

**Pennsylvania Gaming Control Board  
Adopted December 13, 2017**

**Policy Implementing a Category 4 Casino Auction Process**

**I. Introduction**

On October 30, 2017, Governor Wolf signed Act 42 of 2017 into law, creating the concept of a Category 4 Slot Machine License. The Act provides for an auction process that establishes the order in which winning bidders select a “Category 4 location” for which they can then apply for a Category 4 slot machine license in the awarded exclusive area. The required minimum bid price in each auction conducted is \$7.5M for a Category 4 Slot Machine License. The winner of an auction is the bidder which submits the highest qualifying bid which then entitles that bidder to select an exclusive area referred to as a “Category 4 location.”

A “Category 4 location” is a defined term which is “a specific geographic point established by geographic coordinates in this Commonwealth with a 15-linear mile radius.”

The Board is required to adopt procedures to prevent bid rigging and collusion among bidders and establish auction conditions, processed or procedures. The Procedures shall not be subject to review under the Commonwealth Documents Law, the Commonwealth Attorneys Act or the Regulatory Review Act. 4 PA.C.S. §1305.2(c)(2).

The Board herein adopts procedures and processes designed to fulfill this responsibility.

## **II. Auction overview**

As described in more detail within, Section 1305.2 establishes three possible rounds of auctions. An “initial round” which could include up to ten separate auctions; a “subsequent round”; and a final round of “additional auctions.”

The “initial auction” process permits current Category 1 or 2 slot machine licensees to participate and bid for a Category 4 location and the right to apply for a license within that location. If ten “Category 4 locations” are not awarded in the “initial round,” the Board will proceed to the “subsequent round” in which Category 3 licensees may also participate, with the potential for a third round of “additional auctions” if the ten permitted “Category 4 locations” have not been awarded in the prior auctions.

Following the auction process, winning bidders shall submit an application for a Category 4 license which, upon receipt of the license, authorizes the operator to conduct gaming at a future Category 4 casino facility which may operate between 300 and 750 slot machines and, eventually, up to 40 table games. See 4 PA.C.S. §1305.1(C) and 13A11(B)(2.2)(II)(III).

To be clear, the auction process discussed herein does not itself result in the award of a Category 4 license. The process is designed to identify a “Category 4 location” which is defined as a fixed coordinate surrounded by a 15 linear mile radius resulting in a “Category 4 location” which encompasses a 30 mile circle. The winning bidder then has the right to submit an application for a license for a Category 4 slot machine facility within the area of that “Category 4 location.” 4 PA.C.S. §1305.2(C)(10).

### **III. Auction Rounds**

The Board will proceed with scheduling the first of three potential rounds of auctions (the initial auctions, followed by subsequent auctions and additional auctions) for ten available Category 4 slot machine locations as provided in 4 PA.C.S. §1305.2(A)(B) and (B.1). Once ten Category 4 locations have achieved a winning bidder, or a scheduled auction has resulted in no minimum qualifying bids being submitted, the round of auctions being conducted will stop, and the Board will announce a date for resumption of auctions in the next round as determined appropriate by the Board.

The initial auction process must commence by January 15, 2018 and must conclude by July 31, 2018. 4 PA.C.S. §1305.2(A)(1). Additionally, the Board shall set the date, time and location of the initial auctions at least three weeks prior to the initial auction and make the auction information available on the Board's publicly accessible website. 4 PA.C.S. §1305.2(A)(1).

Unless the Board later determines otherwise, it is contemplated that no more than one auction will occur on any given day.

The rounds of auctions will be as follows:

#### **A. Initial Auctions (§1305.2(A))**

- The Initial auctions will be comprised of up to ten separate auctions – one each for the ten available Category 4 Locations.
- The auction process will begin with the first “initial auction” to be held on the date of the Pennsylvania Gaming Control Board's January 10, 2018 public meeting in Harrisburg, PA, and shall be conducted by Board-designated staff. Any auctions conducted which do not fall on a regularly-scheduled, Board public meeting

date will also occur in the Board’s hearing room and will be conducted by Board designated staff.

### **AUCTION SCHEDULE<sup>1</sup>**

January 10, 2018
January 24, 2018
February 7, 2018
February 21, 2018
March 7, 2018
March 21, 2018
April 4, 2018
April 18, 2018
May 2, 2018
May 16, 2018

- Initial auctions shall only be open to Category 1 and Category 2 slot machine licensees. See §1103, Definitions “Initial Auction” and §1305.2(A)(2)
- A winning bidder of an “initial auction” is foreclosed from bidding on a Category 4 location in any of the other auctions within the “initial auction” round. See §1305.1(A)(2)
- All initial auctions shall be completed by July 31, 2018. See §1305.2(A)(1)
- The Board may hold up to ten auctions in the “initial auction” round so long as required minimum bids are submitted. If at any time there are no required minimum bids made at an initial auction,

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<sup>1</sup> The list of dates is tentative and subject to modification at the Board’s discretion and as circumstances dictate. Any modification of the dates will be posted to the Board’s website and emailed to each PA Slot Machine Licensee’s General Manager.

the Board will consider the initial auctions to be completed. Thereafter, the Board will schedule the first of any “subsequent auctions.”

