

***Best Practice
Guidelines for the
Sale of Material Public
Sector Assets***

January 1999

QAO

QUEENSLAND AUDIT OFFICE

PREFACE

The Queensland Audit Office is committed to assisting public sector entities in improving the financial management and accountability of the public sector and one way in which QAO aims to achieve this is through the development and distribution of Best Practice Guidelines. This approach was endorsed by the Public Accounts Committee of Queensland in its Review on the Report of the Strategic Review of the QAO (April 1998).

The sale of material public sector assets is a complex and significant event. Public sector agencies must ensure that the sale process is conducted in accordance with prescribed requirements and with the highest level of propriety and probity to ensure that any benefits accruing to the State are maximised.

Through a methodical and well considered process, the public sector entity can ensure that the confidence of the public is safeguarded and that the sale process is successful.

These Guidelines are designed to assist public sector entities in achieving these objectives.

The Guidelines should not be in any way regarded as policy or requirements with which public sector entities must comply. Instead the Guidelines should be referred to by agencies when they are developing their own internal policies and procedures as they will apply to each public sector entity to varying degrees dependent upon the circumstances associated with the particular entity.

Preface

I commend these Guidelines to you as a value-added service of QAO and as a continued effort to strengthen the accountability awareness of the Queensland public sector.

L J SCANLAN
Auditor-General of Queensland

January 1999

TABLE OF CONTENTS

1. INTRODUCTION	1
1.1 Background	1
1.2 Scope	1
2. STRATEGIC PLANNING	3
2.1 Identify Rationale for the Sale and Sale Objectives	4
2.2 Define Assets Being Sold	4
2.3 Determine the Sale Method	4
2.4 Undertake Risk Assessment and Evaluate Alternatives	4
2.5 Obtain Approval to Proceed With the Sale	5
3. SALE PREPARATION	6
3.1 Establish a Sale Team	6
3.2 Develop the Sale Plan	6
3.3 Determine Sale Strategy	7
3.4 Examine Regulatory Environment	7
3.5 Determine Need for External Assistance	7
3.6 Develop a Sale Timetable	8
3.7 Establish a Sale Budget	8
3.8 Undertake Benchmark Valuations	9
3.9 Prepare Asset for Sale	9
3.10 Develop Sale Documentation	10
3.11 Establish Documentation and Records Management Systems .	11
3.12 Develop Labour Relations Strategies	11

Table of Contents

3.13	Develop Marketing and Media Strategies	12
3.14	Develop Strategies to Identify and Manage Potential Conflict of Interest	12
3.15	Develop Strategy to Manage Confidential Information	13
3.16	Examine Need for a Probity Auditor	14
3.17	Address Community Service Obligations	14
4.	CONDUCT OF THE SALE	15
4.1	Determine Selection Criteria	15
4.2	Develop Evaluation Methodology	15
4.3	Appoint Evaluation Committee	16
4.4	Undertake Sale Launch	16
4.5	Establish Procedures for Receipt of Tenders	17
4.6	Manage Due Diligence Process	17
4.7	Evaluate Tenders	18
4.8	Sale Negotiation and Approval	19
5.	POST SALE ACTIVITIES	20
5.1	Provide Feedback to Unsuccessful Bidders	20
5.2	Undertake a Review of the Sale Process	20
5.3	Develop Strategies to manage Sale Implications	21
5.4	Prepare a Sale Summary	21

1. INTRODUCTION

- 1.1 Background** The purpose of these guidelines is to provide assistance to administrators who are faced with the prospect of the sale of material public sector assets.

Public sector entities involved in asset sales need to avoid the possibility of exposing the entity and the State to action for damages because of perceived or actual misrepresentation, bias or failure to follow advertised procedures.

- 1.2 Scope** While the focus of these guidelines is on the sale of assets and business undertakings involving a public bidding process, the principles are equally applicable to other sale methods such as through the public offering of shares.

Each asset sale is a unique activity governed by the particular circumstances attaching to it. As such, these guidelines do not purport to be an exhaustive checklist for each situation but rather it should be regarded as a point of reference and suitably tailored to meet the needs of the particular circumstances of each sale. In all situations the requirements of best value to the entity and the State, fair dealing, open and effective competition and accountability are paramount considerations in order to ensure that public confidence in the process is preserved.

