on Notice Board at least two days before the date of auction of such goods;

- (c) send a complete inventory or schedule of such goods to all Chambers of Commerce and Industry and to other Associations of importers/traders in that area; and
- (d) display such goods or samples thereof at a place or places and in the manner acceptable to the Director.

(2) All expenses incurred on publicity, preparation of files, schedule of auction and its distribution, display of goods and issuance of delivery orders on final acceptance of a bid or private offer by the competent authority shall be borne by the auctioneer.

14. Commission to which auctioneer shall be entitled. - (1) the auctioneer shall be entitled to a commission on the net proceeds at the rate of ---

- (a) on the first one million rupees, one per cent of the proceeds; and
- (b) on the amount exceeding one million rupees, half per cent of the proceeds so exceeding:

Provided that the auctioneer shall not be entitled to any commission on any guarantee or earnest money forfeited for non-payment of the balance of the amount of a bid by the successful bidder or on auction through departmental procedures or private offer or on the differential of auction proceeds enhanced by the bidder through the efforts of any officer of the department or as a consequence of re-bidding by the competent officer.

(2) The cost of advertisement, sales or delivery of goods, etc., may be deducted from the payable commission by the authorized officer in case of failure of the auctioneer to discharge his functions satisfactorily.

15. Goods may be auctioned in lots.- All goods may be put to bid in convenient lots so as to obtain the highest possible bid:

Provided that the Director may order auction of the goods in combination of various lots or otherwise.

16. Qualification for bidder/tender. - A person can participate in the auction by way of open bid/tender/private offer/re-bidding if he:

- (a) holds a valid Afghan National Identity Card/Company registration certificate and submits a copy thereof;
- (b) has not been disqualified by the competent authority to participate in auction; and
- (c) observes the discipline and obeys these rules.

17. Auction to be conducted by or under supervision of auctioneer.- An auction shall be conducted by the auctioneer personally or, under his direct supervision, by one of the members of his staff and in the presence of a Deputy Director Customs as per following procedure, namely:-

- (i) Before the start of bidding the auctioneer shall announce the lot number/combination of various lot numbers and the details of the goods. The auctioneer must also describe the procedure and rules prior to the start of auction;
- (ii) all auctions shall be on "As is where is" basis. All kind of goods shall be sold as lot or on weight basis. However, all kinds of scrap, metal, rubber/plastic, paper, chemicals, etc., shall invariably be auctioned and sold on WEIGHT BASIS. In all cases where the goods are sold on WEIGHT BASIS the weight shall be metric ton or per kilogram; and
- (iii) in case of goods auctioned on lot basis the approximate weight and the number of packages shall also be mentioned to facilitate identification and delivery of

lots/goods. However, excess weight other than mentioned in the assessment sheet shall not be delivered except on payment of the differential amount so worked out.

18. Manner of Auction. - The auction shall be conducted in the following manner, namely:-

- (i) No bid shall be accepted if it is less than 80% of the reserve price notified before or at the time of auction; and
- (ii) the bid amounts and the names of the highest and second highest bidders shall be recorded in the file by the Customs staff supervising the auction along with its copies of Identity Card as well as tax number of the successful bidder; and

19. Earnest money payable. - Twenty-five per cent of the amount of the highest bid given at an auction shall be payable by the bidder in each case as earnest money immediately after the fall of the hammer failing which the bid will be cancelled and the goods may be sold to the second highest bidder or the higher offer or re-auctioned, as deemed appropriate.

20. Amount of bid to be paid in office. - The balance of the amount of bid shall be paid by the successful bidder in cash or through bank draft in the Treasury as prescribed by the Director, within a period of seven days excluding holidays, of the final acceptance of the bid:

Provided that the Director may extend the period by not more than seven days, on case to case basis if he considers it to be fit and appropriate.

21. Earnest money to be forfeited. - If the balance of the amount of the bid is not paid within the period, the earnest money shall be forfeited in favor of the Government, and the goods may be sold by auction or otherwise.

22. Auction through tender or offer. - The bidder may participate in auction by way of submission of sealed tender/private offer indicating the lot number and enclosing a pay order equal to at least twenty-five per cent of the bid/private offer, in the name of Director of Customs. The sealed tender/private offer may be opened by the Director in presence of the successful bidder in the open auction. This tender/private offer may be accepted by the competent authority if the private offer is higher than the final bid amount in open auction.

23. Auction of perishable/hazardous goods. - Notwithstanding the provisions of these rules, the Director may sell the perishable goods through private offers or open auction at any time on the request of the person under whose possession/control these goods are lying.

24. Auctioneer to issue delivery order.- (1) The auctioneer shall on receipt of a certificate issued by the Director or an officer authorized by him in this behalf to the effect that the whole amount of the bid has been realized, issue under his seal a delivery order giving the name and address of the successful bidder, his Identity Card Number and N.T.N. of the bidder, the date and place of the auction, the number of the lot, full description and quantity of the goods in respect of which bid was accepted and the price at which such goods were sold.

