



Written Statement of

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Committee Hearing on

“Surplus Property: Improving Donation and Sales Programs”

Chairman Towns, Ranking Member Bilbray, and Members of the Committee, my name is Tommy Williams, and I am the president of the National Auctioneers Association and co-founder of Williams & Williams Real Estate Auction Company in Tulsa, Oklahoma. I appreciate the opportunity to speak before you today about our concerns and opposition to the General Services Administration's (GSA) proposed rule 41 CFR 102-38 governing the Federal Asset Sales Initiative (eFAS) regarding the sale of surplus government property.

The National Auctioneers Association is a professional association that represents the interests of approximately 6,000 professional auctioneers who conduct on-line and in-person auctions throughout the United States and around the world. The members of NAA represent all aspects of the auction profession, which range from real estate auctions, to livestock auctioneers. In the interest of protecting the general public, our members abide by a strict code of ethics and are committed to continuing their education and advancing the profession of auctioneering.

Introduction

The NAA and its members are concerned with the GSA's proposed rule 41 CFR 102-38. If enacted, the proposed rule would have a damaging impact on auctioneers and the private sector who currently assist Federal agencies in the sale of surplus personal property to small businesses and other private-sector customers around the country. The proposed rule requires Federal agencies to cease managing their own personal property sales and requires agencies to either migrate their personal property sales to a GSA-approved Sales Center or apply to operate their own Sales Center.

If enacted, the rule would create an effective government monopoly and would risk eliminating the ability of auctioneers and the private sector to contract with agencies to sell their surplus personal property. In fact, private auctioneers are already getting squeezed out, as the GSA has already told other Federal agencies that this policy shift to government-run Sales Centers has already occurred.

That is unfortunate, since the private sector currently assists these Federal agencies by more efficiently and effectively selling surplus property than the GSA can do itself. The NAA firmly believes that the private sector should not be restricted from this market and that agencies should be allowed to continue to choose the sales option that works best for their individual needs.

The NAA and others have requested that an "opt-out" provision be added to the rule allowing agencies to "opt-out" of the requirement of using an FAS Sales Center and select the best option for their needs. If the Sales Center policy does move forward, the NAA believes that private businesses should be allowed to become a Sales Center.

Finally, the NAA would strongly support a policy change enabling individual agencies to keep the government's share of the surplus sales proceeds, instead of that share returning to the general U.S. Treasury.

Role of Auctioneers in Disposal of Federal Surplus Personal Property

Auctioneers have been an effective and efficient partner of government agencies throughout the years. Professional auctioneers across the country have assisted agencies at all levels of government in their surplus sales and disposal needs. These contracts range from selling surplus computers and office equipment for state agencies, to the disposal of surplus vehicles and heavy equipment for Federal agencies. However, if GSA's proposed rule is enacted, agencies will no longer be able to choose the best option for their individual needs, thereby eliminating the beneficial role of many experienced, knowledgeable private auctioneers.

Let me provide you with a couple of stories from our nationwide NAA membership to show how the Federal government, small business customers around the country, and Federal taxpayers have been well-served by our auctioneers.

Before the GSA told the U.S. Forest Service that private auctions were no longer allowed, Jerry King of Fletcher, North Carolina and his family business managed the sales of heavy equipment for the agency. Prior to Jerry being contracted by the Forest Service, the agency's returns on their sales of surplus property were only a fraction of the property's value. Thanks in part to Jerry's experience selling vehicles and equipment and his business' extensive mailing list of over 70,000 prospective customers, Jerry was able to double and even triple the returns for the agency.

Jerry likes to tell the story of his first auction for the agency when he was interrupted mid-way through the auction by the agency's property manager who enthusiastically insisted that Jerry sign-on as their permanent auctioneer. While Jerry and his employees were only halfway through the auction, they had already doubled the returns of any previous sale held by the agency, a true testament to the use of a qualified, professional auctioneer.

As one of the Department of the Navy's contracted auctioneers, Tom Thornton of Jacksonville, Florida has over 10 years of experience selling for the government. An automobile and heavy equipment auctioneer by trade, Tom uses his industry knowledge and marketing/advertising experience to draw prospective bidders from across state lines, many of whom are previous small business customers, to purchase items such as government-owned cranes, bulldozers, pick-up trucks, vans and other equipment no longer in use by the government.