Each sale process broadly consists of four phases, namely –

- strategic planning;
- sale preparation;
- conduct of the sale; and
- post sale activities.

2. STRATEGIC PLANNING

The strategic planning phase is governed by the entity's and the government's policy with regard to the sale of material public sector assets. This phase addresses such issues as the rationale for proceeding with the sale and the sale objectives, identification of assets to be sold, the method of sale, identification of alternative sale strategies and assessment of associated risks and the formal approval process to be followed.

2.1 Identify Rationale for the Sale and Sale Objectives

At the outset the entity's and the government's sale objectives (eg., improved service delivery, increased competition or debt reduction) need to be clearly identified to ensure that an appropriate sale plan is developed that achieves these objectives. Consideration needs to be given to the consequences of the sale on State revenues.

Where appropriate, sale objectives should ensure that potential risks and liabilities associated with the asset are transferred to the purchaser at the completion of the sale.

If the entity and/or the State is required to provide any indemnities, the associated costs of such risks need to be quantified.

- 2.2 Define Assets Being Sold** Determine precisely what assets are being offered for sale, including a preliminary valuation of these assets (eg., are existing contracts with customers being offered for sale, are liabilities included or is the business being sold as a going concern).
- 2.3 Determine the Sale Method** Determine the method of sale that promotes a competitive environment and the optimal outcome with regard to the sale objectives (eg., open tender, negotiation or public float). An indicative timeframe for completion of the sale also needs to be set. Such a timeframe should take into consideration the complexities of the particular sale and also make allowance for possible unforeseen issues. Consideration should also be given to the timing of the sale to ensure that it occurs at the best time for achieving an optimal sale outcome.
- 2.4 Undertake Risk Assessment and Evaluate Alternatives** The advantages and disadvantages and the impact of the sale need to be considered from the perspective of the various stakeholders (eg., the State, taxpayers, customers, employees or regulators). Alternative strategies should also be evaluated having regard to the type of asset that is being considered for sale (eg., corporatisation, contracting out the business or leasing the asset).

- 2.5 Obtain Approval to Proceed With the Sale** Board and/or government endorsement should be sought at the end of the strategic planning phase and prior to progressing to the next stage of the sale process, namely sale preparation.

The role of the relevant Minister's Office and Cabinet (as appropriate) in the sale process should also be clearly established.

3. SALE PREPARATION

The sale preparation phase is concerned with the development of procedures and systems to implement and manage the sale efficiently and effectively. Any central agency policy guidelines should also be considered in this context. A risk management approach needs to be adopted whereby issues which may impact on the sale are identified in the initial stages and strategies are developed to manage these throughout the sale process.

3.1 Establish a Sale Team

A sale team should be established to manage the sale process. The role and responsibilities of the team and reporting milestones including when approval of the relevant Board, Minister and/or Cabinet should be sought needs to be formally communicated to the team.

The team needs to be resourced adequately in terms of an operating budget, staff numbers and necessary skills (eg., planning, marketing, financial, legal, administrative and technical). As a minimum, a project co-ordinator needs to be appointed.

3.2 Develop the Sale Plan

A detailed well documented plan of action providing a step by step description of the sale process needs to be formulated. By adopting a risk management approach, the sale plan would contribute towards clear and controlled decision making and ensure that all applicable tasks and issues are identified at the outset and well managed. Issues that need to be considered in the Sale Plan are outlined in sections 3.3 to 3.17 below.

3.3 Determine Sale Strategy

It would be expected, except in the most exceptional circumstances which should be documented, that all sales would be by open competition. Detailed analysis and market testing of various options should be undertaken to determine the strategy that is most likely to result in a successful sale outcome. For example, if the sale method is open tender, the various options (eg., multi-staged tender, expressions of interest, open bid or bid with disclosed reserve price) need to be evaluated against the sale objectives.

- 3.4 Examine Regulatory Environment** The regulatory environment at both the State and Commonwealth levels and its effect on the sale needs to be identified. Any changes to current legislation which may be necessary to facilitate the sale should be in place prior to offering the asset for sale to minimise uncertainty amongst potential buyers.
- 3.5 Determine Need for External Assistance** The need for any external assistance with the sale process should be identified and substantiated (eg., legal, financial, technical, industrial relations and marketing). When consultants and advisers are engaged, their appointments should be in accordance with the State Purchasing Policy and subject to open and effective competition.
- Generally, consultancy contracts should avoid the inclusion of a success fee as sale objectives may not be solely directed towards price maximisation.
- The contracts should also ensure that any intellectual property that results from consultancies remains the property of the entity or the State.

