

Proposed Rulemaking

Title

Promulgated by:
Office of State Procurement

Title 19. Public Finance

Chapter I. Office of State Procurement, Department of Shared Administrative Services

Subchapter A. Generally

Part 1. Procurement Rules

Subpart 6. Commodity Management

19 CAR § 1-601. Definitions concerning commodity management.

~~(a) "Tax supported institutions" means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.~~

—~~(a)~~ (b) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

(b) "Donation" means a transfer of ownership and title in surplus commodities for no monetary fees or consideration.

(c) "Electronic auction" means a competitive sale of commodities conducted remotely through a dedicated online platform. Bidders participate digitally, and the sale is awarded to the highest bidder at the close of the online bidding.

(d) "Eligible entities" is a collective term for state agencies, tax-supported institutions, and not-for-profit organizations.

(e)(1) "Lease" means a transfer of the right to possession and use of surplus commodities, for a specified term length not to exceed a seven-year period, for a

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monetary fee or other consideration, while retaining ownership and title in the surplus commodities.

(2) Monetary fees or other consideration may not be nominal.

(f) "Marketing and Redistribution" means the Marketing and Redistribution Section created within the Office of State Procurement pursuant to Ark. Code Ann. § 25-8-106.

(g) "Not-for-profit organization" means a private corporation under the Arkansas Nonprofit Corporation Act, Arkansas Code Ann. § 4-28-201 et seq., that is an exempt organization as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that:

(1) Has benevolent, philanthropic, patriotic, or charitable purpose; and

(2) Performs a function that would be performed at the public expense if it were not performed by the organization.

(h) "State agency" is as defined in Ark. Code Ann. § 19-61-103.

(i) "Tax supported institutions" means institutions that derive at least fifty percent (50%) of their revenue appropriation from a taxing jurisdiction.

(j) "Traditional auction" means an in-person, competitive sale of commodities conducted by a licensed auctioneer at a physical location. Bidders must be physically present to participate, and the sale is awarded to the highest bidder at the close of the bidding.

~~— **19 CAR § 1-602. Definitions of terms used in Arkansas Code § 19-11-242.**~~

~~— (a) "Not for profit organization" means a private corporation under the Arkansas Nonprofit Corporation Act, Arkansas Code § 4-28-201 et seq., that is an exempt organization as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that:~~

~~— (1) Has a benevolent, philanthropic, patriotic, or charitable purpose; and~~

~~— (2) Performs a function that would be performed at the public expense if it were not performed by the organization.~~

~~— (b)(1) "Lease" means a transfer of the right to possession and use of surplus commodities, for a specified term length not to exceed a seven year period, for a~~

~~monetary fee or other consideration, while retaining ownership and title in the surplus commodities.~~

~~————(2) Monetary fees or other consideration may not be nominal.~~

~~————(c) "Donation", as used in 19 CAR § 1-606(h), means a transfer of ownership and title in surplus commodities for no monetary fees or consideration.~~

19 CAR § 1-603. Marketing and redistribution surplus computer sales procedures.

(a) **Sales made within the state agency.** The state agency will:

(1)(A) Create a customer receipt for the sales price and calculate sales tax.

(B) ~~Included on t~~The receipt shall include~~will be:~~

(i) The type of equipment, model number, serial number, and property tag number;

(ii) ~~Who the~~The purchaser of the equipment ~~was sold to~~; and

(iii) The purchase amount;

(2) Record the receipt in the cash journal as a customer payment; and

(3) Request a funds transfer through the Department of Finance and Administration Office of Accounting, who shall transfer funds in accordance with the law. ~~from the receipting agency's fund to the:~~

~~————(A) Marketing and Redistribution Section's cost center 383333, Fund MPH0000 — fifteen percent (15%) of the sales price; and~~

~~————(B) Division of Environmental Quality's cost 451346, Fund MER0100 — twenty five percent (25%) of the sales price; and~~

~~————(4) _____~~

(i) The sales tax will be paid when the Department of Finance and Administration Office of Accounting does their (owning agency's) monthly billing for sales and use tax.

(b) **Sales made through ~~the~~ Marketing and Redistribution ~~Section~~ on behalf of the agency.** ~~The~~ Marketing and Redistribution ~~Section~~ will:

(1) Create a customer receipt to record the sales price and sales tax;

- (2) Record the receipt as a customer payment in the cash journal; and
- (3) Request funds transfer through the Department of Finance and Administration Office of Accounting, who will transfer funds in accordance with the law. from Marketing and Redistribution fund MPH0000 to agency fund and cost center fifty percent (50%) of the sales price Division of Environmental Quality cost center 451346, Fund MER0100 twenty five (25%) of the sales price; and
- _____ (i4) The sales tax due will be included in the Department of Finance and Administration monthly report of sales and use tax.

