



AUCTION RULES

SEALED BID NON-ONLINE AUCTIONS

1. INTERPRETATION

In this document, unless a contrary intention is apparent: -

“**Auction**” means Sealed Bid Auction 8(Nov) - 2009 conducted by VicForests for the sale of timber resources.

“**Auction Catalogue**” means the Auctions For Victorian Native Hardwood Logs Catalogue: SBA8(Nov) - 2009: Sawlog, Pulplog, Poles and Speciality Timbers Sealed Bid Auction 8 (Nov) - 2009 published by VicForests for the Auction.

“**Auction End**” means the date on which the Lot Award is made to the Winning Bidder.

“**Auction Manager**” means the person so designated in the Auction Catalogue.

“**Auction Process**” means the auction process conducted in accordance with these Auction Rules.

“**Auction Rules**” means these Auction Rules.

“**Bid**” means an offer to purchase Lots during the Auction Process submitted in accordance with the Bid Submission Form.

“**Bid Submission Form**” means the form for the submission of Bids.

“**Bidder**” means a person or organisation that submits a Bid.

“**Closing Time**” means the time and date specified as such in the Auction Catalogue.

“**Deed Poll**” means the deed poll signed by the Bidder.

“**Delivery Site**” means the Bidder’s delivery site(s) [as nominated in the Bid Submission Form or as otherwise agreed between VicForests and the Bidder].

“**Lot**” or “**Lots**” means all or part of each of the timber lots set out in the Auction Catalogue for the Auction.

“**Lot Award**” means the award of a Lot to a Bidder.

“**Qualification Rules**” means the Qualification Rules applicable for the period during which the Auction is conducted set out on its website at www.vicforests.com.au, as amended from time to time.

“**Reserve Price**” means the reserve price determined by VicForests for a Bidder Delivery Site and Lot.

“**State**” means the State of Victoria.

“**Terms and Conditions**” means VicForests’:

- (a) Terms and Conditions for Timber Sales; and
- (b) Terms and Conditions for Timber Sales – Small Quantities (Specialty Timber and Firewood - SBA8(Nov)),

as set out on the VicForests website at www.vicforests.com.au, including all schedules, exhibits and annexures, and as amended or replaced from time to time.

“**Winning Bidder**” means the Bidder to whom Lots are awarded, subject to the requirements of the Deed Poll.

2. PREAMBLE

The following Auction Rules govern the obligations of parties in the conduct of an Auction.

The Auction Rules for a specific Auction are those rules specified at the time of the Auction.

It is the responsibility of the individual Bidder to ensure they understand and/or seek appropriate legal advice on the Auction Rules.

3. QUALIFICATION

All Bidders wishing to participate in the Auction are required to apply for and be assessed as qualified Bidders. These requirements are set out in the Qualification Rules.

4. BID SUBMISSION

All Bids in the Auction are to be submitted by the Closing Time.

All Bids must be submitted in the the format provided (Bid Submission Form) and completed in full.

Detailed instructions for completion of the Bid Submission Forms are provided as part of the Bid Submission Form.

Bidders may submit more than one Bid for a Lot.

5. LODGEMENT OF BIDS

Lodgement Methods

A.	Email to be received by the Closing Time to the email address specified in the Bid Submission Form. Email title to specify Auction name (SBA8-2009(Nov)) and Applicant's name
B.	By Registered Mail to be received by the Closing Time to: Sealed Bid Auction VicForests' Tender Box GPO Box 191, Melbourne, 3001 Envelope to be marked with Auction name (SBA8-2009(Nov)) and Applicant's name
C.	Delivered by the Closing Time to: Sealed Bid Auction VicForests' Tender Box, Level 7, 473 Bourke St, Melbourne. Envelope to be marked with Auction name (SBA8-2009(Nov)) and Applicant's name

6. LATE BID SUBMISSION

Any Bids that are received by VicForests after the Closing Time will not be considered by VicForests and will be returned to the Bidder.

However, if there is explicit and conclusive evidence that late lodgement resulted from mishandling by VicForests or an electronic malfunction beyond the control of the Bidder, a Bid will be deemed to have been lodged before the Closing Time.

7. IMPROPER ASSISTANCE

Bidders must not seek or obtain the assistance of employees, agents or contractors of VicForests or the State in the preparation of their Bid Submission. VicForests may, in its absolute discretion, disqualify any Bidder that it believes has sought or obtained such assistance.