3.6 Develop a Sale Timetable

A sale timetable with major milestones and approval points should be developed. This should identify sale related activities, individual sale team member responsibilities and their inter-relationships. Due to the complexities usually associated with public sector asset sales, sufficient time should be allowed for potential bidders to develop their bids.

The sale timeframe should be realistic and able to accommodate unforeseen issues and therefore avoid situations where processes may be truncated or corners cut in order to meet over ambitious deadlines. Such a situation could compromise sale objectives and result in a less defensible process.

3.7 Establish a Sale Budget

To manage the costs associated with the sale, a comprehensive budget should be established. The budget should identify the specific nature and timing of these costs and include salary and related administration costs with regard to public sector employees assisting in the sale process.

3.8 Undertake Benchmark Valuations

Once the asset to be sold has been clearly identified, detailed independent valuations of the individual asset components or the whole business should be undertaken. Up-to-date benchmark valuations are necessary to assess the acceptability of bids.

When an asset is being sold with a disclosed reserve price the benchmark valuation would also be of considerable assistance in setting the reserve price. All valuations on the asset should be conducted on the highest and best use basis.

In the case of businesses with property holdings, developmental potential should also be considered in the valuations. The value of intellectual property attaching to assets such as patents should be assessed separately.

3.9 Prepare Asset for Sale

Prior to sale, the asset may need to be appropriately presented to ensure that the best possible outcome is achieved. This could involve undertaking capital improvements or restructuring of the business. The need for such preparatory work and the associated costs should be taken in to account in the context of obtaining a better outcome from the sale.

Consideration should be given to the removal of government guarantees, transfer of licences and safeguarding of intellectual property. Where it is not possible to remove such guarantees etc., appropriate valuations should be made of their worth to the business. Providing indemnities to the State, the entity and public sector employees prior to offering the asset for sale should also be considered.

3.10 Develop Sale Documentation

Documentation clearly setting out the sale objectives, selection criteria, the sale process, sale timetable, bid conditions and the bid structure should be released to all potential bidders. Such an information memorandum could also include background information in relation to the asset, the regulatory framework and financial data. A draft contract should also be made available to potential bidders. Contract documents should include a right to audit clause with regard to a particular bidder should evidence of unethical behaviour come to light.

Consideration should be given to including as a condition of the bid that law enforcement background inquiries will be undertaken in respect of shortlisted bidders. Prior to release of the sale documentation appropriate legal advice should be sought.

3.11 Establish Documentation and Records Management Systems

Documentation and records management systems and procedures need to be implemented to establish a clear and accountable management trail. The documentation should adequately support decisions taken throughout the sale process and should include a record of key discussions and negotiations.

A clear management trail will facilitate any review which may be undertaken by the Auditor-General and other judicial and legislative bodies and is essential to establishing the probity and propriety of the sale process.

3.12 Develop Labour Relations Strategies

Human resource implications associated with an asset sale need to be carefully considered and appropriate strategies developed after consultation with employees and the relevant trade unions.

Where a business is being disposed of and the success of the sale is dependent on retaining key existing employees until the completion of the sale process, the human resource plan should also consider incentives for the retention of such employees.

3.13 Develop Marketing and Media Strategies

A marketing campaign that encourages a competitive environment and provides an equal opportunity to all potential bidders should be developed. The proposed asset sale should be clearly publicised in the media nationally and where appropriate internationally.

Public sector asset sales by their nature may attract significant media and public interest. An appropriate media liaison strategy should be developed.

3.14 Develop Strategies to Identify and Manage Potential Conflicts of Interest

A strategy to identify and manage potential internal and external conflict of interest issues should be developed. Documented guidelines should be in place clearly setting out circumstances where conflict of interest issues could arise (eg., accepting gifts, entertainment, private interest conflicting with public duties or offer of employment by potential bidders). This strategy should be circulated to all public sector employees involved in the sale.

Employees who have a potential conflict of interest should be excluded from the sale process. Potential for conflict of interest should also be considered in relation to the appointment of consultants assisting in the sale process. Bidders should be required to disclose any known conflicts of interest between any parties involved in the sale process.

