

Disposition of Proceeds

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds equal to the direct costs and reasonably related indirect costs incurred in selling surplus personal property.

(b) You may retain all sales proceeds when—

(1) You have statutory authority to retain all proceeds from sales of personal property;

(2) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) You sold surplus Government property that was in the custody of a contractor or subcontractor and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) You sold property related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.300 What happens to sales proceeds that we are not authorized to retain or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

Disputes

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

§ 102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651–658).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

Antitrust Requirements

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of \$3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property.

You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to the General Services Administration?

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of \$5,000 (see § 102–38.115). For each negotiated sale

that meets this criterion, provide the following:

- (1) Description of the property (including quantity and condition).
- (2) Acquisition cost and date (if not known, estimate and so indicate).
- (3) Estimated fair market value (including date of estimate and name of estimator).
- (4) Name and address of purchaser.
- (5) Date of sale.
- (6) Gross and net sales proceeds.
- (7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (see § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

- (a) Competitive sale to the public;
- (b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or
- (c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of