(2) The successful bidder shall present the delivery order issued to him to the person who is the custodian of the goods auctioned and that person shall give delivery of the goods specified in the delivery order against a receipt from the successful bidder under supervision of a customs officer deputed for the purpose. In case of any dispute regarding delivery of the goods,

the decision of the competent officer who had accepted the bid offer shall be final subject to appeal as prescribed under the relevant provisions of the Act.

25. Acceptance of bid. - (1) A bid given at auction shall be subject to acceptance by the Director or by the Deputy Director in-charge of auction but the bidder shall have no right to withdraw his bid without the permission of the officer supervising the auction.

(2) Where the amount of the highest bid given at an auction is upto eighty per cent of the reserve price, the Director may accept the highest bid after satisfying that the reserve price and the quantity/condition of goods are appropriate. However if he thinks that the goods can fetch better price, he may put the goods to re-auction in the next auction schedule.

(3) Where the amount of the highest bid given at an auction is upto sixty per cent but less than eighty percent of the reserve price, the orders of Deputy Director General shall be specifically obtained.

(4) In case where due to damage or deterioration of goods, the amount of the highest bid is less than sixty per cent of the reserve price, the orders of the Director General shall be specifically obtained:

Provided that such orders shall be passed within 15 days of the date of receipt of twenty-five per cent of the bid amount as earnest money or in such extended period as required in certain cases where an inquiry or test is involved.

26. Refund of adjustments. - (1) The amount of the earnest money shall be adjusted towards the final payment of the whole amount of the bid, but where a bid is not accepted by the appropriate authority, the amount of the earnest money shall be refunded to the bidder.

(2) The balance amount in case of less weight than the announced weight shall be refunded to the bidder on application after completion of delivery provided the goods had been auctioned on weight measurement basis i.e. per tonne/kg/liter/meter, etc.

27. Power of Director to cancel auction, etc. - (1) notwithstanding any thing contained in this chapter, the Director may --

- (i) cancel the whole proceeding of an auction.
- (ii) subject to article 25 above, accept or reject any bid or offer or auction at any time before the goods are delivered to the successful bidder. He may also recall the proceedings and recover the goods even after delivery of goods if it is proved that there has been a deliberate attempt to cause loss to the public exchequer; and
- (iii) restrict or refuse the entry of persons to the premises where an auction is held or their taking part in the auction.

(2) Notwithstanding the procedures prescribed above, the Director may issue such general or special orders, regulating the auction as he thinks fit in order to safeguard the public interest.

SCHEDULE

SURETY BOND

BY THIS BOND I/WE _____ of _____ (hereinafter called the obligee (s) am/are held and firmly bound/jointly and severally to the Director General of Customs through the Director of Customs, _____ (hereinafter called the obligor) for the payment to him a sum of Afs. 50,000 (Fifty thousand Afs) as agreed and liquidated damages and not as a penalty;

WHEREAS the obligor has appointed the obligee (s) as Customs Auctioneer(s) under and for the purposes of the Auction rules upon the condition that the obligee (s) should enter into a surety bond for the payment to the obligor of sum of Afs. 50,000 (Fifty thousand Afs) as liquidated damages and not as a penalty conditioned as hereinafter provided;

NOW THE CONDITION of the above surety bond is that if the obligee (s) and his/their executor or administrator at all times during the continuance of his/their appointment as Customs Auctioneer (s) perform (s) his/their duties faithfully, diligently and in an incorrupt manner in relation to any auction conducted by him/them in accordance with the said rules and orders, instructions or directions that may from time to time be given to him/them by the appropriate authorities in this behalf, and makes goods without any delay to the obligor all and every sum of money which becomes due to the Government the above surety bond shall be void, but otherwise the same shall remain in full effect.

IN WITNESS WHEREOF the parties named above have set and subscribed their hand hereunder together with their respective seals in the presence of the witness named below, this _____ the day of _____ 20_____.

Signature, name and address of witness Signature, name and address and seal of the auctioneer.

Signature, name and address of witness Signature, name and address and seal of the Director

PROFORMA OF BANK GUARANTEE TO BE SUBMITTED BY THE AUCTIONEERS UNDER These rules.

WHEREAS the Director of Customs _____ has consented to register M/s _____ as auctioneers for five years with effect from _____. This bank guarantee is furnished for working as auctioneer to the satisfaction of the Director of Customs as per provisions of these rules.

In case M/S _____ fails to discharge his duties to the satisfaction of Director of Customs _____ M/S-_____ (name of the bank) hereby undertakes to make the payment of Afs. 1,00,000 (one lac) on demand by Director of Customs _____ or any officer authorized by the Director of Customs on this behalf, without objection or reservation or any reference to any other person/body within 7 days of the issuance of the demand.

In case of M/s _____ (name of the bank) fails to make the payment within 7 days of the said demand M/s _____ (name of the bank) shall be liable to pay

compensation at the rate of 20 per cent per annum for the period from the date of expiry of 7 days of the date when actual payment is made in the Director of Custom's_____ government account. This bank guarantee is valid until _____. However all claims lodged hereunder will be entertained/accepted by M/s. _____ (name of the bank) 12 months after the aforesaid validity date

Director Legislation.
& Procedures

Director General Customs

Deputy Minister