3.15 Develop a Strategy to Manage Confidential Information

A strategy should be developed to preserve the confidentiality of commercially sensitive information accumulated during the sale process. The issue of post separation employment needs to be considered in this context.

Consideration should be given to the sale team, the evaluation committee, consultants and bidders signing conflict of interest and confidentiality agreements.

Desirably the sale team should be located together in a separate location from departmental premises.

**3.16 Examine
Need for a
Probity
Auditor**

For large, complex, sensitive or potentially controversial sales, consideration should be given to the appointment of a probity auditor to provide external scrutiny and ensure the integrity of the sale process. Clear and comprehensive terms of reference should be formulated for the probity auditor to ensure fairness, equity and best practice.

The probity auditor should be appointed early in the process and certainly prior to involvement of potential bidders and the appointment should be made known to all bidders. The probity auditor should not have any involvement in the decision making process.

**3.17 Address
Community
Service
Obligations**

The impact of the asset sale on the delivery and cost of any existing community service obligations needs to be considered and the manner of delivery of such services after sale completion should also be addressed.

4. CONDUCT OF SALE

The procedures identified in the sale plan as endorsed by the board and/or government are implemented in this phase.

4.1 **Determine Selection Criteria**

Prior to involvement of potential bidders the selection criteria to be utilised in the assessment of the bids should be developed and made public. To facilitate a successful sale outcome the criteria should be unambiguous, be clearly related to the sale objectives and be mindful of costs that may be incurred by bidders. Once developed the selection criteria should be widely distributed and consistently applied throughout the sale process. Any changes to the selection criteria should only be considered where they will not impact upon the evaluation process prior to the change (eg., shortlisting) and the changes should be immediately notified to all potential bidders with sufficient time given to address such changes.

4.2 Develop Evaluation Methodology

In all asset sales, an evaluation methodology consistent with the selection criteria should be developed. The evaluation methodology needs to assess both the financial and qualitative aspects of bids and care should be taken when attaching relative weightings to elements of the selection criteria or evaluation methodology. The evaluation methodology together with relevant weightings should be made public to all bidders.

A net present value analysis approach is recommended where an income producing asset is being sold. The approved evaluation methodology together with relevant weightings should be in place before the involvement of prospective bidders and applied consistently.

4.3 Appoint Evaluation Committee

An evaluation committee with the appropriate skills, knowledge and authority should be appointed and could include members of the sale team. The role and responsibilities of the evaluation committee and reporting milestones should be formally communicated to it. Normally the evaluation committee would have a recommending role to a Steering Committee with decision making powers. Appropriate secretarial support should be provided.

4.4 Undertake Sale Launch

A sale launch may be appropriate to introduce the sale process and present the sale documentation to prospective purchasers. This would also provide potential bidders an opportunity to clarify issues to minimise any uncertainty. Such proceedings should be recorded and made available to all prospective purchasers.

After the launch when clarification is provided by the sale team in relation to issues not specific to a particular bidder, such information should also be made available to all potential bidders.

4.5 Establish Procedures for Receipt of Tenders

Tenders received should be recorded and subject to appropriate control. The confidentiality of bid documents should be maintained at all times. All tenders received must remain sealed and be held in a secure place to be opened simultaneously at a preappointed time and in the presence of at least two officers, one of whom should be unconnected with the sale process. Details of all bids should be duly recorded. Any extensions of time should be granted to all bidders but no extensions should be granted after tenders have been opened.

In complex public sector asset sales the evaluation of bids is both a time consuming and costly exercise. To discourage non-conforming and frivolous bids, consideration should be given to bidders being required to lodge a deposit with their bid.

4.6 Manage Due Diligence Process

Due diligence is the process by which prospective purchasers can obtain and make their own inquiries and satisfy themselves in relation to information pertinent to the sale. The vendor should make all relevant information available to prospective purchasers. A data room may be necessary to facilitate this process. The sale team should ensure that all prospective purchasers have equal access to the information and access to the data room should be under controlled conditions.

During the due diligence process the financial soundness of the prospective purchaser, including the assessment of settlement risk where staged payments are involved, should be undertaken. It may be appropriate in some cases for the sale team to also conduct background checks in relation to the prospective purchasers such as their record in relation to labor relations, the environment and customer relations.