Tom has faced similar challenges to those being proposed by the GSA in the past. Over ten years ago, the Defense Re-Utilization Marketing Service (DRMS) challenged private auction companies involved in the disposal of government property to the Pentagon. To settle this matter, the Navy's Public Works Division provided each party with identical vehicles to sell at auction. The results were staggering. DRMS

successfully auctioned their passenger van with the winning bid coming in at \$800.00. Tom Thornton and his business, Dixie Auction Company, also successfully sold their passenger van but the price far exceeded DRMS's return of \$800. Tom's final bid and selling price was \$3,500, an increase of over 400%.

After the auction DRMS was allowed to auction only cars and passenger buses for the Navy, while Tom Thornton and his business were contracted to sell the remainder of equipment and vehicles. Ironically, a few short years later, DRMS gave up and opted to outsource their auction sales to a private auction company, which currently handles their vehicle sales.

In addition to successfully disposing of property for this agency and others, Tom strives to provide his services at a reasonable cost to the agency he sells for. In the case of Dixie Auction Company, the company charges a fee of \$75.00 per vehicle sold at auction. No matter the vehicle, whether it is a passenger van or a bulldozer, the selling fee charged is \$75.00. This fee is minimal in comparison to the fees currently charged by the GSA's GSAuctions.gov, which also handles government surplus sales. On average, the GSA charges Federal agencies a commission fee of 25%, over double and sometimes triple the commission rate charged by the private sector.

Unfortunately, while their merits have been proven, agencies will no longer be allowed to simply choose Jerry, Tom, and other auctioneers across the country if 41 CFR 102-38 is enacted as it currently reads. Let me describe how that is so.

41 CFR 102-38

Proposed in April 2007 by the GSA, 41 CFR 102-38 requires all federal agencies to conduct their surplus sales through a GSA-approved government Sales Center under the Federal Asset Sales program, whether those agencies wish to use a Sales Center or not. By restricting sales of surplus personal property to government-run Sales Centers, private businesses, such as auctioneers, would be excluded from continuing to service this market under their current arrangements. In fact, the chilling of the marketplace has already started, as GSA representatives have repeatedly told agency officials for the past two years that the pending rule change is imminent, leading agencies to shy away from contracting with the private sector in the meantime.

As written, agencies would be required to migrate their personal property sales to a GSA-approved Sales Center, thereby ceasing to manage their own personal property sales, or apply to become a Sales Center themselves within six months. The GSA-chaired Federal Asset Sales Executive Steering Committee has sole discretion to decide whether an agency can be approved as a Sales Center, and the evaluation criteria for Sales Center applications is not clearly stated in the proposed rule. In essence, the rule grants the GSA effective monopoly rights to sell the vast majority of Federal surplus personal property, as GSA currently operates the only full-service Sales Center in GSAuctions.gov. The NAA firmly believes this is a clear conflict of interest.

Many executive agencies have invested substantial time and effort to develop private partnerships and solutions to serve their agency's personal property disposal requirements. The NAA and others have requested that an "opt-out" provision be added to the rule allowing agencies to "opt-out" of the requirement of using an FAS Sales Center and instead select the best option for their needs. The GSA should make this change to its proposal.

Let me also briefly rebut some of the arguments that the GSA is likely to make in support of its proposal:

First, the GSA will tell you that only specially trained federal agencies, like the GSA itself, can handle the complex sales of selling government surplus. However, since the mid-1800s, federal, state, county, and city governments have relied on the private sector to auction government property. One prominent auctioneering company sells surplus property on behalf of 1,500 government agencies nationwide. The GSA sold \$130 million in goods and services in 2007, but the live auction industry sold \$270.7 billion, over 2,000 times that amount. Now the GSA is telling us that we are no longer competent enough to run our auctioneering businesses? What exactly is the GSA able to do that a private auctioneer could not do more efficiently?

Second, the GSA will say that they do not run the only surplus Sales Center. However, GSA's operation is the only full-service Sales Center. USDA's Sales Center only covers property located in the Washington, DC area. The U.S. Marshals and Treasury Sales Centers only sell seized and forfeited assets for their respective Departments. The \$130 million in surplus sales by GSA in Fiscal Year 2007 represented about 90% of all federal surplus sales. Moreover, 99% of all civilian federal property managers are now forced to use GSAuctions.gov as part of the Federal Asset Sales initiative. That sounds pretty close to a monopoly to me.

