

NDC NEGOTIATED SALE GUIDELINES

SECTION I. NAME

The following rules shall be known as NDC's Operating Guidelines for the Negotiated Sale of its Properties

SECTION II. BASIS AND OBJECTIVE

1. These rules aim to establish a procedure for NDC's conduct of negotiated sale.
2. The rules were based on COA Circular 89-296, the governing circular for the disposal of government assets, as well as the negotiated sale practices of other similarly situated government owned and controlled corporations (GOCCs) such as the Philippine National Oil Company (PNOC) and the Home Guaranty Corporation (HGC).

SECTION I. COVERAGE.

1. These Guidelines shall apply to:
 - a. Sale of assets, which had undergone at least two (2) failed biddings; or
 - b. Sale of assets acquired by NDC from the International Corporate Bank (ICB) by virtue of the Deed of Assignment, dated September 16, 1988 in light of the non-applicability of the circular to the disposal by government financial institutions of foreclosed assets or collaterals acquired in the regular course of business.

SECTION IV. DEFINITION OF TERMS

1. **Public Bidding** - Public offering of an asset where award thereof is given to the buyer who offers the highest price, provided that such offer is compliant with the bidding terms and conditions set by NDC.
2. **Failure of Public Bidding** – A failure of public bidding occurs if:
 - a. There was no offeror;
 - b. There was only one offeror; or
 - c. All bidders were non-compliant with the terms and conditions of the public bidding.

SECTION V. BOARD APPROVAL

Properties which shall be sold pursuant to these Guidelines must have prior NDC Board approval.

SECTION VI. MODES OF NEGOTIATION.

NDC may negotiate using any of the following modes:

1. **Direct Negotiations.** NDC may separately negotiate with each and every offeror on dates as shall be designated by the NDC Disposal Committee.
2. **Through Brokers.** NDC may also negotiate through brokers who are duly accredited by the company.

SECTION VII. ANNOUNCEMENT OF NEGOTIATED SALE

Upon approval by the NDC Board, NDC may announce the negotiated sale of any of its properties by:

1. INVITATION

- a. Letters addressed to participants in the last two failed biddings for the property;
- b. Advertisement either through a newspaper of general circulation or a local paper where the property is located for three consecutive days preferably on a weekend for greater readership; or
- c. Advertisement posted at the NDC website.

2. NOTIFICATION TO BROKERS

NDC shall from time to time furnish its accredited brokers with a list of its assets scheduled for negotiated sale.

SECTION VIII. INDICATIVE PRICE

Floor prices of assets sold under these Guidelines must at least be 90% of the original selling price.

SECTION IX. VALIDITY OF THE INDICATIVE PRICE

1. The third party appraisal upon which the indicative price was based is valid for one (1) year. Such one-year validity is reckoned from the date of approval by the Board for the sale of the property through public bidding.
2. The running of the one year (1) year validity period is stayed if:
 - a. Negotiations started within one (1) year from the date of approval by the board as stated in the immediately preceding section;
 - b. The offeror tendered his deposit within said period; and
 - c. Delays in the evaluation of offers and award of the sale is not the offeror's fault.

SECTION X. QUALIFIED OFFERRORS

Only Filipino Citizens and corporations which capital stock is at least sixty percent (60%) owned by Filipino Citizens can participate in the negotiated sale.

SECTION XI. DOCUMENTARY REQUIREMENTS

1. Offerrors must submit their duly notarized Letters of Intent to Buy, sample is in Annex “A”, accompanied by:
 - a. Earnest Money equivalent to at least 10% of the amount of purchase offer;
 - b. Personal Data Sheet/ Company Profile/ General Information Sheet of the Offerror as well as that of his representatives, in case representatives submit the offer;
 - c. Tax Clearance Certificate for the immediately preceding year;
 - d. Special Power of Attorney for representative(s)/ Board Resolution authorizing the company’s participation in the negotiated sale and also citing therein such company’s duly designated representative;
 - e. A copy of the Negotiated Sale Guidelines with each and every page thereof duly signed by the offeror on the right hand margin to serve as evidence that the offeror has read and been properly apprised of the rules governing the sale; and
 - f. Other documents that may be required by NDC based on the kind and value of the asset being sold.
2. The Letter of Intent to Buy together with the required attachments and the 10% deposit must be placed in two (2) separate sealed envelopes correspondingly signed and labeled with **LETTER OF INTENT TO BUY**, and **DEPOSIT**, respectively.

