



Energy, Mines and Resources
Land Management

Box 2703, Whitehorse, Yukon Y1A 2C6

Land Tender Guidelines

GOVERNMENT OF YUKON

**Tender Process, Procedures and
Instructions for Bidders**

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INTRODUCTION

What is Land Tender?

1. A Land Tender is a sale through a sealed Bid process. This is generally a price driven process. Price is normally the determining factor for the winning Bid

Tender Documentation

2. Documentation to support a Tender consists of the following:

Tender Guidelines

- 2.1 The guidelines contains general Tender process and procedure information.

Tender Package

- 2.2 The Tender package contains specific information on the lots for sale and how to submit a Bid, as well as the Tender Bid form a Statutory Declaration and a checklist for Bidders.

Other Information

- 2.3 When required reports, zoning and municipal information form part of the Tender documentation.
3. It is the Bidder's responsibility to become familiar with all Tender documentation to understand the Tender requirements prior to submitting a Bid.
4. Tender documentation is available at the Application Office and online at:
http://www.emr.gov.yk.ca/landmanagement/upcoming_lotteries_tender.html

Application Office and the Closing Time

5. Bids must be delivered in person or mailed to the Application Office. Bids faxed or e-mailed to the Application Office will not be considered.
6. A Bid can also be couriered to the Application Office however, if received later than the Closing Time the Bid will not be accepted. Submissions delivered by hand are recommended.
7. Bids must be received by the Application Office by the Closing Time. Bids received after the Closing Time cannot be considered.
8. The Bidder cannot change their Bid after the Closing Time.
9. Only the Application Office may, by addendum to the Tender documentation, public notice or other appropriate notice, extend the Closing Time at any time prior to the Closing Time.

BIDDING INSTRUCTIONS

The Bid

10. A Bidder may only submit one Bid per lot, herein after described as the "Bid".
11. A Bidder must submit a notarized Statutory Declaration declaring to abide by the Tender requirements. Notary services are available at the Application Office free of charge.
12. A Bid is considered complete if it contains the following:
 - 12.1 a sealed Bid Envelope described below;
 - 12.2 payment of a non-refundable application fee of \$26.25, (\$25.00 Application fee and \$1.25 GST);
 - 12.3 a \$300.00 cash Deposit herein after described as the "Deposit; and
 - 12.4 a signed and notarized Statutory Declaration, if notarized privately.
13. Bids and Deposits are returned to unsuccessful Bidders. Bidders must appear in person and show identification at the Application Office to collect their Deposit. The Application Office will advise Bidders when they can retrieve their Bid and Deposit.
14. The Bid is held in trust for a minimum of fourteen (14) days from the Tender Opening date or until the lot is sold or there are no other Bids

Upset Price

15. The Bid amount must be equal to or greater than the Upset price.
16. The Upset price is identified in the Tender Package.

Sealed Bid

17. The sealed Bid Envelope must contain the following:
 - 17.1 completed Tender Bid Form;
 - 17.2 a Bid amount in the form of a Certified Cheque, Bank Draft or Canadian Postal Money Order as described in the Tender package.
 - 17.3 a Registered Bidder must supply confirmation of registration or a valid incorporated certificate and provide a copy of a valid business licence in good standing with the Government of Yukon, Community Services, Consumer and Corporate Affairs.
18. The Bid Envelope must clearly identify the Bidder's name and mailing address, the name of the Tender and the Closing Time.
19. The Bid Envelope will remain sealed and confidential until the Tender Opening.

20. The Bidder must choose one of the following options as the Bid Deposit amount:

Option A

20.1 The total Bid amount plus the total payable GST or a GST exempt number.

Option B

20.2 A minimum of twenty percent (20%) of the total Bid amount plus the total payable GST or a GST exempt number.

21. Bid Deposits are held in trust until the successful Bidder accepts the lot offered.

Rejected Bids

22. Failure to comply with the requirements set out in this document and the Tender Package will be cause for rejection of a Bid.