Third, the GSA will say that a federal agency can waive out of the Sales Center requirement in order to use a private-sector option. However, the devil is in the details on that one, as the so-called waiver requirements as described in FMR 102-2.60 to 102.2.110 are unrealistic. According to the regulation, the federal property manager would need to have the "head of your agency" or a "designated official" write to the GSA's Regulatory Secretariat, describe the duration of the temporary deviation (since "deviations cannot be open-ended") and provide a quantitative business case to meet an unclear GSA standard. The property manager then must "[c]onsult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them."

Very few property managers will even attempt to jump through those bureaucratic hoops to apply for a waiver. That's especially true since the GSA, with a vested financial interest in limiting competition, has the sole authority to approve or reject the waiver request in the end. This is a waiver process in name only.

Fourth, the GSA will tell you that consolidating all auctions into one website is good for the public. But that's the beauty of the Internet. It's not hard to search for multiple auction websites. Plus, we all support e-government, but couldn't GSA's website just be a "portal," listing other private- and public-sector auction websites without forcing them to use or become a government-run Sales Center?

Fifth, the GSA will claim that its prices are competitive. Well, GSA charges a minimum commission of 25% for sales under \$1,000, 25% for sales between \$1,000 and \$5,000, and 20% for sales between \$5,000 and \$25,000. The vast majority of private-sector auctioneers selling government surplus charge 5% to 10% for the exact same services.

Let me also provide a couple of examples of instances in which the GSA's attempted rebuttals have fallen short so far. GSA Administrator Lurita Doan, in a letter to Chairman Edolphus Towns in January 2007, stated that agencies would not be required to migrate to a designated Federal Sales Center as long as they submit a simple business case attesting to the merits of their preferred sales solution. However, when the rule was proposed in April 2007, the draft rule did not contain a simple business case waiver.

Furthermore, in a letter to Oversight and Government Reform Committee Member Virginia Foxx in September 2007, GSA narrowed its previous promise by stating that agencies with existing private sector sales partners would be able to "request a deviation from this rule" if they could "demonstrate a more effective sales solution" than the GSA-run Sales Center.

As also suggested by my "prebuttal" above, there are several problems with GSA's suggested approach to Congresswoman Foxx regarding a waiver:

First, under existing federal law (FMR § 102.2.75), a "deviation" can be only temporary, which leaves agencies with little incentive to pursue effective sales vendors in the meantime.

Second, GSA would be running the sole full-service Sales Center while also deciding if private vendors provide "a more effective sales solution."

Third, the deviation approach appears to apply only to agencies with existing private partners, meaning that it would be impossible for agencies without current private partners to choose that option in the future.

Fourth, according to the "waiver" requirements, you need to have the "head of your agency" or a "designated official" write to the GSA's Regulatory Secretariat, describe the duration of the temporary deviation (as "deviations cannot be open-ended") and provide a quantitative business case to meet an unclear standard from the GSA. The property manager then must "[c]onsult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them."

Again, GSA needs to do a lot better than this as it decides on a final policy. GSA needs to include a fair and simple “check-the-box” opt-out to allow agencies to use private-sector surplus sales partners.

Finally, the NAA would strongly support a policy change enabling individual agencies to keep the government’s share of the surplus sales proceeds, instead of that share returning to the general U.S. Treasury. This change would encourage agencies to choose the surplus sales solution that best maximizes their return. In most cases, we believe that a private auctioneer would be that solution.

For all of these reasons, the National Auctioneers Association looks forward to receiving clear guidance from the GSA that will enable the private sector to continue its valuable partnership with federal agencies in the sale of surplus government property. Private auctioneers provide a more efficient and effective return to the taxpayer than GSA’s proposed Sales Centers, and we want to continue to provide that service.

Mr. Chairman, we do not oppose the GSA’s overall goals for e-government. What we oppose, and what GSA has made clear that it intends to do by its actions to this point, is taking the sale of surplus property away from the private sector and making it a government function. There is no justification for this.

All we ask is for this committee to ensure that each federal agency has the opportunity to choose the sales solution, whether private or GSA-run, that provides the best, most cost-effective approach in their individual case. Without this committee’s intervention, the GSA will succeed in squeezing out small businesses across the country because the devil is in the details on the GSA’s current proposal. Input from the Congress to GSA to make these points, thanks to this hearing and otherwise, will be invaluable in our efforts.

Thank you, Chairman Towns and Ranking Member Bilbray, for the opportunity to testify. I will be pleased to answer any questions that the Committee may have.