19 CAR § 1-604. Surplus computer sale reporting.

(a)(1) Each agency shall provide be responsible for providing to ~~the~~ Marketing and Redistribution ~~Section~~, by the tenth of the month following the sale, a list of all surplus computer items sold.

(2) The list shall iinclude the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold, and the amount.

(b) If the sale of surplus computer or electronic equipment is made within the agency, sixty percent (60%) of the proceeds shall be returned to the agency and forty percent (40%) of the proceeds shall be deposited with Marketing and Redistribution.

(c) If the sale is conducted by ~~the~~ Marketing and Redistribution ~~Section~~ outside the agency, the owning agency will receive fifty percent (50%) of the proceeds and; ~~twenty-five fifty~~ percent (~~250~~%) of the proceeds will be retained by ~~the~~ Marketing and Redistribution. ~~Section, and twenty-five percent (25%) of the proceeds will go to the Computer and Electronic Recycling Fund at the Division of Environmental Quality.~~

19 CAR § 1-605. State Agency commodity management procedures – Disposition of commodities other than computers and electronic equipment.

(a) Resale.

(1) ~~The~~ Marketing and Redistribution ~~Section~~ will make available to agencies, tax supported entities, or not for profit organizations as defined in Arkansas Code § 22-1-101 commodities that are in serviceable condition and/or commodities that have

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of potential use ~~available by to eligible entities agencies, tax supported entities, or not for profit organizations~~ for a ~~fivetwenty~~-day hold period prior to making them available to the general public.

(2) During the ~~fivetwenty~~-day hold period, Marketing and Redistribution may only sell the commodities ~~to eligible entities may only be sold to agencies, tax supported entities, or not for profit organizations by the Marketing and Redistribution Section.~~

(3) ~~At the sole discretion of the State Procurement Director or the director's designee at the Marketing and Redistribution Section, commodities which the director or the director's designee at the Marketing and Redistribution Section reasonably believe to be valued at one hundred dollars (\$100) or less per individual item, or commodities that historically have not sold to agencies, tax supported entities, or not for profit organizations, or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty day hold period.~~

~~————(4) The State Procurement Director or the director's designee at the Marketing and Redistribution Section may waive the fivetwenty-day hold requirement when he or she determines that such waiver is in the state's best interest.~~

(b) Intrastate agency sale.

(1) Excess and surplus cCommodities ~~that are no longer needed by an agency~~ may be sold to another agency by completing and submitting an Intrastate Agency Sale Form, ~~which can be found on the Marketing and Redistribution Section website under forms, to the Marketing and Redistribution Section.~~

(2) This form must be completed and forwarded electronically from the selling agency to the purchasing agency, then to ~~the~~ Marketing and Redistribution, which will Section, where it is forward it ed to the Department of Finance and Administration Office of Accounting for completion and transfer of funds.

(c) **Disposal.** When commodities have no scrap or resale value, a certificate of property disposal form must be submitted to ~~the~~ Marketing and Redistribution ~~Section,~~ which will then return a certificate of property disposal authorization to the requestor

~~within ten (10) working days, a certificate of property disposal authorization,~~ indicating the proper handling procedure for the commodities.

(d) **Cannibalization.**

~~(1) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.~~

~~_____~~(2)(A) The disassembly of an item for use of its component parts for repair or maintenance of a similar item ~~will~~may only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form.

(B) Authorization for cannibalization ~~will~~shall be approved by the Marketing and Redistribution ~~Director~~Section prior to any disassembly or removal of components parts.

(C) If authorized, the item will be removed from the agency's property listing by the requesting agency.

(D) Any residual material remaining after cannibalization must be processed through ~~the~~ Marketing and Redistribution ~~Section~~.

~~_____~~ (E) ~~Requests for authorization for cannibalization will be expedited.~~

~~_____~~ (F) ~~If properly marked, authorization should be returned to the agency with ten (10) working days.~~

~~_____~~ (G) ~~It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through the Marketing and Redistribution Section.~~

(23)(A) **Cannibalization of Motor Vehicles.** Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from ~~the~~ the Marketing and Redistribution ~~Director~~Section.