8. ANTI-COMPETITIVE CONDUCT

Bidders and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Applicant or any other person in relation to the preparation, content or lodgement of their Bid(s).

9. VALIDITY OF BIDS

Subject to Section 12, any Bids that do not comply with the requirements set out in Section 4 above, will not be considered.

Valid Bids must be at or above the Reserve Price for a Lot.

10. AUCTION PRICING

Auction Pricing is based on the Point of Sale for each Lot and where applicable the Bidder's Delivery Site.

All Bids are to be submitted in Australian Dollars.

All Auction and Bid pricing is exclusive of Goods and Services Tax (GST).

11. STATUS OF BIDS

Bids submitted during the Auction cannot be withdrawn by the Bidder under any circumstances, and are binding on the Bidder.

12. CLARIFICATION OF BID SUBMISSIONS

Where in the opinion of VicForests, a Bid submission is unclear, VicForests may seek clarification from the Bidder. Failure of the Bidder to supply clarification to the satisfaction of the VicForests in the timelines specified may render the Bid liable to disqualification.

VicForests is under no obligation to seek clarification of anything in a Bid submission and

VicForests reserves the right to disregard any clarification that VicForests considers to be unsolicited or otherwise impermissible.

13. EVALUATION OF BIDS

VicForests will assess Bids taking into account the highest net return to VicForests for an Auction.

- VicForests reserves all rights to award part or all of the Lots in its absolute discretion and, without limitation, may award part or all of a Lot to any Bidder, whether or not its Bid is the highest.
- Bids will be compared by VicForests on the basis of the residual stumpage value of each Lot.

Evaluation Stages

At the date of release of these Auction Rules, VicForests is seeking approval to allow exporters of unprocessed logs (**Exporters**) to participate in this Auction. If such approval is obtained, VicForests intends to give preference in the first instance to the allocation of timber to domestic processors, and thereafter to Exporters in respect of any remaining timber,

The evaluation procedure set out below assumes that approval to allow Exporters to participate in the Auction will be obtained.

VicForests will conduct Bid evaluation in stages.

13.1 Stage 1. Bids for Lots where timber will be Processed in Australia

Bids from Domestic Processors will be evaluated in the first stage. Subject to sections 13.3 and 13.4 below, VicForests will assess bids for Lots to identify the bid or bids that provide the highest net return determined on the basis of quantity and bid margin.

13.2 Stage 2. Bids for Lots where Timber is to be exported without processing in Australia

Any Lots or parts of Lots that are unallocated in Stage 1 will be evaluated in Stage 2, for allocation to any Bidders intending to export unprocessed logs. Subject to sections 13.3 and 13.4 below, VicForests will assess bids for Lots to identify the bid or bids that provide the highest Net return determined on the basis of quantity and bid margin.

13.3 Bid Evaluation within a Stage

All Bids for a Lot will be evaluated in accordance with the following considerations:

- a) Lot Bid price relative to the Bidder's Reserve Price for the Lot (Bid Margin);
- b) Quantity of timber Bid for a Lot (Bid Quantity); and
- c) Lot Bid Value = (Bid Margin x Bid Quantity).

13.4 Lot Award within a stage

In determining Lot Award VicForests will take into account:

- a) Lot Bid Value;
- b) Bidder's Capacity Limit;
- c) Amount of Bidder's pre-approved Auction Security;
- d) Bidder's maximum target quantity, and
- e) Bidder's Lot preferences

and the comparison of all Auction Bids that provides the highest net return to VicForests.

The aggregate total of all Lot Awards made to an individual bidder cannot exceed the lower of the Bidder's Capacity Limit or maximum target quantity.

13.5 General

VicForests may, in its absolute discretion, enter into pre-contractual negotiations with a Bidder for any Lot or part of a Lot in the Auction Catalogue.

VicForests reserves all rights to award part or all of the Lots in its absolute discretion and, without limitation, may award part or all of a Lot to any Bidder, whether or not its Bid is the highest.

VicForests reserves the right, in its absolute discretion, not to award a Lot to any Bidder.

All Bid Submission Forms become the property of VicForests. Bidders permit VicForests to reproduce the whole, or any portion, of their Bid Submission Forms for the purposes of bid evaluation.