Condition of Sale

23. The Government of Yukon, Energy Mines and Resources, Land Management Branch makes no representation or gives any warranty with respect to any improvements or chattels on any lot. The sale is on a "as is, where is" basis pursuant to the *Lands Act and Land Regulations OIC 1983/192*.

24. The Government of Yukon assumes no responsibility for missing survey pins.

THE TENDER PROCESS

25. The Application Office will date and time stamp each Bid on the sealed envelope.

26. All Bid amounts and Bidder names are confidential until the Bid Opening.

27. The number of Bids received by the Application Office will not be disclosed until the Bid Opening. The Application Office is available to answer questions about the Tender process however cannot assist the Bidder with completing the Tender Bid form because it is confidential.

28. Any Bid received after the Closing Time will not be considered regardless of the reason for being late and will be returned to the Bidder unopened.

29. The Application Office may, by addenda to the Tender documentation or by public notice or other appropriate notice, extend the Closing Time at any time prior to the Closing Time.

30. It is the responsibility of the Bidder to confirm the Closing Time and the Application Office location and to ensure that the Bid is received prior to the Closing Time.

31. The Government of Yukon shall not pay any Bidder for costs incurred to obtain any monies towards the Tender.

32. Erasures or corrections should be initialed by the person or persons signing the Bid.

33. If, in the opinion of the Application Office, any Bid contains a minor defect, requires clarification, fails to provide requested information, or fails in some way to comply with any requirement of the Tender documentation that can be remedied or clarified without providing an unfair advantage in relation to the other Bidders, the Application Office may request clarification or supplementary information from the Bidder.
34. The Application Office, upon receipt of the appropriate clarification or supplementary information, may, as applicable, accept the clarification or further information, or waive the minor defect or irregularity and accept and continue review of the Bid.
35. Any failure by a Bidder to provide such clarification or supplementary information within the time frame specified by the Application Office in its request may result, in the opinion of the Application Office, in continued review of the Bid without consideration of the requested clarification or supplementary information or in rejection of the Bid.
36. Any clarification or supplementary documentation accepted by the Application Office shall be considered to form part of the Bid received from the Bidder. After the Closing Time, only the clarification and supplementary documentation specifically requested by the Application Office shall be reviewed and considered as part of the Bid.
37. Bids shall remain irrevocable for 60 days from the Closing Time unless the Bid is withdrawn prior to Closing Time.
38. The Bidder is deemed to represent and warrant by the submission of its Bid, signed by its authorized signatory, together with the submission of its Deposit, that its Bid has been duly authorized, validly executed and that it is intended to create a binding obligation of the Bidder.
39. By submitting a Bid, the Bidder agrees that the Bid is held in trust until an Agreement for Sale has been executed. The Bidder agrees if successful, to execute an Agreement for Sale within fourteen (14) days from the date the Bidder receives from the Application Office a notice of award, failing which the Bidder shall be subject to the provisions in the Acceptance section.

Agents

40. An Agent may act on behalf of a Bidder however he/she may not act for himself/herself as well.
41. An Agent acting on behalf of a Bidder must have:
 - 41.1 the Bidder's written authorization allowing the agent to enter the Tender;
a photocopy of the Bidder's valid driver's license or government-issued identification card;
 - 41.2 a notarized Statutory Declaration signed by the agent on behalf of the Bidder.
42. A copy of the Agent Statutory Declaration is found online at http://www.emr.gov.yk.ca/landmanagement/upcoming_lotteries_tender.html