(B) These vehicles will not be removed from the property listing until the carcass of the vehicle has been disposed of by ~~the~~ Marketing and Redistribution Section.

~~— (C) In no event should more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by the Marketing and Redistribution Section.~~

(~~C~~) These procedures do not exempt an agency from compliance with any other requirements relating to the disposal or acquisition of motor vehicles.

(e) Handling of surplus equipment.

(1) ~~State a~~Agencies with surplus items must contact ~~the~~ Marketing and Redistribution ~~Section~~ to schedule a delivery or pick-up date.

~~— (2)(A) A Surplus Disposal Form must be transmitted by the agency showing the agency name, address, phone number, contact person, and listing of all items with serial and property numbers, if available.~~

~~— (B) The Surplus Disposal Form will be processed by the Marketing and Redistribution Section when the surplus items are delivered or picked up.~~

19 CAR § 1-606. Auction and onsite sales — Disposition of commodities.

(a) General requirements.

(1) Commodities that are not subject to or have completed the ~~fivetwenty~~-day hold period, pursuant to 19 CAR § 1-605(a), may be offered for sale.

(2)(A) Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency.

(B) The rental fee or fees less applicable handling fee or fees will be remitted to the owning agency.

(b) Notice required.

(1) Public notice of commodities sold by competitive sealed bid should be given at least five (5) days prior to the date established for the sale.

(2) The notice will include publication in any electronic or printed medium.

(c) Public auction.

(1)(A) Public auction ~~whether electronic or traditional~~ may be used when deemed in the best interest of the state.

(B) Auction costs will be paid from proceeds.

(C) In a traditional auction, ~~if proceeds do not cover the costs,~~ the agency requesting the auction will be responsible for any expenses not covered from the proceeds.

(D) Any cost associated with an electronic auction will be covered by proceeds from the sale.

(2) Procedures.

(A)(i) In a traditional auction a licensed auctioneer will be used.

(ii) The solicitation to bidders must stipulate, at a minimum:

(a) All terms and conditions of ~~the any~~ sale;

(b) That the purchaser must remove all items purchased within a stated time; and

(c) That the state retains the right to reject any and all bids.

(B) In an electronic auction, the purchaser must pick up or otherwise cause the items purchased to be removed within a stated time.

(d) Competitive sealed bidding.

(1) Competitive sealed bidding will be used when ~~—~~

~~(A) The value of the item cannot be determined based on market value or past history of same or similar items sold; or~~

~~(B) If it is determined by the Marketing and Redistribution ~~Section~~ Director that it is in the best interest of the state.~~

(2) **Procedures.** When surplus or excess commodities are to be sold by competitive sealed bidding, the procedures followed must be in accordance with Arkansas Code §§ 19-~~611-501204~~, 19-~~611-502228~~, and 19-~~611-505229~~, and the rules promulgated hereunder except the award will be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the state.

(e) Onsite sales.

(1) **Definition.** "Onsite sales" includes the process of:

(A) Internet auctioning; and

(B) Sale of commodities to the general public from ~~the~~ Marketing and Redistribution ~~Section~~, a satellite location, and/or other agency locations when approved by ~~the~~ Marketing and Redistribution ~~Section~~.

(2) Onsite sales will be used for surplus and excess items not purchased by other state agencies or tax supported entities.

(3) **Procedure.** The selling price will be established by ~~the~~ Marketing and Redistribution ~~Section~~ based upon:

(A) Demand;

(B) Condition of commodities;

(C) Past experience gained from auction or competitive sealed bid sales;

and

(D) ~~Prevailing R~~etail prices for same or similar commodities in the local market.

(f) **Negotiated sale.**

~~————(1) A~~ Negotiated sale may be used if no acceptable bids were received during the bid process ~~and an offer is made “after the fact” for the item.~~

~~————(2) Offers will only be accepted from bidders that participated in the sealed bid offering the item.~~

(g) **Trade-in.** Surplus commodities may be traded ~~at in when~~ the Marketing and Redistribution Director’s discretion. ~~Manager or Assistant Marketing and Redistribution Manager determines that the trade in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.~~

(h) **Lease or donation.**

(1) Surplus commodities may be leased or donated to tax supported entities or nonprofit organizations when:

(A) Requested in writing by the owning agency through a lease or donation request form; and

(B) Approved by the State Procurement Director or their designee.