14. POST AUCTION

Following the Auction End, VicForests will confirm Lot Award to Winning Bidders.

VicForests will notify unsuccessful Bidders that their Bids have been unsuccessful.

VicForests will publish the results of the Auction.

15. GRIEVANCE PROCEDURE

Any grievance of a Bidder either during or after the Auction must be submitted to the Auction Manager in accordance with the Grievance Procedure set out in the Annexure A of these Auction Rules and is subject to the time limits set out in the Grievance Procedure.

16. GENERAL

The Auction Rules are not an offer. The Auction Rules are an invitation for persons to make an offer to purchase the Lots.

Nothing in these Auction Rules or a Bid Submission Form will be construed to create any binding contract (express or implied) between VicForests and any Bidder. In particular, any acceptance by VicForests of a Bid Submission Form is not and is not deemed to be:

- (a) an offer to contract by VicForests; or
- (b) a binding undertaking of any kind by VicForests (including, without limitation,

quasi-contractual rights, promissory estoppel, or rights with a similar legal basis).

VicForests may in its absolute discretion and at any time:

- (a) change the Auction Rules;
- (b) change the timing of any step in the Auction Process; and
- (c) terminate or suspend the Auction Process.

VicForests reserves the right to change any information in the Auction Rules or the Auction Rules themselves.

No representation made by or on behalf of VicForests in relation to the Auction Rules (or its subject matter) will be binding on VicForests unless that representation is expressly incorporated into the Terms and Conditions.

VicForests hereby excludes, to the fullest extent permitted by law, all liability to Bidders arising out of or otherwise in connection with the participation by Bidders in the Auction including, without limiting the foregoing, any liability:

- o for errors in the Reserve Price(s)
- o for loss or delay in the receipt by a Bidder of any electronic notification from VicForests;
- o for loss or delay in the receipt by VicForests of any electronic notification from a Bidder;
- o for indirect, incidental, special or consequential damages including damages for loss of profits or savings (actual or anticipated) and loss of goodwill, whether or not the Bidder knows of the possibility of such damage or such damage was otherwise foreseeable; and
- o contributed to directly or indirectly by the Bidder's acts or omissions, except to the extent that such liability arises from acts or omissions of VicForests that are negligent or unlawful or which amount to wilful misconduct.

Each Bidder indemnifies VicForests, its officers, employees and agents, from and against any claim, action, liability, loss, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character arising directly or indirectly from any:

- o breach by the Bidder of these Auction Rules; or
- o acts or omissions (including any negligence, unlawful conduct or wilful misconduct) by the Bidder arising out of or otherwise in connection with the Bidder's participation in the Auction.

**ANNEXURE A -
GRIEVANCE PROCEDURE
APPLICABLE TO THE AUCTION PROCESS**

1. OBJECTIVES

- 1.1 VicForests aims to provide a framework for raising and dealing with Grievances which may arise from an Auction.
- 1.2 The broad objectives of the Grievance Procedure for all stakeholders are to:
- (a) provide an efficient, clear, fair and accessible mechanism for dealing with issues which may arise from an Auction ; and
 - (b) ensure that the determination of any Grievances, and Auction itself, has been conducted properly.
- 1.3 VicForests will engage an appropriately qualified person as the Probity Adviser to oversee this Grievance Procedure.

2. INTERPRETATION

2.1 Definitions

In this document unless the context otherwise requires:

words and expressions which are not defined in this Grievance Procedure but which have a defined meaning in the Auction Rules have the same meaning as in the Auction Rules.

Aggrieved Bidder means a Bidder who has submitted a Bid in accordance with the Auction Rules and Auction Catalogue.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne.

Grievance means a complaint by an Aggrieved Bidder.

Grievance Panel means the panel established by VicForests set out in **paragraph 4**.

Grievance Procedure means the procedure set out in **paragraph 5**.

Probity Adviser means the person or organisation engaged by VicForests pursuant to **paragraph 1.3**

2.2 Interpretation

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) a gender includes the other gender;

- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means “includes without limitation”;
- (e) a reference to a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and includes the person’s legal personal representatives, successors, assigns and persons substituted by novation; and
- (f) if the date on or by which any act must be done is not a Business Day, the act must be done on or by the next Business Day.

