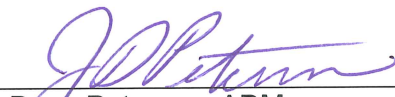




Land Procedure Allocation Procedures - Competitive Process

NAME OF LAND PROCEDURE:	Allocation Procedures - Competitive Process
APPLICATION:	Applies to all sale and tenure dispositions via competitive process
ISSUANCE:	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
IMPLEMENTATION:	Ministry of Forests, Lands and Natural Resource Operations
REFERENCES:	<i>Land Act (Ch. 245, R.S.B.C, 1996)</i> <i>Ministry of Lands, Parks and Housing Act (Ch.307, R.S.B.C, 1996)</i>
RELATIONSHIP TO PREVIOUS LAND PROCEDURE:	This procedure replaces the previous Allocation Procedures - Competitive Process in effect August 16, 2004



Dave Peterson, ADM
Tenures, Competitiveness and Innovation
Ministry of Forests, Lands and Natural
Resource Operations

MAY 26 2011

Date:

EFFECTIVE DATE: June 1, 2011
AMENDMENT :

FILE: 11480-00

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011
May 1, 2013	BN 197274	Consequential amendment that added a reference to the new Allocation Procedure Expressions of Interest.

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1. PURPOSE

A competitive process may be used to fairly and equitably dispose of Crown land for sale or tenure where there are multiple interests. Competitive processes are used to obtain the broadest market exposure and opportunity.

A competitive process will be used where the authorizing agency has identified and developed the opportunity. It may also be used where an area under application has multiple competing interests and the program policy allows for the use of a competitive process. In some cases, a competitive process may be used where an existing tenure has been cancelled, or expires and is not renewed, and is to be re-offered for the same land use.

This procedure complies with the provisions of the *Land Act* and the *Ministry of Lands, Parks and Housing Act*.

2. DEFINITIONS

Authorizing Agency means the provincial ministry responsible for the specific land use authorization.

Closing Date means the latest date and time that the authorizing agency will accept offers, proposals, or registrations.

Competitive Process means an offering for sale or tenure through an Expression of Interest, Public Lot Draw, Public Auction, Request for Offers to Purchase or Request for Proposals.

Deposit means the sum of money required to be submitted with each offer, proposal, or registration form. A bidder's deposit may be required for auction participants.

First Nation is a term that refers to the Indian peoples in Canada, both Status and non-Status. Although the term First Nation is widely used, no legal definition of it exists. Some Indian peoples in British Columbia have adopted the term "First Nation" to replace the word "band" in the name of their community.

Minimum price means the lowest price (appraised current market value) at which the land will be offered but does not include any other related costs (e.g., Property Purchase Tax) or purchaser's legal costs.

Opening means the official opening of offers or proposals on the date stated in the information package.

Proxy means a person designated by a registrant for the purposes of lot selection or auction.

Public offering means the use of a competitive process or real estate industry listing.

3. TYPES OF COMPETITIVE PROCESSES

The type of competitive process can be designed to fit the particular situation. Types of competitive processes include:

- Expressions of Interest
- Request for Offers to Purchase
- Request for Proposals
- Public Lot Draw
- Public Auction

Expressions of Interest – please see Allocation Procedure – Expressions of Interest

Request for offers to purchase allow Crown land to be offered to the public through a request for sealed bids. It may be used where the highest and best use of Crown land is known and a minimum price at which it will sell has been established. Request for Offers to Purchase are appropriate when the principal reason for accepting or rejecting an offer is the price. Request for Offers to Purchase can be made through the Multiple Listing Service (MLS) with a specific opening date.

Request for proposals are generally used when the land value is uncertain and land use has not been pre-determined. This disposition method is normally used where disposition would include alternative forms of development or acquisition. A request for proposals may be used to achieve appropriate development of a site. Interested parties submit sealed proposals outlining the intended use(s), purchase price (or bonus bid/rentals), and the terms and conditions of sale or tenure. Proposals may be complex and often require extensive review to determine the financial and/or corporate capability of the prospective purchaser, social or environmental benefits/costs, and the financial return to the Crown. It is important to clearly define the evaluation criteria prior to using this process.

Public lot draw can be used to provide the public with an opportunity to participate in a draw for the sale or lease of Crown land. In this case the market price or lease arrangements have been predetermined by the authorizing agency.