Amending Bids

43. An amendment may be made to a Bid that has been received prior to Closing Time provided that the amendment is received by the Application Office prior to Closing Time.
44. Any amendment shall be signed by one of the authorized signatories of the Bid. It should be submitted in a sealed Envelope which is mailed or delivered to the Application Office prior to the Closing Time.
45. A failure to sign the amendment by a person authorized to make the Bid on behalf of the Bidder shall cause the amendment to be rejected in which case the original Bid or any previous amendment, whichever is most recent, shall prevail.
46. Any amendment received after the Closing Time shall be rejected and the original Bid including any previous amendment received prior to the Closing Time, whichever is most recent, shall prevail.
47. An amendment to a Bid should, on the Envelope, clearly identify the Bidder's name and mailing address, the name of the Tender and the Closing Time.
48. Multiple amendments to a Bid may be submitted. Each amendment should be clearly numbered sequentially. Every unnumbered amendment shall be deemed a nullity and shall not replace any previous amendment to the Bid price.
49. In the sole opinion of the Application Office, if any amendment to a Bid is unclear, ambiguous as to meaning or intent, or does not comply with the requirements of this section, then the Application Office shall reject that amendment.
50. Bidders should ensure that their Bid Deposit reflects any amendments that may have increased their original Bid prices.

Successful Bidder

51. Once the winning Bid has been determined by the Application Office the successful Bidder will be contacted.
52. The successful Bidder must execute an Agreement for Sale within fourteen (14) days of the Tender Opening as described in the Tender package.
53. All remaining Deposits are held in trust until the successful Bidder has executed an Agreement for Sale, normally fourteen (14) days after the Tender opening, however could be for a longer period.
54. The Application Office will advise unsuccessful Bidders when their Bid and Deposit can be picked up. For process information refer to the section on Acceptance.
55. If a lot is not selected once offered during the Tender Opening, the lot will be offered to the next successful Bidder until there are no other Bids. Lots not sold through the Tender process may be made available for sale "over the counter" at the discretion of Application Office.

Results

56. It is understood and acknowledged when submitting a Tender Bid that the information contained in the Tender Bid form is being collected under the authority of the *Lands Act and Land Regulations OIC 1983/192* to be used for the purpose of the public Tender process.
57. The Application Office may publish information received during the Tender process including, Bidder names and Bid amounts. Questions about the collection of this information can be directed to the Application Office.
58. The Tender results will be made available at the Application Office and online at: http://www.emr.gov.yk.ca/landmanagement/upcoming_lotteries_tender.html

Completion of Forms

59. All forms must be completed in full and be printed legibly in ink.
60. Adjustments, changes or corrections to information provided by the Bidder on any form should be initialed by an authorized signatory of the Bidder.
61. The legal name of the Bidder must be included where indicated on the Tender Bid Form found in the Tender package. The Bidder should also include their complete address including postal code, phone number, cell number and fax number.
62. The Bidder should be aware of the requirements of the *Partnerships and Business Names Act, R.S.Y. 2002, c. 166* and the *Business Corporations Act, R.S.Y. 2002, c. 20*. Failure to comply with the requirements of those statutes, particularly those for registration, may result in rejection of their Bid. The Application Office shall only accept Bids from Registered Bidders. The Application Office shall not accept Bids from joint ventures.

Authorized Signatory on Bid Form

63. A Bidder or Agent must sign the Tender Bid form where indicated.
64. Sole proprietors must sign the Bid Form where indicated. The words "Sole Proprietor" should be inserted.
65. For partnerships, at least one partner must sign the Tender Bid form where indicated and the word "Partner" should be inserted for each signature under Title.
66. For limited companies and corporations, the duly authorized signing officer(s) of the company must sign the Tender Bid Form and state the official capacity in which the signing officer acts (e.g., "Chief Financial Officer") should be inserted.

Withdrawal of Bid

67. A Bidder may withdraw a Bid from consideration by submitting a written request signed by an authorized signatory of the Bidder and delivering the request in person to the Application Office, prior to the Closing Time.

68. A withdrawal is only valid provided that the request is received by the Application Office prior to Closing Time.
69. Bids that have been withdrawn in accordance with this section shall be returned unopened to the Bidder along with the Deposit.

