

DSWD OPINION NO. 14 S. 2024DRN: LS-L-LO-23-11-07205-C**MEMORANDUM**

FOR : **ATTY. KARINA ANTONETTE A. AGUDO**
Director IV, Administrative Service

FROM : **THE OFFICER-IN-CHARGE, LEGAL SERVICE¹**

SUBJECT : **LEGAL OPINION RELATIVE TO THE BIDDING RULES FOR THE DISPOSAL OF UNSERVICEABLE PROPERTIES OF DSWD**

DATE : **24 JANUARY 2024**

This pertains to your **MEMORANDUM²** dated 16 November 2023, requesting for legal opinion on the issues on the recommended improvement of the processes and procedures in the conduct of Public Bidding for the sale of unserviceable properties.

May we direct you to some legal references for the disposal of government assets or properties through public bidding, thus:

1. **Presidential Decree No. 1445 otherwise known as “*Ordaining and Instituting Government Auditing Code of the Philippines*”, states that:**

Section 79. Destruction or sale of unserviceable property. When government property has become unserviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefore, be inspected by the head of the agency or his duly authorized representative in the presence of the auditor concerned and, if found to be valueless or unsalable, it may be destroyed in their presence. If found to be valuable, it may be sold at public auction to the highest bidder under the supervision of the proper committee an award or similar body in the presence of the auditor concerned or other duly authorized representative of the Commission, after advertising by printed notice in the Official Gazette, or for not less than three consecutive days in any newspaper of general circulation, or where the value of the property does not warrant the expense of publication, by notices posted for a like period in at least three public places in the locality where the property is to be sold. In the event that the public auction fails, the property may be sold at a private sale at such price as may be fixed by the same committee or body concerned and approved by the Commission.

2. Part II, Section G of the DBM Manual on Disposal of Government Property specifies that property may be disposed through condemnation, transfer, barter, donation and sale as appropriate and deemed most advantageous to the government.

¹ Special Order No. 6021 series 2023

² Request for Legal Opinion relative to the Bidding Rules for the Disposal of Unserviceable Properties

It reads, thus:

5.0 Sale of Property

5.1 Public Bidding. As a general rule, the disposal of government property shall be through sale by public bidding. Public bidding may be done through sealed public bidding or when circumstances warrant by viva voce.

3. **Commission On Audit Circular No. 86-264 dated October 16, 1986 or "General Guidelines On the Divestment or Disposal of Assets of Government-Owned and/or Controlled Corporations, And Their Subsidiaries"**, recognizes the following modes of disposal as follows:

3.1 Public Auction

As a rule, public auction or bidding shall be the primary mode of disposal of assets. The established mechanics and procedures in public auction shall be observed, which shall invariably include: (a) adequate publicity and notification, so as to attract as much number of interested parties; (b) sufficient time frame between publication and date of auction; (c) opportunity to inspect assets to be disposed of by interested parties; (d) confidentiality of sealed bids or proposals; (e) bond and other pre-qualification requirement to guarantee performance; and (f) fair evaluation of tenders, and proper notification of award. xxx

On the other hand, in **Memorandum Circular (MC) No. 09 series of 2004**, the term Disposal in government refers traditionally to the sale or destruction of assets and property which are unserviceable and/or no longer needed in its operation. Undeniably, a considerable quantity of unserviceable, no longer needed, obsolete, forfeited/seized supplies, materials and equipment and valueless records have grown into unmanageable and uneconomical proportions. Many of these properties are exposed to the elements causing deterioration such that their values are fast sinking to the disadvantage of the government.

And **Item 8.3.1 of Administrative Order (AO) No. 06, series of 2017** entitled "**Comprehensive Guidelines on the Management of DSWD Properties**" provides the modes of disposal of DSWD properties, to wit:

8.3 Modes of Disposal

8.3.1 Sale/Public Auction

As a general rule, the disposal of government property shall be through sale by public bidding. This is done through sealed public bidding or when circumstances warrant, by "viva voce". Xxx

Now, we will address your concerns one by one.

- 1. Whether DSWD personnel are allowed to participate as bidders, without violating any rule or law involving government employees**

The participation of DSWD personnel as bidders should be evaluated in accordance with relevant laws and regulations concerning government employees. It is imperative to ensure that their involvement does not violate any legal provisions governing the conduct of public

auctions. A careful review of applicable statutes and regulations is recommended to ascertain the permissibility of such participation as long as "**there is no conflict of interest**".