Public auction allows interested parties to bid against each other for the right to acquire an interest in Crown land (sale or lease). This process may be used where the authorizing agency's research demonstrates that the demand for the parcels is high, or possibly exceeds the supply. The auction process can be the most appropriate method for obtaining a fair return to the Crown, particularly when the market value of Crown land is uncertain due to unique characteristics of the properties.

4. GENERAL PROCEDURE

The following procedure will apply to all competitive processes. Specific additional procedures for conducting and concluding each type of process are provided in sections 5 (Request for Offers/Proposals), 6 (Public Lot Draw) and 7 (Auction). A separate procedure exists specifically for "Expressions of Interest".

4.1 Eligibility

The eligibility of all parties participating in a competitive process must be determined in accordance with the specific program policy under which the property is being offered.

4.2 Consultants

A competitive process can be carried out by Provincial staff or consultants (includes realtors) engaged by the authorizing agency. There will be at least one Provincial representative present at openings for proposals/offers and lot draw proceedings. The authorizing agency may nominate local officials or hire consultants to assist as needed. Consultants and realtors are hired in accordance with current contracting policies and industry norms.

Two types of consultants may be used to assist Provincial staff:

- A consultant hired to assist in the process who may or may not be a realtor.
- A realtor hired on a commission and/or remuneration basis who is specifically involved in the listing and selling process.

The authorizing agency is responsible for selecting the consultant and ensuring that the selection process is fair. The authorizing agency monitors the overall process and makes all final disposition decisions.

Where consultants are hired, the following duties will be performed and kept confidential by Provincial staff: drafting Terms of Reference for external fee appraisals; selecting appraisers and ordering the appraisal; reviewing, and accepting or rejecting, appraisals. The appraised market value which is accepted by the authorizing agency is generally to be kept confidential during negotiations. One exception to this is when the authorizing agency establishes and makes known a minimum price, based on the market value of the land. In some cases the minimum price will also be kept confidential and used by the authorizing agency in assessing the appropriateness of each offer.

4.3 Preparation Activities

The following steps are to be completed prior to the competitive process:

- Ensure all status clearance, aboriginal interest consideration procedures, land surveying, appraisal and listing activities are finalized.
- Determine the appropriate deposit amount, market value and/or minimum price as relevant.
- Determine the public disposition period. Establish the time, date and location of the competitive process and make appropriate arrangements.
- An information package is prepared (see below).
- The advertisement is inserted in selected media. Allow at least two weeks from date of first advertisement to allow interested parties to obtain package, inspect property, etc.
- The advertisement/listing must include statements to the effect that “The highest price might not be accepted. The authorizing agency reserves the right to reject all offers/proposals if not satisfactory. The public offering/proposal call process is closed once all offers/proposals have been rejected. The authorizing agency may then negotiate with any interested party.”
- Have signs placed on properties whenever feasible.

- Ensure that an Offer to Lease/Purchase has been prepared for each property being offered.

4.3.1 Information Packages

All interested parties will be provided with an information package containing:

- summary of salient facts,
- location map and plot plan,
- permitted land uses and development potential of the site,
- special conditions for land development, if any,
- information concerning eligibility requirements,
- instructions to prospective purchasers,
- registration requirements and form, if applicable
- sample Offer to Purchase/Lease (tenure documents) as appropriate,
- details regarding deposit requirements, and,
- location, time, and date of competitive process – for receipt of offers and public opening of offers (where relevant).

The authorizing agency has the discretion to modify the information package to suit local circumstances.

4.4 Disposition Process

Public disposition processes will at all times be formally conducted, accurate and well documented.

No agent or employee of the authorizing agency has the right to waive deposit requirements. Deposits, in the amount specified, are to be submitted by certified cheque, money order, or bank draft made payable to the authorizing agency or its agents.

No extension of the closing date, or of the designated time of receipt of registration forms, will be given to accommodate late registration/submissions. All late Offers/Proposals will be officially declared invalid and recorded as such. They are returned, unopened, to the sender with the envelope stamped or written with the words, "Received Late - Unopened" plus a covering letter giving full details.