Addendum

70. A written Addendum issued by the Government of Yukon, Energy Mines and Resources, Land Management Branch, Land Client Services Manager is the only means of varying or changing Tender details and documentation.
71. If the Application Office releases additional information or makes an amendment to Tender documentation, the written Addendum will be available at the Application Office and posted online.
72. No Government of Yukon employee, or Municipal Agent is authorized to amend the content of the Tender details, documents and / or packages except as described in this section.
73. Addendums issued prior to the Closing Time shall become part of the Tender documentation provided the Government of Yukon determines that the Addendum has amended the terms and conditions of the Tender documentation.
74. An Addendum issued up to one (1) calendar week prior to the Closing Time does not require the Government of Yukon to extend the Closing Time.
75. An Addendum issued within one (1) calendar week of the Closing Time shall include an extension to the Closing Time to ensure there is at least one (1) calendar week between the Addendum date and the Closing Time.
76. It is the responsibility of the Bidder to take note of all Addendums and any supplementary information issued by the Application Office. Submission of a Bid constitutes a representation by the Bidder that he or she has reviewed all Tender documentation including Addendums made prior to and after submitting a Bid.

Clarification

77. The Government of Yukon shall not be responsible for any oral advice, information or instructions, unless confirmed in writing by the Application Office.

Evaluation

78. Bids will be evaluated based on Bid amount, normally the highest Bid amount will be the successful Bid. The Bid order is normally from highest to lowest. A results list is created at the Tender Opening.
79. Bids that are less than the Upset Price shall result in the Bid being rejected.
80. The Application Office will evaluate the Bids on the basis of the Tender documentation.

81. If the Application Office determines after evaluation of the Bids, that two or more Bids have identical Bid amounts, the Application Office will select the Bid that was received on or by the earliest date and time the Application Office stamped receipt of the Bid.

Notice of Award

82. After the Application Office has evaluated the Bids and determines the winning Bid order, they will notify the winning Bidder. Only the winning Bidder will be notified. Results from the Bid will be available online and at the Application Office before noon the day after the Tender opening.

83. In the event the successful Bidder is disqualified, a representative of the Application Office shall contact the next Bidder on the Bid results list, and notify them that they are now the successful Bidder.

84. The Application Office need not accept the highest Bid and reserves the right to reject or accept any and all Bids without further explanation.

Acceptance

85. In the event that the successful Bidder executes an Agreement for Sale within fourteen (14) business days of being notified of having submitted the winning Bid, the Application Office shall release the other Bids and Deposits for that lot.

86. In the event that the successful Bidder fails to execute an Agreement for Sale within fourteen (14) business days of being notified of having submitted the winning Bid, the Bidder shall be deemed disqualified and will forfeit the lot and the \$300.00 Deposit. The Bidder will not be able to purchase the same lot for thirty (30) days of the lot being made available for public sale.

87. The Application Office shall as soon as practicable thereafter contact the next qualified Bidder on the results list in Bid order and advise the successful Bidder has been disqualified and provide the next qualified Bidder with fourteen (14) days to execute an Agreement for Sale.

88. In the event the next qualified Bidder fails to execute an Agreement for Sale within fourteen (14) days that Bidder shall be deemed disqualified and will forfeit the lot and the \$300.00 Deposit. The Bidder will not be able to purchase the same lot for thirty (30) days of the lot being made available for public sale.

89. In the event a successful Bidder terminates their Agreement for Sale at any time, the Bidder may not purchase the same lot within thirty (30) days of the lot being made available for public sale.

90. The Tender process continues until the results list has been depleted.

General Conditions

91. The Application Office expressly reserves the right to terminate or cancel the Tender process at any time prior to issuance of notice of award of the Tender Agreement for Sale and, without limitation, to cancel the Tender process if it determines that all Bids are less than the Upset Price.
92. The Application Office expressly reserves the right to:
- 92.1 amend the Tender documentation at any time before Closing Time;
 - 92.2 re-commence the Tender process; and
 - 92.3 have discussions or negotiate with the Bidder who has received the notice of award.
93. The Application Office may decline to accept any Bid where:
- 93.1 the Bid fails to comply with any of the requirements contained in the Tender documentation;
 - 93.2 there is sufficient evidence, satisfactory to the Application Office, indicating that the Bid is a result of collusion between Bidders; or
 - 93.3 there is sufficient evidence, satisfactory to the Application Office, that the Bidder, or any employee or subcontractor, has been involved in fraud, bribery, fraudulent misrepresentation or criminal activity that would adversely impact the ability of the Bidder to execute an Agreement for Sale.
94. If a Bid is rejected by the Application Office, the Bid amount shall be returned to that unsuccessful Bidder. The \$300.00 Deposit is forfeited.

