

**PENNSYLVANIA GAMING CONTROL BOARD**  
**AUGUST 5, 2020**

**Category 4 Casino Auction Process**

The Board adopted the Category 4 auction process in December 2017. That process addressed the three potential rounds of auctions including the "initial auctions", the "subsequent auctions" and the "additional auctions" as provided for in Section 1305.2 of the Act. The first two rounds of auctions were conducted during the first half of 2018, resulting in 5 successful auctions for Category 4 slot machine licenses. The third potential round of auctions was not held at that time as determined by the Board in its discretion.

Subsequently, on June 28, 2019, pursuant to an amendment to the Fiscal Code, *see* SB712, the conducting of additional auctions was authorized. Despite such, and the Board providing notice of additional auctions for Category 4 licenses, no persons appeared before the Board to submit a bid and the auctions were thereby cancelled as provided in law.

In May 2020, the General Assembly passed HB 1083, which was signed into law by the Governor as Act 23 of 2020. That legislation amended the Fiscal Code, §1724.1-E (Pennsylvania Gaming Control Board) to provide in relevant part:

E) CATEGORY 4 SLOT MACHINE LICENSE AUCTION.- -  
NOTWITHSTANDING 4 PA.C.S. PT. II OR ANY OTHER PROVISION OF  
LAW TO THE CONTRARY, THE FOLLOWING SHALL APPLY:

(1) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS  
SUBSECTION, THE BOARD SHALL CONDUCT AN AUCTION  
PURSUANT TO 4 PA.C.S. § 1305.2(C)(12) OF ANY CATEGORY 4  
SLOT MACHINE LICENSE FOR WHICH THE BOARD HAS DENIED  
THE APPLICATION FILED BY THE WINNING BIDDER OF AN  
INITIAL AUCTION, SUBJECT TO THE LIMITATIONS UNDER  
PARAGRAPHS (2), (3) AND (4).

(2) IN CONDUCTING THE AUCTION UNDER THIS SUBSECTION, THE  
FOLLOWING SHALL APPLY:

(I) THE BOARD SHALL CONDUCT THE AUCTION ACCORDING  
TO THE PROCEDURES UNDER 4 PA.C.S. § 1305.2(C).

(II) THE BOARD SHALL SET THE DATE, TIME AND LOCATION

OF THE AUCTION AT LEAST TWO WEEKS PRIOR TO THE AUCTION AND MAKE AUCTION INFORMATION AVAILABLE ON THE BOARD'S PUBLICLY ACCESSIBLE INTERNET WEBSITE.

(III) IF THE AUCTION FAILS TO GENERATE A BID, FURTHER AUCTIONS MAY NOT BE CONDUCTED.

(IV) ELIGIBLE BIDDERS MUST BE ONE OF THE FOLLOWING:

(A) A SLOT MACHINE LICENSEE AS DEFINED UNDER 4 PA.C.S. § 1103 THAT SATISFIES THE FOLLOWING:

(I) THE SLOT MACHINE LICENSEE'S LICENSE AND TABLE GAMES OPERATION CERTIFICATE ARE IN GOOD STANDING WITH THE BOARD; AND

(II) THE SLOT MACHINE LICENSEE AGREES TO LOCATE A CATEGORY 4 LICENSED FACILITY AS PROVIDED UNDER 4 PA.C.S. § 1305.1(B)(1), (3), (4), (5), (6) AND (7).

(B) A PERSON WITH AN OWNERSHIP INTEREST IN A SLOT MACHINE LICENSEE AS DEFINED UNDER 4 PA.C.S. § 1103 THAT SATISFIES THE FOLLOWING:

(I) THE PERSON HOLDS A LICENSE IN GOOD STANDING ISSUED BY THE BOARD;

(II) THE PERSON SATISFIES THE REQUIREMENTS OF 4 PA.C.S. PART II AND ANY CRITERIA ESTABLISHED BY THE BOARD FOR LICENSURE, INCLUDING, BUT NOT LIMITED TO, FINANCIAL AND CHARACTER SUITABILITY REQUIREMENTS, AND HAS BEEN APPROVED BY THE BOARD; AND

(III) THE PERSON AGREES TO LOCATE A CATEGORY 4 LICENSED FACILITY AS PROVIDED UNDER 4 PA.C.S. § 1305.1(B)(1), (3), (4), (5), (6) AND (7).

(3) A WINNING BIDDER'S CATEGORY 4 LOCATION MAY NOT BE LOCATED WITHIN 40 LINEAR MILES OF A LICENSED FACILITY, AS DEFINED UNDER 4 PA.C.S. § 1103, OR A PROPOSED CATEGORY 4 LICENSED FACILITY.

(4) A WINNING BIDDER THAT IS NOT AN EXISTING SLOT MACHINE LICENSEE SHALL FOLLOW THE PROCEDURES SET FORTH UNDER 4 PA.C.S. § 1305.1(D)(3)(III) BY FILING A PETITION WITH THE BOARD TO OPERATE SLOT MACHINES AND PAYING THE AUTHORIZATION FEE PER AUTHORIZED SLOT MACHINE.

Pursuant to Act 23 of 2020, the Board will conduct one auction for the Category 4 slot machine license previously applied for and denied to Mt Airy Resorts and Casino. **The auction will occur at the Board's public meeting scheduled for September 2, 2020.**

Persons or entities eligible to participate in the auction are any slot machine licensee as defined in Section 1103 of the Act, as well as a person with an ownership interest in a slot machine licenses as defined under Section 1103 of the Act and that satisfies defined criteria (*see* (E)(2)(IV)(B)(I)(II)(III) above).