4.5 Documentation Procedure

Only the Offer to Purchase, Lease or other approved document is to be used, having been modified to suit the circumstances. Documents will be executed on behalf of the Crown by the authorizing agency's regional director, or other Provincial official with appropriate signing authority. After all documents have been completed, they are to be distributed in accordance with the policy for the type of land being offered.

With the exception of some unique circumstances, the sale of all real estate assets owned by the Government of British Columbia requires the issuance of a Crown Grant.

Dispositions may be subject to the processing of a variety of legislative and administrative instruments in accordance with the *Land Act*, *Ministry of Lands, Parks and Housing Act*, and the *University Endowment Land Act*.

Where possible the authorizing agency will attempt to obtain legislative and administrative approvals prior to marketing of the property so as not to hinder the expeditious disposition of land.

Successful participants are required to:

- complete all financial transactions prior to signing documents; and,
- submit the balance of their bid and/or purchase price within the time limit to the designated office, by certified funds or money order, made payable to the authorizing agency or its agent.

5. SPECIFIC PROCEDURE - REQUEST FOR OFFERS TO PURCHASE/ PROPOSALS

Offers to purchase allow multiple bids based on the value of the Crown land primarily considering the financial aspect of the disposition, but also incorporating factors such as phasing of development, environmental management, etc.

Requests for proposals involve assessing multiple criteria to determine the winning proposal. This is a useful tool to promote desired outcomes, and to support identified social, economic and environmental needs and opportunities. The criteria used to evaluate the successful proposal can include environmental factors, proposed employment, downstream economic benefits, social benefits, pricing, timing and other relevant aspects of the development.

Open offerings are used to obtain the broadest market exposure and opportunity.

Requests for Offers/Proposals can be either administered and managed by Provincial staff, or offered to the public by way of exclusive listings that are distributed to other member realtors through the MLS board office.

At least two weeks should elapse after the publication of the first advertisement before the sale takes place.

A confidential minimum price may be established.

5.1 Evaluation Criteria for Requests for Proposals

Evaluation criteria will be defined prior to issuing the proposal call. Criteria may include baseline standards which must be met by all proposals, as well as extra considerations and weightings to be applied to each. The criteria should be developed by each region to reflect provincial priorities. Where appropriate, the criteria may be developed through a consultative approach involving local interests, government agencies, First Nations and other affected parties.

In general, evaluation criteria should reflect the following provincial objectives:

- economic benefits - potential employment, infrastructure development, capital investment, implications for industry development, climate change adaptation;
- environmental benefits – positive effects through restoration work, clean up of abandoned site, etc, or minimizing negative impacts through environmental technologies, staff training, low-impact development, etc. ;
- social benefits - education and training opportunities, partnerships with First Nations or local governments; community health and welfare; ;
- revenue benefits for the Crown – price offered, bonus bid, taxes, downstream benefits, etc.; and,
- viability/feasibility – based on business plan, financing, experience of applicant.
- More specific Provincial, regional and community considerations may also be incorporated into the evaluation criteria.

5.2 Receipt of Offers/Proposals

The authorizing agency will prepare an offer/proposal log and instruct the relevant personnel in the regional office (or agent's office) in the recording and security arrangements for receipt of offers/proposals and deposits.

Offer/proposal envelopes will be time and date stamped upon receipt and numbered consecutively. The envelopes should be logged by number, time and date.

The log sheet and offers/proposals will be kept safely locked up until the time of the official opening.

When using listing agents, the sealed offers are to be delivered to an authorizing agency representative, unopened, prior to the official opening. The listing agent is solely responsible for the delivery of all sealed offers to the authorizing agency at the designated time.

5.3 Opening Procedure

All offers will be opened publicly. However, proposals are often complex and the authorizing agency has the discretion to hold a closed opening for proposals. The advertisement will include information on whether the official opening for proposals is public or not.

Opening remarks will include a statement that the authorizing agency reserves the right to accept, reject or negotiate any and all offers.

The opening must commence at the specified time. Offers/proposals will be opened in the same order as they were received. No offer/proposal is permitted to be altered after it has been opened.

The offer/proposal log will note:

- The names of the Provincial personnel and the authorizing agency's consultants in attendance;
- The official closing date and time.

At the opening, record and announce only:

- the date and time of receipt of each offer;
- the name and address of each offeror;
- the amount of the offer and deposit; and
- the closing date of the offer.

