

COMMISSION ON AUDIT CIRCULAR NO. 89-296 January 27,1989

TO : All Heads of Departments, Chiefs of Bureaus/Offices of the National Government, Provincial Governors, City Mayors, Heads of Local Government Units, Managing Heads of Government-Owned and/or Controlled Corporations including their Subsidiaries, COA Directors, Heads of National, Local and Corporate auditing units and all others concerned.

SUBJECT: Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries.

I. PURPOSE: -

To achieve uniformity and consistency in the observance of audit procedures and to ensure facility in audit with respect to the divestment or disposal of property and other assets of all national government agencies/instrumentalities, local government units and government-owned and/or controlled corporations and their subsidiaries, this Circular prescribes audit guidelines on the matter.

II. RATIONALE: -

As a matter of national policy in support of its economic recovery program, the Government has devised a scheme of reducing the number of government entities or instrumentalities and government-owned or controlled corporations and their subsidiaries which have proliferated to unmanageable proportions. To achieve this goal, it has resorted either to privatization of a good number of these corporations and their subsidiaries or the divestment or disposal of their property and other assets as well as that of national government agencies and local government units. In aid of this endeavor, this Commission has deemed it fit to prescribe audit guidelines for the use and observance of the management of these government entities/instrumentalities and of the auditors concerned.

III. DEFINITION AND SCOPE: -

These audit guidelines shall be observed and adhered to in the divestment or disposal of property and other assets of all government entities/instrumentalities, whether national, local or corporate, including the subsidiaries thereof but shall not apply to the disposal of merchandise or inventory held for sale in the regular course of business nor to the disposal by government financial institutions of foreclosed assets or collaterals acquired in the regular course of business and not transferred to the National Government under Proclamation No. 50. They shall not also cover dation in payment as contemplated under Article 1245 of the New Civil Code.

As envisioned in this Circular, divestment shall refer to the manner or scheme of taking away, depriving, withdrawing of an authority, power or title. As opposed to investment which signifies the delivery of possession of anything to another, divestment connotes taking away and/or withdrawal of such possession and title (Black's Law Dictionary, Rev. 4th edition; Webster's New School/Office Dictionary).

IV. AUTHORITY OR RESPONSIBILITY FOR PROPERTY DISPOSAL/DIVESTMENT

Pursuant to existing laws on the matter, the full and sole authority and responsibility for the divestment or disposal of property and other assets owned by national government agencies or instrumentalities, local government units, and government-owned and/or controlled corporations and their subsidiaries shall be lodged in the heads of the departments, bureaus, and offices of the national government, the local government units, and the governing bodies or managing heads of government-owned or controlled corporations and their subsidiaries conformably to their respective corporate charters or articles of incorporation, who shall constitute the appropriate committee or body to undertake the same.

V. MODE OF DISPOSAL/DIVESTMENT: -

This Commission recognizes the following modes of disposal/divestment of assets and property of national government agencies, local government units and government-owned or controlled corporations and their subsidiaries, aside from other such modes as may be provided for by law.

1. Public Auction

Conformably to existing state policy, the divestment or disposal of government property as contemplated herein shall be undertaken primarily thru public auction. Such mode of divestment or disposal shall observe and adhere to established mechanics and procedures in public bidding, viz:

- a. adequate publicity and notification so as to attract the greatest number of interested parties; (vide, Sec. 79, P.D. 1445)
- b. sufficient time frame between publication and date of auction;
- c. opportunity afforded to interested parties to inspect the property or assets to be disposed of;
- d. confidentiality of sealed proposals;
- e. bond and other prequalification requirements to guarantee performance; and
- f. fair evaluation of tenders and proper notification of award.

It is understood that the Government reserves the right to reject any or all of the tenders.

2. Sale Thru Negotiation

For justifiable reasons and as demanded by the exigencies of the service, disposal thru negotiated sale may be resorted to and undertaken by the proper committee or body in the agency or entity concerned taking into consideration the following factors:

- a. There was a failure of public auction. As envisioned in this Circular, there is failure of public auction in any of the following instances:

- 1. if there is only one offeror.

In this case, the offer or bid, if sealed, shall not be opened.

- 2. if all the offers/tenders are non-complying or unacceptable.

A tender is non-complying or unacceptable when it does not comply with the prescribed legal, technical and financial requirements for pre-qualification.

- b. The negotiation may be conducted singly, i.e., on a one-on-one basis, or in group, provided that due communication between the offerors and the government is established with a view to ensuring that the government gets the best price.
 - c. To avert possible confabulation among unscrupulous parties, a record of the proceedings of the negotiation must be maintained.
 - d. It is understood that the price agreed upon at the negotiation shall not be lower than the floor price as fixed by the government or the highest offer submitted at the failed public auction whichever is higher.

Conformably to existing law and regulation, in the case of local government units, the Office of the Treasurer shall undertake the negotiated sale subject to approval by the proper Committee on Award. Where the acquisition or transfer cost of the property exceeds ₱5,000.00 in the case of provinces and cities, the approval of this Commission is required. In the case of municipalities, where the acquisition or transfer cost of the property is more than ₱3,000.00, the approval of the Provincial Auditor is required.

- 3. Barter, which is the direct exchanged of commodities without the use of money and without reference to price or the exchange of goods of one character for goods of another, may be made with other government agencies or government-owned and/or controlled corporations. This shall be resorted to where there is an offer that would redound to the interest of and is advantageous to the government.
- 4. Transfer to Other Government Agencies

Where the property or assets involved are no longer serviceable or needed by the department, agency, corporation or local government unit concerned, they may be transferred to other government entities/agencies without cost or at an appraised value upon authority of the head or governing body of the said agency or corporation, and upon due accomplishment of an Invoice and Receipt of Property (Cf., Sec. 76, P.D. 1445).