3. All offers must be received by NDC on or before the designated deadline. Any offer tendered beyond said date and time shall be disqualified.
4. The envelopes containing the **LETTER OF INTENT TO BUY** and **DEPOSIT** must be addressed as follows:

The Chairman
NDC Disposal Committee
6/F National Development Company Building
116 Tordesillas St, Salcedo Village, Makati City

CONTENTS: LETTER OF INTENT TO BUY or
DEPOSIT for (*Name/ Location of Property*)

SECTION XII. DUE DILIGENCE

1. All offerors shall have fifteen (15) days, from the date of advertisement or the date on which letters of invitation were sent, within which to inspect and conduct due diligence on the property.
2. NDC shall not give any warranty on the property except as to its title.
3. All queries about the property and the conduct of the negotiations per se must be conveyed to the NDC Disposal Committee in writing at least 5 days before the deadline for the submission of offers.
4. Bid Bulletin(s) shall be issued before the deadline of submission of offers to address all queries.
5. Location maps, titles/tax declarations and other sale documents may be requested from the Disposal Committee during the 15-day due diligence period.

SECTION XIII. TERMS OF PAYMENT

1. Offers shall be in **CASH** but offers in **INSTALLMENT** may also be entertained in the event that there are no offers in cash. In all instances, the sale shall be on an **AS-IS, WHERE-IS** basis.
2. NDC accepts cash, cashiers and manager's checks issued by major commercial banks in Metro Manila for offers made in **CASH**.
3. **INSTALLMENT** offers shall be paid through post-dated checks that shall be similarly drawn from major commercial banks in Metro Manila. The post-dated checks shall be issued by the winning offeror according to the terms that shall be approved by the NDC Board.
4. Notwithstanding the immediately preceding section, the 10% deposit for both modes of payment shall be made **STRICTLY IN CASH**.
5. Offers in **INSTALLMENT** shall be discounted at prevailing market rates. Amortization schedules shall be subject to the NDC Board's approval.
6. Deposits shall be applied as part of the purchase price.
7. Deposits of losing offerors shall be returned without any interest immediately after NDC has chosen the winning offeror.

SECTION XIV. EVALUATION OF OFFERS.

1. The NDC Disposal Committee shall consider the following basic guidelines in evaluating offers :
 - a. Offers in **CASH** are always preferred and offers in **INSTALLMENT** may only be considered if no offers in CASH **were** tendered.
 - b. **CASH** offers must at least be 90% of the original selling price;
 - c. For **INSTALLMENT** offers, the Net Present Value of the stream of installments, discounted at prevailing interest rates, should be equivalent to at least 90% of the original selling price;
 - d. Preference shall always be given to those who offer the shortest payment period.
3. Evaluation of offers must be concluded by the Disposal Committee within fifteen (15) days subject to extension as the need arises and upon notice to all offerors.

SECTION XV. NOTICE OF AWARD

1. NDC shall issue a notice of award to the winning offerror upon approval by the NDC Board.
2. Refusal of the winning offerror to: (a) accept the award, or (2) to execute the Deed of Absolute Sale or Deed of Conditional Sale, as the case may be, shall cause automatic forfeiture of the offerror's deposit in favor of NDC exclusive of other remedies under the law, which NDC may avail.

3. The winning offeror shall be required, among others:
 - a. **Cash.** To render full payment of the Purchase Offer within thirty (30) days upon receipt of the Notice of Award.
 - b. **Installment.** To issue the required post dated checks within thirty days upon receipt of the Notice of Award and to comply with other terms and conditions as shall be prescribed by the NDC Board.
 - c. To submit all other documents which NDC may deem necessary for the consummation of the sale.