5.4 Evaluation and Acceptance

All offers/proposals are to be carefully analyzed for compliance with specified requirements and a recommendation for acceptance or rejection prepared.

Proposals will be evaluated against the pre-set evaluation criteria. All offers/proposals received will be forwarded to an evaluation team and evaluated as quickly as possible. Evaluation teams are comprised of the appropriate Provincial staff and/or consultants. A Project Review Team (comprised of agencies and groups with a recognized interest in the project) may also be used to evaluate proposals.

The evaluation team will prepare a performa evaluation of the terms and conditions of the offers/proposals. A summary will be submitted for approval (based on delegations of authority). For properties over \$2.5 million, the team leader will prepare a more in-depth evaluation with advice and recommendations.

The authorizing agency accepts the successful offers/proposals in accordance with signing authorities. The successful participant will be notified.

Where the highest bid meets or exceeds the minimum price, and there is a tie, all of the bidders may be advised of the tie bid situation and be invited to tender a further bid, which is to exceed their existing bid.

6. SPECIFIC PROCEDURE - PUBLIC LOT DRAW

This procedure may be used for the disposition of Crown residential or recreational lots.

In this case, interested parties are required to fill out and submit a registration form. Individuals may have only one registration form included in the draw. No more than one person in a family unit (related adults who reside at the same address, not including children aged 19 yrs or more) may register.

Registrants may designate a proxy for the purposes of lot selection through a proxy form. If a proxy form is received, a notation of the registrant's name should be made in the lot draw log, together with the name of the proxy.

Registrants (or their proxy) must attend at the lot draw in order to be eligible in all cases except a mail-in lot draw. Attendance is not mandatory at a mail-in lot draw but participants are invited to attend.

6.1 Receipt of Registrations

The authorizing agency will prepare a lot draw log to record the time and date of receiving the form. Registration forms will not be accepted after the specified deadline.

6.2 Lot Draw Procedure

An explanation of the procedures will be given prior to drawing any names. The rules and regulations and other materials in the information package are to be explained, and participants advised that deposits of those unsuccessful in obtaining a lot will be returned as soon as possible.

The names of registered participants will be put into a box. The first name drawn will have the first choice of the available lots. The second name drawn will have the next choice of the remaining lots and so on, until a name has been drawn for each of the available lots or all the names have been drawn. Successful participants are permitted to choose only one lot. In the event a name is drawn and the lot which that person is interested in has already been spoken for, that person may select one of the remaining lots, or declare themselves a non-participant.

The official record of the public lot draw is the lot draw log. Information to be recorded in the log at the time of the draw includes:

- the names of the officials conducting the draw;
- the lot number chosen by the registrant (confirm that each registrant or their proxy was present at the lot draw); and,
- the order in which the lots were chosen.

Participants in a mail-in lot draw may, upon registration, make any number of choices, in order of preference, of the lot they wish to purchase. The first name drawn will have their first choice recorded in the lot draw log; all subsequent names drawn will have their choice recorded, in the order of their choosing, as long as there remains a lot which has not been taken by a previously drawn name.

The name of each participant drawn will be recorded in the lot draw log regardless of whether they are successful in obtaining the lot of their choice, in exactly the order in which they are drawn.

6.2.1 Public Lot Draw Announcements

Immediately after the last available lot has been drawn, or there are no registration forms remaining, an announcement will be made of the names of the successful participants in the order in which they were drawn, and the lot numbers recorded in the lot draw log as reserved in that name. It will also be announced that upon the closing of the lot draw, deposits of all successful participants shall forfeit absolutely upon default whether or not the participant completes the offer form.

6.3 Post Lot Draw Requirements

The authorizing agency arranges for each of the successful participants in attendance at the lot draw to complete and sign the acceptance of the Offer to Purchase or Lease (as applicable).

The authorizing agency staff accepts the successful Offers to Purchase/Lease in accordance with signing authorities.

If the successful registrant is represented in the lot draw by a proxy, or the draw was by mail, the Offer to Purchase/Lease is to be sent to the registrant with explicit instructions to complete the acceptance of the offer and forward to the authorizing agency within ten days.

All registrants of a mail-in lot draw are to be contacted by phone as soon after the draw as possible to inform them of the results.