4.7 Evaluate Tenders

The selection criteria and the evaluation methodology need to be consistently applied throughout the evaluation process. The bids should be categorised as -

- conforming bids;
- non-conforming bids;
- bids qualified by issues;
- bids with issues deemed conditional; and
- bids affected by issues arising subsequent to the initially released documentation.

When a large number of bids is anticipated the evaluation methodology should consider shortlisting of bids but care should be taken not to shortlist too narrowly. Where practical, all members of the evaluation committee need to be involved in meetings with bidders to enhance the transparency of the evaluation process.

The proceedings of these meetings should be documented and any clarification of issues contained in bids must follow clearly established protocols.

During the evaluation process the rationale for selecting or eliminating a bid needs to be clearly documented.

4.8 Sale Negotiation and Approval

Where the selection process includes negotiation with more than one bidder, each should be treated equally. The negotiation strategy should be endorsed by the board and/or the government and include clear guidelines in relation to the negotiating parameters and limits. The negotiation process should be focused towards achieving the best possible sale outcome for the entity and the State through the minimisation of any bidder uncertainty.

Indication of the success or otherwise of bids should not be made public until the successful bidder has been approved by the board and/or government.

5. POST SALE ACTIVITIES

5.1 Provide Feedback to Unsuccessful Bidders

Frank and open debriefing sessions should be held with unsuccessful bidders while maintaining commercial confidentiality in relation to the successful bid. It may be also desirable to obtain comment on the sale process from all bidders prior to feedback and address any issues during the debriefing sessions.

5.2 Undertake a Review of the Sale Process

At the end of a sale, a review of the entire sale process should be undertaken. Such a review should analyse whether -

- the sale outcome met the original sale objectives;
- the process followed the sale plan;
- the process could have been carried out more economically, efficiently or effectively;
- the consultants' performance was satisfactory;
- customers were satisfied with the outcome;
- a better result could have been achieved had a different strategy been adopted; and
- there were any other lessons to be learned from the process.

- 5.3 Develop Strategies to Manage Sale Implications** Systems should be established to monitor and manage post sale implications such as staged financial payments and ongoing commitments. To ensure there is confidence in the public sector asset sale process, any future undertaking by a purchaser should be monitored after the completion of the sale.
- 5.4 Prepare a Sale Summary** To promote accountability and probity, a sale summary should be prepared and reviewed by the probity auditor (where appointed) or the Auditor-General at their discretion. The sale summary, together with any commentary or qualification from the probity auditor or Auditor-General, as the case may be, should be tabled in Parliament. This requirement would be similar to the preparation of a project summary as required by the Policy Framework for Private Sector Involvement in Public Infrastructure and Service Delivery issued by Queensland Treasury in September 1997.

NOTES

QAO Best Practice Guidelines and other Publications

PUBLICATION	DATE RELEASED
Consideration for Better Management of General Procurement Practices	Jan 99
Guidelines - AAS33/AASB 1033: Presentation and Disclosure of Financial Instruments	July 98
Guidelines for the Implementation of New Generation QGFMS (SAP R/3)	June 98
Our Audit Process	Jan 98
Best Practice Guidelines - Information Systems (Revised)	Oct 97
Guidelines for Dealing with Reportable Gifts - Including Hospitality and Entertainment	Oct 97
Guidelines for Year 2000 Compliance	Sept 97
Guidelines on AAS29 - Financial Reporting by Government Departments	Nov 96
QAO Auditing Standards	July 96
Guidelines for the Conduct of Audits of Performance Management Systems	March 95

Copies of these Publications are available by contacting the QAO Service Centre on (07) 3405 1100 or can be accessed at QAO's website.

The State of Queensland, Queensland Audit Office (1998).

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Inquiries should be addressed to -

Queensland Audit Office
GPO Box 1139
BRISBANE QLD 4001
Phone: (07) 3405 1100

QAO

Queensland Audit Office

Level 11, Central Plaza One,
345 Queen Street, Brisbane, Qld, 4000
GPO Box 1139, Brisbane Qld 4001
Tel: (07) 3405 1100 Fax: (07) 3405 1111
Web Address: <http://www.qao.qld.gov.au>
Email: qao@qao.qld.gov.au