- 5. Destruction or Condemnation

This mode shall be resorted to only when the unserviceable property has no commercial value, or is beyond economic repair, or there is no willing receiver, and/or the appraised value is less than the administrative cost of sale, subject to prior inspection by the Auditor concerned. Valueless property shall be condemned either by burning, pounding, throwing beyond recovery, and the like. The head of the department, agency and corporation and the local chief executive shall approve the disposition.

VI. AUDIT PROCEDURE: -

A. To facilitate audit of the disposal/divestment of corporate assets as herein contemplated, the management of the government corporation concerned shall furnish the Auditor at least twenty (20) days before the advertisement of the call to public auction with a copy each of the following documents:

- a) Program for disposal with time schedules;
- b) Inventory Report showing the itemized list and complete description of the assets;
- c) Appraisal Report showing the appraised values of the assets, prepared by an in house and/or independent appraiser;
- d) Disposal procedure adopted.

which are prepared by the concerned offices/departments of the corporation and submitted to the proper Disposal Committee or similar body constituted by the management thereof.

Upon receipt of these documents, the Auditor shall perform the following functions:

1. Secure and gather the following information regarding the asset -
 - a. In the case of physical assets other than foreclosed collaterals, information relative to the original cost of acquisition, the accumulated depreciation, and the net book value at the time of appraisal.
 - b. In the case of whole companies or government-owned and/or controlled corporations (GOCCs) other than foreclosed collaterals, information about the total loans and capital contribution or equity of the government in the entity concerned.
 - c. Any other information relative to the asset which will assist in arriving at the reasonableness of the appraisal or valuation shall likewise be gathered.
2. Review the corporation's procedures for the sale of assets to determine their propriety and conformity with existing laws and regulations.
3. In the event that the appraisal/valuation is equal to or higher than either the net book value, the principal loan, or total government exposure as mentioned in each of the cases in Nos. 1.a and 1.b above, the Auditor need not forward the appraisal/valuation report to the COA Central Office, but shall file it in his office

together with the information gathered in No. 1 above as supporting documents for the review done, which shall be available for review by the COA Central Office.

4. In the disposal/divestment of assets, the Auditor shall also review the actual sales or disposal value of the asset as against the appraisal/valuation report. If the bid/sales value is less than the appraised value, the Auditor shall require justification thereon from management. On the basis of such justification, the Auditor shall make his own evaluation and submit his comment/recommendation to the COA Technical Service Office (TSO).
5. The Auditor, in forwarding the appraisal/valuation report to the TSO shall include in his comments and recommendation a comparative analysis of the foregoing information vis-a-vis the appraisal/valuation report received from management.

The TSO, employing its own organic personnel or engaging the services of a private consultant/specialist, shall review the appraisal/valuation report of the corporation for reasonableness, thereafter transmitting its comments/action thereon to the Auditor concerned, thru the COA Corporate Audit Office.

B. When property of a local government unit has become in-serviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefor, be inspected and appraised by the provincial or city auditor or his duly authorized representative or that of this Commission.

C. The Auditor of a department, bureau or agency of the national government or any local government unit upon receipt from the department/agency head or local chief executive concerned of the Inventory and Inspection Report supported by individual equipment survey reports and current photographs, as well as the Waste Material Report, in case of waste materials and worn-out and obsolete spare parts, shall refer these documents to a Technical Property Inspector assigned to his office, if any, or to the TSO in the COA Central Office for inspection and appraisal of the property. The Technical Property Inspector thus assigned shall;

- a) conduct an inspection of the unserviceable equipment or property to verify justification for disposal;
- b) appraise the disposable equipment or propriety; and
- c) prepare an Inspection Report which shall indicate the following, among others:
 - 1 - description, quantity and specifications of the equipment or property;
 - 2 - date of purchase;
 - 3 - acquisition cost;
 - 4 - physical condition;
 - 5 - appraised value;

6 - remarks/recommendations.

This Inspection Report shall be submitted to the Auditor who shall transmit the same to the proper Disposal Committee and shall be used as basis for its decisions.

VII. COA ROLE DURING DISPOSAL: -

In all modes or instances of disposal of government property or assets as hereinabove contemplated, the proceedings shall be undertaken by the appropriate authority in the presence of the Auditor or other COA representative who shall act as an intelligent, responsive and articulate witness thereto. The said act of witnessing shall not be confined merely to seeing what is being done during the proceedings but shall be related to the more meaningful discharge by the Auditor of his/her constitutional duty to examine, audit and settle all accounts pertaining to the expenditures or uses of government funds and property. Thus, the Auditor acting as such witness may verbally advise the agency head or his duly authorized representative of any objectionable feature/s of the proceedings. Otherwise, he may sign documents and other papers pertinent only to those proceedings which he witnessed with his comments which he deems necessary under the circumstances. Related advices and/or comments done in writing should invariably be sent officially to and duly receipted for by head of the agency or his duly authorized representative concerned. These written advices or comments shall form part of the bases of action to be taken by the auditor in the pre-audit or post audit of the subject transactions.

VIII. EFFECTIVITY AND REPEALING CLAUSE

All Circulars, Memoranda, rules, regulations and other issuances inconsistent herewith are hereby repealed, amended or modified accordingly.

This circular shall take effect January 2, 1989.

(SGD.) EUFEMIO C. DOMINGO, Chairman

(SGD.) ALBERTO P. CRUZ, Commissioner

(SGD.) BARTOLOME C. FERNANDEZ, JR., Commissioner