7. SPECIFIC PROCEDURE - PUBLIC AUCTION

Auctions are conducted in accordance with current industry practice and usually utilize professional assistance. Bidders for a public auction are required to register. At the discretion of the authorizing agency, bidders may be represented by proxy, providing it is correctly documented and executed.

7.1 Deposit

Individual policies on the types of property being offered by auction should be reviewed to determine the amount of deposit required at time of auction, including the required documentation.

On high value properties a "bidder's deposit" may be required, at the discretion of the authorizing agency, in the form of a certified cheque or bank draft as part of the bidder's registration. The authorizing agency may require an increase in the deposit to a minimum of 10% of the sale price upon signing the offer to purchase as an incentive to complete the sale.

7.2 Auction Procedure

The auction is to commence at the predetermined time, beginning with an explanation of the auction process. The auctioneer, in explaining the auction package, should pay particular attention to:

- eligibility requirements;
- statutory limit on Crown land holdings;
- deposit requirements;
- forfeiture of deposits;
- the terms and conditions contained in the tenure document or offer to purchase;
- there should be a public disclosure that each property has a minimum price (if relevant) acceptable to the authorizing agency and any bids below this minimum price will not be accepted. The minimum price may be disclosed to the public or kept confidential at the authorizing agency's discretion;
- fees and charges which the bidder will be required to pay over and above the bid amount;
- any further particulars specific to the program under which the land is being offered;
- procedures for handling residual parcels for which no bids are received;

- obligation of successful bidders to complete offers of purchase and sale; and,
- specific procedures on how the auction will be run.

After all questions have been answered, the auctioneer proceeds to offer the parcels of land in the following manner:

- the legal description, details of the dimensions and size of each parcel will be announced prior to calling for bids;
- bids will be called for;
- bidding will continue until a bid, not exceeded by other bids, has been given;
- announce the last bid;
- provide bidders with three opportunities to increase the bid; and,
- close the bidding if no further bids are forthcoming after the third opportunity has arisen.

The successful bidder will be asked to report to the cashier and remit:

- deposit (as stated in the information package or policy for the type of property being offered);
- fees, if any; and,
- rental (if applicable).

All successful bidders are required to report to the cashier at the conclusion of each parcel auctioned in order to remit deposits and sign the contract. The auction may recommence once deposit is received and successful bidder signs the Offer to Purchase or tenure offer. If the successful bidder advises that they are not interested in bidding on additional parcels, the auction may commence immediately.

If the highest bid is below the minimum price acceptable to the authorizing agency, the property will not be sold.

A commissioner may be required to witness the execution of offer.

The cashier is responsible for:

- issuing a receipt to the bidder for the deposit, rent and fees;
- assisting the bidder in completing the tenure documents, statutory declarations and any other forms that may be required;
- checking that all remittances are made payable to the authorizing agency;
- determining, where two or more persons are acquiring a single parcel and registered partnership is not being formed, the type of tenancy in which the document will be drawn (tenancy in common and the portion of distribution for each person, or joint tenancy); and,
- advising the successful bidder when the balance of the funds must be submitted and the location of the office where it is to be submitted. Closing procedures to complete sale should be explained along with solicitor requirements.

7.3 Auction Closure

Any parcels remaining unsold are offered a second time to allow auction participants an opportunity to acquire their second choice of property.

The auctioneer will then announce that:

- the auction is closed;
- deposits, fees and rentals will forfeit to the Crown if the terms of the offer are not met by the successful bidder within the specified time limits; and,
- all rights to an interest in land acquired at an auction by a successful bidder will be extinguished if the terms of the offer are not met within the specified time limits.

7.4 Disclosure

Upon request, interested parties are to be provided with the names of the successful bidders and dollar amount of successful bids.

8. RESTRICTED OFFERINGS

Restricted or invitation offerings or auctions are usually used when a property is landlocked or otherwise non-viable. In this case the property is offered for sale to all the adjoining interests. Restricted offerings will follow the procedures outlined in sections 5 or 7 (as appropriate).

9. FINANCIAL OPTIONS

Subject to Executive approval, the authorizing agency may consider providing vendor take back ("VTB") mortgages on agreements of sale in accordance with policies developed by the authorizing agency's Director of Finance and Administration where and when it is determined that providing a VTB will assist in the disposition of an asset and, or, achieve the best price for the asset.