SECTION XVI. EXECUTION OF CONTRACT

1. NDC and the winning offeror shall execute a **DEED OF ABSOLUTE SALE** for payments made in CASH or a **DEED OF CONDITIONAL SALE** for payments made in **INSTALLMENT** upon the buyer's tender of payment as set forth in the immediately preceding section.
2. Ownership of the property shall be transferred to the buyer upon **full payment** of the purchase price and compliance with all the terms and conditions set forth in the sale document.
3. Failure by the winning offeror to tender payment within the prescribed period shall be a ground for NDC to unilaterally terminate the sale and forfeit the deposit
4. In case of failure by the offeror to pay an installment payment, the conditions under the Deed of Conditional Sale shall prevail.

5. NDC and the winning offeror in **INSTALLMENT** shall execute a **DEED OF ABSOLUTE SALE** upon the winning offeror's complete payment of the full purchase price of the property.

SECTION XVII. TAXES AND FEES

The burden for all taxes, fees and expenses attendant to the sale shall at all times be shifted to buyers. Thus, the NDC Disposal Committee must ensure that all sale prices shall be inclusive of all taxes and dues by which NDC, as the seller is legally liable to pay.

SECTION XVIII. UNSOLD PROPERTIES

All properties which are not sold within the appraisal's one (1) year validity period shall be referred back by the Disposal Committee to the Asset Management Group for re-appraisal and/or reconsideration of plans for the property.

LETTER OF INTENT TO BUY

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OFFERS IN INSTALLMENT

PURCHASE PRICE: _____

_____ (Words)
_____ (Figures).

On the following terms: (State Proposed Terms- Duration, Amortization
Schedule, Interest, Other Terms)

We further state that:

- (1) We hereby undertake without any reservation that if accepted, this offer to purchase the _____ property shall be subject to the terms and conditions as specified in the Negotiated Sale Guidelines dated _____.

- (2) We hereby warrant the completeness and correctness of the information furnished by us in the LETTER OF INTENT TO BUY including all of its accompanying documents.
- (3) We hereby confirm that our offer to purchase is a firm offer. We hereby absolutely waive our option to withdraw our offer to purchase for a period of sixty (60) days from the date we submitted our offer. We, however, agree that said 60-day period may be extended upon mutual agreement between NDC and ourselves.
- (4) We hereby certify that we have gathered all the data and conducted all the needed investigations of the property, which we deemed necessary to ensure that we are fully apprised and completely cognizant of the true condition and accurate value of the _____ property. As a consequence thereof, we shall not, under any circumstance, claim any modification in our proposal price upon the grounds that _____ property's true condition and actual value turn out to be different from our findings and/or assumption.
- (5) We hereby represent and warrant that: (a) we have examined and understood the Negotiated Sale Guidelines dated _____ issued by NDC as evidenced by our signature on the right hand side of each and every page thereof; (b) Accept the terms and conditions specified therein, including NDC's right to reject any and all offer without thereby creating any liability in our favor; and (3) pursuant thereto we hereby absolutely waive all claims against any of NDC's stockholders, directors, officers or employees and other representatives or agents which may arise out of or in connection with the making and/ or non-acceptance of our offer.

- (6) By submitting our offer we: (a) agree that our deposit may be forfeited in favor of NDC in case of any occurrence of the forfeiture events outlined in the Negotiated Sale Guidelines dated _____; (b) acknowledge that NDC 's forfeiture of our deposit will not preclude NDC from pursuing any other legal remedies; and (c) accept the limitations of warranties and liabilities contained in the Negotiated Sale Guidelines and hereby waive and recognize that we shall as a result thereof not have any claims for any damages or other relief except for reimbursement to us of our deposit without interest.
- (7) We hereby, waive any right to obtain a writ of injunction or of prohibition or a restraining order or any other form of coercive, judicial, administrative and other relief against NDC, or any of its stockholders, officers, directors, employees and representatives to prevent, to restrain or in any manner forestall, hinder or render inconvenient the holding of the bidding or re-bidding, including but not limited to the negotiation and award of the sale of the _____property to the winning offeror.

Please find attached our duly accomplished documentary requirements.

Very truly yours,

(Signature Over Printed Name)

REPUBLIC OF THE PHILIPPINES)
) S.S

SUBSCRIBED AND SWORN to before me this _____day
of_____ at _____, affiant
exhibited to me his government issued ID
No._____issued on _____
at_____and
valid until _____.

Doc No. : _____
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