2.3 **Headings**

Headings do not affect the interpretation of this document.

3. **SUBMISSION OF GRIEVANCE**

- 3.1 Grievances must be submitted to the Auction Manager in writing, by email to the address specified in the Auction Rules.
- 3.2 The Grievance must be received by the Auction Manager:
 - immediately upon the cause of the Grievance arising or becoming known to the Aggrieved Bidder
 - By 5.00 pm on the first day following Auction End, whichever is the earlier.
- 3.3 VicForests will have no obligation to consider any purported grievance received after 5.00 pm on the first day following Auction End.
- 3.4 In order for a Grievance to be valid:
 - A Grievance must not include any complaint in relation to a contravention of any law, whether pursuant to legislation or common law:
 - The Bidder must state its Grievance in a reasonable level of detail so that the nature of the Grievance and the grounds on which the Bidder relies in respect of the Grievance is clear: and
 - The Bidder must not make reference to the participation of any other Bidder in an Auction and in particular, it must not make reference to:
 - The conduct of any other Bidder in connection with an Auction: or
 - The outcome of an Auction with respect to any other Bidder
- 3.5 The Grievance must set out:
 - (a) the basis for the Grievance (specifying the issues involved);
 - (b) how the subject of the Grievance (and the specific issues) affects the Aggrieved Bidder;
 - (c) any relevant background information; and

(d) the outcome desired by the Aggrieved Bidder.

3.6 All Grievances will be acknowledged by the Auction Manager via return email.

4. **GRIEVANCE PANEL**

4.1 Grievances will be determined by a Grievance Panel that consists of the following:

- (a) the Chief Executive Officer of VicForests or delegate
- (b) Director- Sales and Planning of VicForests or delegate; and
- (c) a suitably qualified independent person nominated by VicForests.

4.2 Grievances will be determined by the Grievance Panel in accordance with the Grievance Procedure in **paragraph 5**.

4.3 By participating in the Grievance Procedure, each Aggrieved Bidder acknowledges that the Grievance Panel is empowered and authorised to determine Grievances and that the rules of natural justice need not apply to the proceedings of the Grievance Panel.

5. **GRIEVANCE PROCEDURE**

5.1 Upon submission of the Grievance by the Aggrieved Bidder, the Auction Manager will contact the Aggrieved Bidder to arrange for a time convenient to the Aggrieved Bidder to make an oral submission to the Grievance Panel.

5.2 The Grievance shall be determined having regard to the following factors only:

- (a) the operation and content of the Auction Rules;
- (b) any legally binding documents (such as, a deed poll) executed by the Aggrieved Bidder relevant to the Auction Process ;
- (c) the Aggrieved Bidder's participation in the Auction Process;
- (d) any information provided by external consultants engaged by VicForests to provide assistance and advice to VicForests on the operation of the Auction Process or any part thereof); and
- (e) any recommendations made by the Probity Adviser.

5.3 The Grievance Panel will hear oral submissions

- (a) at the office of VicForests on the date(s) notified to Aggrieved Bidders;
- (b) by the Aggrieved Bidder in person or a representative of the Aggrieved Bidder in person or by telephone if the Aggrieved Bidder is unable to attend in person; and
- (c) that are to be no longer than 45 minutes in duration.

5.4 The Probity Adviser shall be entitled to be present when oral submissions are made by an Aggrieved Bidder to the Grievance Panel and may only participate to the extent permitted by the Grievance Panel.

5.5 VicForests shall be entitled to record the hearing of Grievances by the Grievance Panel by such means as it sees fit.

6. **DETERMINATIONS ARE FINAL, BINDING AND CONCLUSIVE**

6.1 Determination of a Grievance by the Grievance Panel shall be final, binding and conclusive on the Aggrieved Bidder upon notice to the Aggrieved Bidder.

7. **CONFIDENTIALITY**

7.1 Each Aggrieved Bidder authorises and consents to the use of any personal information provided in connection with the rules of the Auction Process for the purposes set out herein, subject only to the *Privacy Act 1988* (Cth) and any other applicable legislation. Without limiting the forgoing, such information may be used by the Grievance Panel as reasonably necessary to determine any Grievance.

7.2 The Grievance Panel and each Aggrieved Bidder shall maintain as confidential the Grievance, application of the Grievance Procedure and the determination of the Grievance.