Investigation of Lot and Documents

95. Submission of a Bid is deemed to be conclusive evidence that the Bidder has inspected the lot available and made all investigations necessary to obtain full understanding as to the condition of the lot and means of access. The Bidder is deemed to have obtained all necessary information, local or otherwise about circumstances which may influence or affect its Bid.
96. By submitting a Bid, the Bidder acknowledges that it has not relied on any statements, representation, or information made, furnished or given by the Government of Yukon other than that contained in the Tender documentation or Addendums.
97. By submitting a Bid, the Bidder acknowledges and agrees to be fully responsible for interpretation of the information contained in the Tender documentation.

Governing Laws and Regulations

98. A Bidder represents and warrants, by submission of a Bid, that he/she is/are aware that the Tender and Agreement for Sale are subject to the conditions and provisions of the *Lands Act, R.S.Y. 2002, c. 132*, and any regulations to such Act, as they may be amended from time to time.

No Collusion or Lobbying

99. By submitting a Bid, the Bidder represents and confirms to the Government of Yukon, with the knowledge and intention that the Government of Yukon may rely upon such representation and confirmation, that the Bid has been prepared without collusion or fraud and in fair competition with Bids from other Bidders.

Limitation of Damages

100. A Bidder is solely responsible for the costs and expenses in preparing and submitting Bids.

101. Except for a claim for costs of preparation of a Bid in a proceeding under the Bid dispute resolution process, each Bidder, by submitting a Bid, irrevocably waives any claim, action or proceeding against the Government of Yukon including without limitation any judicial review or injunction application or against any of the Government of Yukon employees, advisors or representatives for damages, expenses or costs including costs of Bid preparation, loss of profits, loss of opportunity or any consequential loss for any reason including:

101.1 any actual or alleged unfairness on the part of the Government of Yukon at any stage of the Tender process; if the Government of Yukon does not award or execute an Agreement for Sale; or,

101.2 if the Government of Yukon is subsequently determined to have accepted a non-compliant Bid or otherwise breached or fundamentally breached the terms of the non-compliant Tender documentation.

Bid Dispute Resolution

102. Each Bidder, by submitting a Bid, irrevocably agrees that:

102.1 if the Bidder has any dispute concerning any matter arising out of the Tender process or that relates in any way to the Tender documentation it shall be bound by and shall proceed in accordance with the dispute resolution process described herein;

102.2 the Bidder shall not seek injunctive relief or take any other action or proceeding to impede or stop the Tender process or award of the Agreement for Sale; and

102.3 the Bidder shall be bound by and shall proceed through the Bid Challenge Process set out in the Contracting Regulations and Contracting Directive which can be viewed at: <http://www.hpw.gov.yk.ca/selling/policy.html>.

103. Each Bidder agrees, that if any dispute with any matter arising out of the Tender process or relating in any way to the Tender documentation, shall:
- 103.1 make bona fide efforts to resolve the dispute by amicable negotiations initially between staff representatives of the Bidder and the Government of Yukon and, if unsuccessful, subsequently between the Chief Executive Officer of the Bidder and the appropriate Assistant Deputy Minister;
 - 103.2 provide frank, candid and timely disclosure of all relevant facts, information and documents relating to the dispute to the Government of Yukon; and
 - 103.3 failing resolution through amicable negotiation, submit the dispute to the Bid Challenge Committee.
104. Each Bidder, by submitting a Bid, consents to the disclosure of the Bid and the evaluation of the Bid to the Bid Challenge Committee.
105. Subject to the *Access to Information and Protection of Privacy Act* (ATIPPA) and the Bid dispute resolution process, if applicable, information other than prices contained in Bids submitted to the Government of Yukon and Bidder names shall be held in confidence.