~~(2)(A) Written requests must be submitted to the manager identifying the equipment by name, serial number, property number, the benefit to the public in cases of proposed donations, and lease terms in cases of proposed property leasing.~~

~~(B) The manager will estimate the property value and forward the request to the director for his or her approval/disapproval.~~

~~(3) The director will respond in written communication to the requesting agency on a case by case basis.~~

(24) If approved, ~~the~~ requesting agency must maintain a copy of the original written request and the written approval/disapproval from the director for audit purposes.

(35) Copies of the request and approval/disapproval will also be maintained by Marketing and Redistribution ~~at the section.~~

(i) Disposition of Commodities by the Arkansas Department of Transportation

(1) The Arkansas Department of Transportation may dispose of its own commodities without the assistance of Marketing and Redistribution. ~~the Office of State Procurement, but However,~~ its dispositions must comply with all applicable law, rules, and the procedures ~~outlined herein for said disposition.~~

(2) Nothing herein is intended to prohibit the use of the office for the disposition of those commodities, and the department may request Marketing and Redistribution ~~the office~~ make the disposition.

(j) ~~Excess-Online sale for commodities in remote locations and/or that are cost prohibitive property too heavy or expensive to transport, to the Marketing and Redistribution Section.~~

(1) ~~Excess-Commodities that are in remote locations or that are cost prohibitive and/or commodities where the cost to transport to the Marketing and Redistribution shall Section would be prohibitive should be reported by written communication in writing to the Marketing and Redistribution Section~~ with a complete description and details of the condition of the equipmentcommodity.

(2) ~~The~~ Marketing and Redistribution ~~Section~~ will make one (1) of the following recommendations:

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(A) Redistribution.

(i) The commodity ~~should~~may be redistributed for state use and ~~the Marketing and Redistribution Section~~ will notify eligible agencies and/or tax-supported entities that could utilize the commodity.

(ii) When the property is sold, the receiving agency will be responsible for the removal of the item or items with the expense of moving being taken into consideration when price is determined; or

(B) Onsite Sale.

(i) An onsite sale may be conducted in accordance with 19 § CAR 1-606(e).

~~The Marketing and Redistribution Section will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.~~

~~—————(ii) A certificate of property disposal will be transmitted to the owning agency designated as follows:~~

~~—————(a) The property identified is authorized for cannibalization by the manager who hereby authorizes the agency to perform the cannibalization;~~

~~—————(b) The property identified is authorized for destruction by the manager who hereby authorizes the agency to perform the destruction;~~

~~—————(c)(1) Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer or dealers at local prices.~~

~~—————(2) Payment or payments received are to be sent and made payable to the section with a copy of the Certificate of Property Disposal authorizing the sale; and~~

~~—————(d)(1) Property with resale value that is not feasible for transport to the Marketing and Redistribution Section may be disposed of by obtaining quote bids "as is, where is".~~

~~_____ (2) Owning agencies should attempt to obtain
(3) bids.~~

~~_____ (3) A copy of the bid quotes, a copy of the
Certificate of Property Disposal authorizing the sale, and the proceeds are
to be sent and made payable to the Marketing and Redistribution
Section. (C) Disposal or Cannibalization.~~

~~(i) The property may be disposed of or cannibalized in accordance
with 19 CAR § 1-605(d).~~

~~_____ (D) Competitive Sealed Bidding.~~

~~_____ (i) The property may be sold in accordance with 19 CAR § 1-606(d).~~

~~_____ (3k) Specialized commodities may be offered for trade-in only with when the
trade-in price is approved by price offered being forwarded in a written transmission to
the the -Marketing and Redistribution Director. Section for determination of price
acceptability.~~

~~_____ (4) If none of the above procedures are applicable, the State Procurement
Director will make an individual determination.~~

**19 CAR § 1-607. Allocation and disbursement of proceeds from sale or
disposal of surplus commodities.**

(a) Using agency.

(1) The ~~allocation of~~ proceeds from the sale, lease, or disposal of surplus
commodities, and proceeds from an insurance policy for loss of property because of
fire, storm, or other causes, less appropriate fees, will be remitted made and deposited
to the using agency which had possession of the commodity.

~~_____ (2) Such allocations and deposits will be made at the sooner of when the using
agency's account balance has reached at least fifty dollars (\$50.00) or the end of each
fiscal year.~~

(b) Fee schedule.

(1) ~~The Office of State Procurement~~Marketing and Redistribution will develop maintain a fee schedule that will ~~to defray the costs of the commodity management program.~~

~~————(2) The fee schedule will~~ set forth ~~various~~ charges for its services. Any charges rendered will be deducted from the proceeds before they are remitted to the agency.