**B. Subsequent Auctions (§1305.2(B))**

- Upon the completion of all initial auctions in which there are winning bidders selected, a “subsequent auction” will be held for any Category 4 slot machine locations which may remain available.
- “Subsequent auctions” shall only be open to Category 1, Category 2 and Category 3 slot machine licensees. See §1103, Definitions “Subsequent Action” and §1305.2(A)(2)
- Category 1 and Category 2 slot machine licensees that submitted a winning bid during the “initial auctions” may submit a bid in all “subsequent auctions.” See §1305.2(B)(2)
- Any “subsequent auctions” will be held on dates and times to be announced by the Board. All “subsequent auctions” shall be completed by August 31, 2018. See §1305.2(B)(3)
- If, at any time, there are no required minimum bids made at a “subsequent auction” for an available Category 4 slot machine license, the round of “subsequent auctions” will end. Thereafter the Board may consider, in its discretion, whether to proceed with “additional auctions.” See §1305.2(B.1)

**C. Additional Auctions (4 PA.C.S. §1305.2(C))**

- If, after all “initial auctions” and any “subsequent auctions,” ten Category 4 locations have not obtained a winning bidder, the Board may consider whether it is in the best interest of the Commonwealth to conduct “additional auctions.” See §1305.2(B.1)
- Should the Board conclude it is in the best interest of the Commonwealth to conduct “additional auctions,” before conducting any additional auctions, it will announce an application period and criteria by which anyone other than Category 1, Category 2 and Category 3 slot machine licensees may submit an application to qualify to submit a bid at an “additional auction.”
- After the application period has closed, all applications received will be submitted to the Board’s Bureau of Licensing and Bureau of Investigations and Enforcement (“BIE”) for conducting vetting of each application relative to the criteria established by the Board. The criteria will include, among other things, financial and character suitability requirements.
- Upon the completion of all investigations of applications submitted, each application will be brought before the Board for a determination as to whether the applicant has met the criteria established by the Board and is, therefore, qualified to participate in any “additional auctions.”
- Once the Board has determined which applicants are qualified, and any appeals related thereto are final, the Board will set a schedule for any “additional auctions” to be held.

- Bidding at “additional auctions” will be open to all Category 1, Category 2 and Category 3 slot machine licensees, as well as any applicants who qualify to bid through the process described above.

## **I. Auction Process/Making a Bid**

- Bid rigging and/or collusion between two or more bidders is strictly prohibited. “Bid rigging” and/or “collusion” as used herein includes, but is not limited to: 1) sharing of information or the agreement between two or more potential bidders regarding bid strategy, bid amounts, or locations for Category 4 locations, whether directly or indirectly, including through third parties, with intent to or having the potential to suppress winning bid amounts or to frustrate competitive bidding; 2) engaging in complementary bidding designed to create an appearance of competition; 3) agreeing to divide customer or market areas; or 4) agreeing to a payment or compensation of any form by a winning bidder to another potential bidder in connection with any bid or auction.

An authorized representative of each bidder shall submit an affidavit (see below), under penalty of perjury, attesting that no bid rigging or collusion with other bidders has occurred. Any information or suspicion that bid rigging or collusion has occurred in connection with the auction bids will be referred to State and/or Federal law enforcement authorities. 4 PA.C.S. §1305.2(C)(2).

- At least one week prior to any scheduled auction, each prospective bidder shall submit, to the Board’s Bureau of Licensing, a bond or letter of credit, payable to the Commonwealth of Pennsylvania, in the amount of \$7,500,000. 4 PA.C.S. §1305.2(C)(5). A prospective bidder may keep a bond or letter of credit on file for

future auctions, so long as the bond or letter of credit remains unexpired and in good standing. No bid will be accepted if the bidder's bond or letter of credit has expired and is not in good standing.