Following the auction process, a winning bidder which is a current slot machine licensee 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 potentially up to 40 table games. See 4 PA.C.S. § 1305.1(c) and 13A11(b)(2.2)(II)(III).

In addition, a person who has an ownership interest in a current slot machine licensee in Pennsylvania as set forth above and who submits a winning bid shall submit an application for a Category 4 license and shall follow the procedures set forth under 4 PA.C.S. § 1305.1(d)(3)(iii) by filing a petition with the Board to operate slot machines and paying the authorization fee per authorized slot machine. *See* Act 23 of 2020, §1724.1-E (4).

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 facility within the area of that "Category 4 location." 4 PA.C.S. §1305.2(c)(10).

A selected Category 4 location (the 30 miles circle) may not be located within 40 linear miles of a licensed facility as defined under Section 1103 of the Act, a proposed Category 4 licensed facility, or the center point of a previously-auctioned Category 4 facility location if a site has not yet been selected . This means that the 30-mile circle which depicts the Category 4 location may not intercept or overlap with the 80 mile circle around a Category 1 , 2 or 3 licensed facility, a proposed Category 4 licensed facility or the center point of the previously-auctioned Category 4 facility location if a site has not yet been selected.

## **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 affirmation (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 the 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). No bid will be accepted if the bidder has not submitted the bond or letter of credit.

The license fee for a Category 4 slot machine license shall be the amount of the winning bid in the auction. No bid may be lower than \$7,500,000. 4 PA.C.S. § 1305.

### **Supplemental Bid Guidelines**

**Due to the COVID-19 pandemic and its effect on public gatherings, the presentation of in-person bids by persons eligible to bid in the Category 4 auction is not advisable. Therefore, the Board will modify the bid process as follows:**

**Any person eligible to bid in the Category 4 auction to be held on September 2, 2020, may submit its bid no later than Monday, August 31, 2020 in one of two ways as follows:**

1. **By submitting the bid and location designation via next day mail/shipping so that it arrives at the Gaming Control Board's Office in the Commonwealth Tower no later than Monday, August 31, 2020. A person submitting the bid via this method shall address the envelop to Pam Lewis, Board Secretary. The person shall also send an email to the Board Secretary at [pamelewis@pa.gov](mailto:pamelewis@pa.gov) and to Board Chief Counsel Doug Sherman at [rsherman@pa.gov](mailto:rsherman@pa.gov) indicating that a bid and location have been sent and providing the tracking information for the bid.**
2. **By hand delivering the bid and location designation to the Board's Commonwealth Tower on Monday, August 31, 2020 between the hours of 11:00 a.m. and 12:00 p.m. A representative of the Board will be present to collect any bids and locations submitted in this manner.**

**Similar to prior auctions, an eligible person who participates in the auction shall submit two sealed envelopes at the time identified above. 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 an 8.5" by 11" paper identifying only the date of the auction (September 2, 2020), the bid amount, and the identity of the eligible 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.**

**All bids and locations received will be maintained as confidential and sealed until Wednesday, September 2, 2020 when the bids will be opened immediately before the start of the Board's public meeting. The opening of the bids will be broadcast through a live-stream video and audio broadcast. Upon the opening of all bids, the winning bidder and the chosen Category 4 location will be announced.**

In the event more than one bidder has bid the winning amount (i.e., there is a tie), the auction will remain open and pending, and the tied high-bidders may submit another bid under the process described herein by Monday, September 28, 2020 for opening immediately prior to the Board's public meeting on September 30, 2020.

The envelope submitted in the tie-breaking process should contain only the final and best bid amount and the identity of the bidder. After all such bid envelopes are opened, the winning bidder will be determined.

- o 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.
- o 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 as the "final and best bid").
- o 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 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. The confidential retention of the envelopes shall also serve as documentation of bid history and trends should allegations of inappropriate bidding be implicated.

The Board will thereafter post on its website the name of the 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, September 4, 2020.
- 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 the auction process shall be ended.
  - 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.
- 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.
- Failure of the winning bidder to submit an application as required shall result in a forfeiture of the winning bidders 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)(11).
- 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)(1).
- 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.

- 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.

### **III. Affirmation**

Submitted with each bid shall be an affirmation executed by a person authorized by the bidder to act on its behalf and to bind the bidder, and signed under penalty of perjury for unsworn falsification to authorities, which will include the following information (the form of affirmation is provided herewith).

- 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 40 linear miles of a Category 1 , Category 2 or Category 3 licensed facility, another Category 4 facility site or, another Category 4 location if a site within that location has not yet been selected, and the method by which that fact was determined.
  - o Linear miles shall mean a measurement along one straight line.
  - o The measuring points to be used shall be:
    1. The closest point of the closest building housing a gaming floor for the closest Category 1, Category 2 or Category 3 licensed facility, Category 4 site, or the center point of the previously-auctioned Category 4 facility location if a site has not yet been selected; 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 any municipality which has opted to prohibit such a facility. 4 Pa.C.S. §1305.1(a.1).
- An affirmation that the licensed facility will be sited within the boundaries of the identified "Category 4 location." 4 Pa.C.S. §1305.1.
- 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)(5)

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