



BCTS

BC Timber Sales

Advisory Bulletin No. 06/19/09 – Auction Process - Outstanding Accounts

This bulletin replaces Advisory Bulletin 08/03/04.

The purpose of this bulletin is to provide staff and registrants with an explanation of the administration of applications for timber sale licences (TSLs) submitted by registrants having a non-current account¹ at the time and date of tender closing.

BC Timber Sales Regulation

On August 6, 2004, the *BC Timber Sales Regulation (BCTSR)* was amended by repealing section 3(3). That amendment resulted in the elimination of the requirement that registrants not have a non-current account in order to be eligible to apply for a BC Timber Sales agreement. After that date, applications for TSLs from applicants having a non-current account were managed through application of section 81 (5) & (6) of the *Forest Act*.

On December 8, 2008, the *BCTSR* was again significantly amended to provide for, among other things, cancellation of registrations for outstanding accounts (ref. section 10), and clarification of disqualification limits (ref. section 12).

Forest Act

Section 81 (5) and (6) of the *Forest Act* stipulates that applications for a BCTS agreement may be refused if the applicant [or related person] has not paid stumpage or other money payable to government, or has not made arrangements satisfactory to the revenue minister to pay the stumpage or other money.

Therefore, the timber sales manager (TSM) has discretion as to whether or not to refuse an application submitted by an applicant that has a non-current account.

Auction Process

For the purpose of this Bulletin, the auction process consists of four distinct steps:

1. receipt of applications (tenders),
2. tender opening,
3. acceptance/refusal of applications, and
4. approval of an application.

¹ A non-current account is one for which an invoice that relates to the amount has not been paid within 28 days.

1. Receipt of applications:

Applications will be received, whether submitted by hand over-the-counter or by mail. All applications received will be recorded as to time and date, and stored pending tender opening.

Staff may check the eligibility of applications, including non-current accounts, after the deadline for receipt of tenders but prior to opening of tenders, if the identity of the applicant is known prior to the tender opening (e.g. the applicant's name is on the outside of the tender envelope).

2. Tender opening:

All tenders received prior to the advertised date and time for receipt of tenders will be opened at the advertised time and place, and the applicant name, registration number, bonus bid/bonus offer, and security type will be recorded on the FS69 (SALE OF CROWN TIMBER BID & DEPOSIT RECORD) and in BCTS Admin.

The FS69 and applications will be presented to the TSM for consideration.

3. Acceptance/refusal of applications:

The TSM will determine bidder eligibility using the criteria in the BCTS Regulation, and deem ineligible any and all applications not meeting those criteria.

All eligible applications will be ranked from highest bidder to lowest bidder.

The TSM will then consider all eligible applications in the context of section 81 (5) & (6) of the *Forest Act*, commencing with the two highest bidders (*reference s.20 (5)(a) of the Forest Act*).

The TSM will accept an application from a BCTS enterprise if the application satisfies the eligibility requirements stated in the BCTS Regulation **and** if the TSM has not refused the application after applying section 81 (5) & (6) of the *Forest Act*.

Section 10 of the *BCTSR* is not to be applied at this stage in the tendering process.

Criteria for consideration by TSM when making a determination under section 81 (5) & (6)

The TSM may consider factors relevant to the determination in question including, but perhaps not limited to, any or all of the following when making the determination:

- Amount of outstanding account
- Length of time the account has been overdue
- Applicant's past performance in paying accounts
- The nature of the outstanding account.

By way of example, the TSM may consider accepting applications if the amount outstanding is immaterial, the account has been current until shortly before the tender opening, the applicant does not have a history of outstanding accounts, or the outstanding account is the result of the actions of a third party not paying stumpage on behalf of the applicant.

Refusal:

The TSM must give consideration to refusing, on the basis of outstanding accounts, all eligible applications submitted by applicants having an outstanding account.

If the TSM refuses an application after applying the above criteria, the applicant **should be notified immediately** of that refusal and the application returned to the applicant.

If the applicant wishes to pay the outstanding account at this time, the applicant may do so, but payment of the account will not reverse the decision to refuse that application.

Upon refusing the application, the TSM must apply all or part of the bid deposit toward payment against the non-current account.

If the TSM refuses the applications containing the highest bid and the second highest bid pursuant to section 81 (5) and (6), the TSM should consider the two applications containing the next highest bids. This process should continue until either one or more applications are not refused, or until all applications have been deemed ineligible or have been refused.

If the TSM refuses an application under section 81 (5) and (6), the TSM may consider cancelling the registration of that applicant pursuant to section 10 of the *BCTSR* or disqualifying the person from being registered as a BCTS enterprise pursuant to section 78 of the *Forest Act*.

Non-arm's length relationship:

The TSM should also consider whether an applicant has a non-arm's length relationship with another person or corporation that has a non-current account with government. The meaning of "arm's length" is contained in the following *Income Tax Act* interpretation bulletin IT-419R2, <http://www.cra-arc.gc.ca/E/pub/tp/it419r2/it419r2-e.html> .

If an applicant that is not at arm's length with a debtor, including being in control of a debtor corporation at the time the debt was incurred, it is appropriate for the TSM to consider a refusal of that application under section 81.

Even though a debtor licensee may be controlled by a receiver, section 81 of the *Forest Act* may be applied when considering an application submitted by that debtor. Also, section 81 may be applied to an application submitted by client that has passed through bankruptcy, and has had its debt discharged. Despite having successfully passed through bankruptcy, the client's debt remains on government accounts. Although the debtor cannot be forced to pay the debt through application of section 81, that section can be applied with respect to an application submitted by either the debtor client or any person not at arm's length with that debtor.

4. Approval of Application:

In accordance with section 20 of the *Forest Act*, the TSM must, from those applications remaining after consideration for refusal, approve the eligible application of the applicant whose proposed bonus bid or bonus offer is the highest of those tendered by all applicants with eligible applications, or at the direction of the minister, decline to approve any of the eligible applications.

Section 20 (5)(a) of the *Forest Act* stipulates that, should the highest eligible applicant fail to enter into the agreement, the TSM may approve the application submitted by the next highest ranked applicant. If the second highest ranked applicant subsequently fails to enter the agreement, the competition will be terminated.

Failure to Enter into Agreement - Application of Bid Deposit to Outstanding Account

If the highest eligible applicant (or second highest eligible applicant, as the case may be) has an outstanding account and fails to enter into the agreement, the bid deposit may be applied to the outstanding account. As well, in accordance with section 78 (4) of the *Forest Act*, the TSM must disqualify that applicant from being registered as a BC timber sales enterprise.

Section 12 of the *BCTSR* sets forth parameters for consideration when determining the period of disqualification.

The bid deposit of all other applicants having an outstanding account may be applied to the respective applicant's outstanding account.

Checking for existence of Outstanding Accounts

Bidders can independently check for potential overdue accounts by visiting the Ministry of Finance web-site located at <http://www.rev.gov.bc.ca/frb/index.htm> or by contacting the nearest Ministry of Finance office at:

Northern Interior Region Suite 478 – 1011 4 th Ave. Prince George, British Columbia V2L 3H9 (250) 356-9853	Southern Interior Region Suite 204 – 455 Columbia St. Kamloops, British Columbia V2C 6K4 (250) 828-4105	Coast Region PO Box 9990 Stn Prov Govt Victoria, British Columbia V8W 9R7 (250) 356-8995
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Bidders can also request BCTS staff undertake a client account check (through the Accounts Receivable Management System [ARMS]) prior to submitting a tender, or any time before the deadline for applications.

Contacts

Further details regarding these changes are available at your local timber sales office.