- The license fee for a Category 4 slot machine license shall be the amount of the winning bid in each auction. No bid may be lower than \$7,500,000. 4 PA.C.S. §1305.2(C)(5)
- Submission of bids shall be by sealed bidding as follows:
  - A representative of each bidder shall present two sealed envelopes to the Board Secretary, prior to the commencement of the auction. Each envelope shall clearly identify the bidder on the outside of the envelope. The two envelopes will be as follows:
    1. An envelope identified as the “BID” and containing a 8 ½” by 11” paper identifying only the date of the auction, the bid amount, and the identity of the slot machine licensee bidder; and
    2. A second envelope identified as “AFFIDAVIT / LOCATION” containing an affidavit required to be submitted with the bid (see below) and clearly indicating the geographic point (longitude and latitude) which will serve as the center point of the “Category 4 location”, as well as the county and municipality wherein such point is located.

- Upon receipt of the aforementioned-envelopes from every bidder at an auction, an individual designated by the Board, will open the bid envelope for each bidder in random order.
- Once all bids have been opened by designated Board staff, the winning bidder and the amount of the winning bid will be announced.
- The identity of the losing bidders and the amount of the losing bids will not be announced so as to minimize the potential for collusion in future auctions. See 4 PA.C.S. §1305.2(C)(2)
- In the event more than one bidder has bid the winning amount (i.e., there is a tie), the meeting will be adjourned for one hour, after which all bidders which previously submitted the same high, winning bid amount will submit another sealed bid envelope with the bidder's final and best bid. The envelope will contain only the final and best bid amount and the identity of the bidder. After all such bid envelopes are opened, announced and posted, the winning bidder will be determined.
  - A bidder which elects not to submit a final and best bid as described herein, will have its bid amount set at the amount of its initial bid.
  - Should one round of best and final bids not determine a winner (i.e. there is another tie), the tied high bidders shall conduct one additional "final and best bid" submission. If that second tie-breaker does not result in a winning bid, that specific auction will be cancelled and all potential bidders shall proceed to the next scheduled auction approximately two weeks later.

- All bids subsequent to a bidder's initial bid in a specific auction must be equal to or greater than a prior bid in the same auction (i.e. a bidder may not submit a lower bid following a tie in a best "final and best bid")
- After all final and best bidding is complete, the bids will be opened, the amount of the winning bid will be announced and the identity of the winning bidder will be made public.
- After the winning bidder at an auction is determined, the winning bidder's second envelope will be opened and the Category 4 location chosen by the winning bidder will be announced by the Board publicly stating the following:
  1. the geographic point (longitude and latitude) which will serve as the center point of the Category 4 location; and
  2. the county and municipality wherein such point is located.
- At the conclusion of the auction, the Board shall retain possession of all "Bid" envelopes as well as all "Affidavit - Location" envelopes. The "Bid" and "Location" envelopes will be maintained confidentially by the Board and not subject to publication, so as to minimize opportunities for collusion in subsequent auctions. The Confidential Retention of the envelopes shall also serve as documentation of bid history and trends should allegations of or patterns of inappropriate bidding be implicated.

- The Board will thereafter post on its website the name of each winning bidder, the amount of the winning bid and the Category 4 location chosen by the winning bidder.

## **II. Post-Auction Procedure**

- The winning bidder at each auction must pay the winning bid amount, by wire transfer or certified funds, no later than 4 p.m. on the second business day after the date of the auction.
- If the winning bidder fails to pay the winning bid on the second business day after the auction, the second highest bidder shall be deemed the winning bidder and its Location Envelope will be opened. Upon notice to the second highest bidder/ deemed winning bidder, it shall submit to the Board payment of its bid amount, as described above, within two business days of receiving notice by the Board.
  - If the second highest bidder/deemed winning bidder declines the award or is otherwise ineligible to win, the auction will be voided and a new auction date will be established and announced.
  - If the Board is required to move from the winning bidder to the second highest bidder/deemed winning bidder as described herein, all parties submitting bids will be notified and the Board will post notice of this occurrence along with a copy of the submitted winning bid and location selection on its website.

- If the Board is required to move to a second highest bidder in an auction and there is a tie among second highest bidders, that specific auction will be voided and the Board will proceed to the next scheduled auction.
- If in the initial round of auctions, the winning bidder fails to pay the winning bid on the second business day after the auction, such that the Board is required to proceed to the second highest bidder, the Board shall consider the initial high bidder ineligible to bid again in that initial round.
- The winning bidder, be it the original winning bidder or deemed winning bidder, shall submit to the Board's Bureau of Licensing an application for a Category 4 slot machine license within six months of the date of payment of its winning bid. Upon motion of the applicant, the Board may in its discretion extend this deadline for two additional months. 4 Pa.C.S. §1305.2(C)(10)(I)
- Failure of the winning bidder to submit an application as required shall result in a forfeiture of the winning bidder's bid and right to apply for the Category 4 slot machine license at issue. Should this occur, the Board shall schedule another auction. 4 Pa.C.S. §1305.2(C)(10)(II)
- In order to be awarded a Category 4 slot machine license, a winning bidder's application must meet all of the requirements of the Pennsylvania Race Horse Development and Gaming Act. 4 Pa.C.S. §1305.2(C)(11)
- In the event the Board denies the application for a Category 4 slot machine license, the winning bidder shall be refunded 75% of its

bid for the license in question. Should this occur, the Board shall schedule another auction. 4 Pa.C.S. §1305.2(C)(12)