In Section 9.4 of Administrative Order No. 06, s. 2017, or the "Comprehensive Guidelines in the Management of DSWD Properties" states that, "any person, partnership, or corporation adhering to the rules and regulations prescribed by PDAC/RPADAC may participate in the sale by public bidding. However, officers and employees involved in the preparation of disposal activities, along with their relatives within the fourth degree of consanguinity or affinity, are prohibited from participating in the public bidding."

Based on this provision, participation in the public bidding for the sale of properties is open to any person, partnership, or corporation, except for officers and employees, and their relatives within the fourth degree of consanguinity, who are engaged in the preparation of disposal activities. Hence, it is our opinion that DSWD personnel are permitted to participate as bidders without violating any rule or law related to government employees. This is in accordance with the provision stating that any person can engage in the public bidding, except those individuals directly involved in the preparation of disposal activities and their specified relatives, so as to avoid any actual or perceived conflict of interest.

- 2. If DSWD employees are allowed to participate as individual bidders, are they allowed to submit different documents such as expression of interest letter, copy of DSWD ID and copy of payslip?**

LS recommends that DSWD employees may be allowed to participate as individual bidders in the public bidding for the disposal of unserviceable properties. However, their participation should be subject to the submission of necessary and standard documents to ensure transparency and fairness in the bidding process. These documents may include:

- a. **Expression of Interest Letter:** A formal letter expressing the bidder's interest in participating in the public bidding for the disposal of unserviceable properties.
- b. **Copy of DSWD ID:** A valid identification card issued by the Department of Social Welfare and Development (DSWD) to verify the bidder's identity and affiliation with the Department.
- c. **Copy of Payslips or Proof of Financial Ability to Pay:** Submission of payslips or any other relevant proof of financial capacity to ensure that the bidder has the capability to fulfill the financial obligations associated with the property acquisition.

These documentary requirements are consistent with standard practices to verify the eligibility, qualifications and capability of individual bidders, regardless of their affiliation with the DSWD.

- 3. Whether the Property Disposal and Awards Committee (PDAC) can require a fee from bidders, similar to the bidding documents fee in the case of public bidding for procurement of goods and services under RA 9184?**

Regarding the issue of whether the Property Disposal and Awards Committee (PDAC) can require a fee from bidders, akin to the bidding documents fee in the case of public bidding for the procurement of goods and services under RA 9184, it is opined that public bidding for the disposal of unserviceable properties by DSWD shares similarities with procurement bidding, to reiterate *supra*:

3.1 Public Auction or Bidding

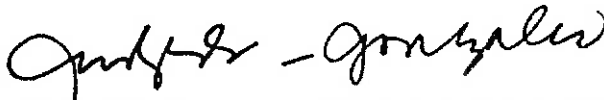
As a rule, public auction or bidding shall be the primary mode of disposal of assets. The established mechanics and procedures in public auction shall be observed, which shall invariably include: (a) adequate publicity and notification, so as to attract as much number of interested parties; (b) sufficient time frame between publication and date of auction; (c) opportunity to inspect assets to be disposed of by interested parties; (d) confidentiality of sealed bids or proposals; (e) bond and other pre-qualification requirement to guarantee performance; and (f) fair evaluation of tenders, and proper notification of award.

It is crucial to emphasize that any imposed fee should be reasonable and proportionate to the administrative costs associated with the bidding process. Transparency in the imposition and utilization of such fees is paramount to uphold the integrity of the public bidding process. Typically, such fees are intended to cover administrative costs related to the bidding process, encompassing the preparation and distribution of bidding documents. It is imperative, however, to ensure that the fee aligns with the actual costs incurred by the concerned committee.

Consequently, we recommend for further study or exploratory activities on the imposition of fees by the PDAC.

In sum, subject to legal provisions and guidelines mentioned, DSWD personnel are allowed to participate as bidders in the disposal of unserviceable properties, with the necessary precautions to avoid conflicts of interest. The submission of specific documents for individual bidders and the imposition of a reasonable bidding fee by the PDAC are acceptable practices to maintain transparency and fairness in the public bidding process. However, it is recommended that DSWD establish its own guidelines concerning the requirement for bidders to pay a fee for the acquisition of the agency's unserviceable properties through public bidding.

For your consideration.



ATTY. MARIA CASSANDRA M. URBIZTONDO-GONZALES

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