- If the Board approves the application for a Category 4 slot machine license and the applicant fails to open and operate the Category 4 licensed facility, the bid for the license in question shall be forfeited. Should this occur, the Board shall schedule another auction. 4 Pa.C.S. §1305.2(C)(13)
  
- In addition to the slot machine license fee/winning bid amount, Category 3 slot machine licensees and qualified entities successful in obtaining a Category 4 slot machine license during any subsequent auction or additional auction will have the following authorization fees **(not due at time of auction, but at a later date, upon petition and approval by the Board)**
  - Upon petition and approval by the Board, a Category 3 slot machine licensees will pay a \$10,000 per machine authorization fee for each slot machine it wishes to place in its Category 4 licensed facility that falls above its authorized compliment under the Act. 4 Pa.C.S. §1305.1(D)(II)
  
  - A qualified entity will have to petition the Board for approval to operate between 300 and 750 slot machines. If approved by the Board, the qualified entity will have to pay a \$10,000 authorization fee for each slot machine. 4 Pa.C.S. §1305.1(D)(III)
  
- In addition to the slot machine license fee/winning bid amount, in order to operate table games at a Category 4 licensed facility, a Category 4 licensee must petition for approval to do so with the Board. Upon submission of the petition, a one-time nonrefundable

authorization fee in the amount of \$2,500,000 must be paid. 4  
Pa.C.S. §13A11(B)(2.1)

### III. Affidavit

Submitted with each bid shall be an affidavit, executed by a person authorized by the bidder to act on its behalf and to bind the bidder, and signed under penalty of perjury, which will include the following information (**the Board will post a form of affidavit on its website prior to the first initial auction**):

- The geographic GPS point (longitude and latitude) which will serve as the center point of the “Category 4 location”, as well as the county and municipality wherein such point is located.
- An affirmation that the “Category 4 location” is not within 25 linear miles of a Category 1, Category 2 or Category 3 licensed facility, and the method by which that fact was determined.
  - *Notwithstanding this requirement, a Category 4 location may be within 25 linear miles of the winning bidder’s own Category 1, Category 2 or Category 3 licensed facility, so long as not also within 25 linear miles of another Category 1, Category 2 or Category 3 licensed facility. If this is the case, it shall be so indicated on the affidavit.*
  - *Linear miles shall mean a measurement along one straight line.*
  - *The measuring points to be used shall be:*

1. *The closest point of the closest building housing a gaming floor of the closest unrelated Category 1, Category 2 or Category 3 licensed facility; and*
2. *the closest point to the subject “Category 4 location”*

- An affirmation that the proposed Category 4 licensed facility will not be located in:
  - A county hosting a Category 3 licensed facility. 4 Pa.C.S. §1305.1(B)(6); or
  - A county of the sixth class which is contiguous to a county that hosts a Category 2 licensed facility. 4 Pa.C.S. §1305.1(B)(7)
  
- An affirmation that the proposed Category 4 licensed facility will not be located in any municipality which has opted to prohibit such a facility. 4 Pa.C.S. §1305.1(A.1)
  - *A list of all municipalities which have opted to prohibit the placement of a Category 4 facility within its borders shall be posted on the Board’s website beginning November 13<sup>th</sup> and updated weekly through January 3, 2018.*
  
- An affirmation that the licensed facility will be sited within the boundaries of the identified “Category 4 location.” 4 Pa.C.S. §1305.1(B)(1)
  
- An affirmation that the proposed “Category 4 location” is not within any portion of a previous winning bidder’s “Category 4 location.” 4 Pa.C.S. §1305.1(B)(3)
  
- An affirmation that, prior to licensure, if applicable, the bidder for a Category 4 location will waive any exemptions, deductions,

abatements or credits created under the Keystone Opportunity Zone and related programs. 4 Pa.C.S. §1305.1(B)(4)

- An affirmation that no collusion or bid rigging has occurred between persons associated with the bidder or any of its representatives and persons associate with any other bidder or any of its representatives.

**This Policy Implementing a Category 4 Casino Auction Process has been adopted during the Board's December 13, 2017 public meeting by vote of the Board.**



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**DAVID M. BARASCH**  
**Chairman, PGCB**