

REGULATION ON AUCTION OF LAND USE RIGHTS FOR LAND ASSIGNMENT WITH THE COLLECTION OF LAND USE LEVIES OR FOR LAND LEASE

(Promulgated together with the Prime Minister's Decision No. 216/2005/QĐ-TTg of August 31, 2005)

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope

This Regulation shall apply to the auction of land use rights (called auction for short) in order to assign land with the collection of land use levies or to lease land.

Article 2.- Subjects entitled to participate in auction

Economic organizations, households and individuals that are entitled to be assigned land with the collection of land use levies or to be leased land by the State under the provisions of the Land Law and wish to use land for execution of investment projects or construction of dwelling houses under plans approved by competent state bodies.

Article 3.- Cases entitled to land assignment or land lease through auction

1. Land assignment with the collection of land use levies

a/ Investment in construction of dwelling houses of households individuals.

b/ Investment in construction of dwelling houses for sale or lease, except for cases where land is used for construction of high-rise condominiums for industrial park workers.

c/ Investment in construction of infrastructures for assignment or lease.

d/ Using the land fund for creation of capital for investment in construction of infrastructures.

e/ Using land as ground for construction of production and/or business establishments.

f/ Using land for agricultural production, forestry, aquaculture or salt making.

2. Switch from land assignment in other forms to land assignment with the collection of land use levies or change of land use purposes, except for the case of non-change of land users.

3. Lease of land, including lease of land in the

agricultural land fund used for public-utility purposes of communes, wards or district townships for agricultural production, forestry, aquaculture or salt making.

4. Other cases to be decided by People's Committees of provinces or centrally-run cities (hereinafter referred collectively to as provincial-level People's Committees).

Article 4.- Competence to decide on land assignment or land lease through auction

A state agency competent to assign or lease land of any category for any project under the provisions of law on land shall have competence to assign land or lease land of such category for such project through auction.

Article 5.- Conditions on to be-auctioned land plots

1. Being included in the detailed land use planning or detailed land use plans; the detailed construction plannings approved by competent authorities in accordance with the current provisions of law on land or construction.

2. Having been compensated for ground clearance.

3. Having the auction plans approved by competent authorities.

Article 6.- Conditions for registration of participation in auctions

The subjects defined in Article 2 of this Regulation shall be entitled to register for participation in auctions when fully satisfying the following conditions:

1. Filing their applications for participation in the auction, made according to the form set by the auction council or a state organization having the function to auction land use rights, containing the commitment to use the land for the set purposes in accordance with the planning when winning the auction.

2. Conditions on capital and techniques or financial capability

a/ Organizations must fully satisfy the conditions on capital and techniques for execution of investment projects or schemes under the provisions of law.

b/ Households and individuals must fully satisfy the conditions on financial capability for execution of investment projects or schemes under the provisions of law. In case of auction of land already divided into lots for construction of dwelling houses of households or individuals, households or individuals participating in such auction shall not have to meet this condition.

3. A household shall have only one member to participate in an auction; an organization shall have only one unit to participate in an auction; a corporation with two or more enterprises shall have only one enterprise to participate in an auction; a corporation with member companies, parent company and affiliate companies, joint-venture enterprises with one party contributing capital to the joint venture shall have only one enterprise to participate in an auction.

Chapter II

AUCTION ORDER AND PROCEDURES

Article 7.- Setting up of auction councils

1. The People's Committees competent to assign and/or lease land shall have competence to set up auction councils. In case of necessity, provincial-level People's Committees may assign district-level People's Committees to set up the councils for auction of land to be assigned or leased to organizations.

2. A provincial-level auction council must be composed of representatives of the Services of Finance; Natural Resources and Environment; Planning and Investment; and Construction, and other members decided by the provincial-level People's Committee in conformity with the local reality. In cases where a leader of the provincial-level People's Committee cannot assume the chairmanship of the auction council, the director of the Finance Service may be authorized to act as chairman of the council.

A district-level auction council shall be composed of a leader of the district-level People's Committee as its chairman and representatives of sections and specialized boards like the composition of a provincial-level auction council.

Article 8.- Notice on organization of auctions

1. Thirty days before conducting an auction, the auction council or the state organization having the function to auction land use rights shall make public announcement on the to be-auctioned land plot at least twice within two weeks on the mass media such as local radio and television stations, local newspapers, other mass media and post up such announcement at places where the auction shall be organized and the office of the district-level People's Committee of the locality where exists the to be-auctioned land plot.

2. A public announcement shall contain the following contents: location, acreage, size, landmark of the land plot, the current use purpose, the detailed land use planning, the land use purpose under planning, the detailed construction planning, the land use duration; registration time and venue, time of auction and other information relating to the land plot. Based on the requirements, characteristics and size of the land plot to be auctioned, the provincial-level People's Committee shall decide to announce or not to announce publicly the reserve price.

Article 9.- Registration for participation in auctions

1. Subjects fully satisfying the conditions defined in Article 6 of this Regulation shall make registration and complete the registration procedures within the time limit notified by the auction council or the state organization having the function to auction land use rights.

2. Organizations and individuals making registration and filing dossiers for participation in an auction must pay the following sums:

a/ A deposit (bail-advance) to be decided by the provincial-level People's Committee for every auction, which, however, must not exceed 5% of the reserve price of the to be-auctioned land plot. The auction winners shall have their deposits deducted from the payable land use levies or land rents.

Deposits shall be refunded in the following cases:

- Auction failers, who shall be refunded the deposits immediately after the auctions end.
- Persons who have made registration for

participation in the auction but withdraw their registrations within the duration of completing the procedures of registration for participation in the auction specified in Clause 1 of this Article.

- Supplementary auction winners who refuse to receive land use rights defined at Point d, Clause 3, Article 11 of this Regulation.

Deposits shall not be refunded and must be fully paid into the state budget in the following cases:

- Persons who have registered for auction participation but do not participate in the auction.

- Persons who participate in the auction from the second round on but offer bids in a subsequent round lower than the bids in the immediate preceding round.

- Auction winners who refuse to receive land use rights or retract their bids.

- Persons who violate the regulations of such auction.

b/ Auction charge: This charge amount paid upon registration for auction participation shall be spent on the organization of auctions and not be refunded to organizations or individuals that have registered for participation and paid such charge. The specific charge rates shall be decided by provincial-level People's Councils in suitability to the local realities in accordance with the current law on charges and fees.

Article 10.- Reserve prices and bid levels

1. Reserve prices

a/ Principles for determining the reserve prices

The reserve price of an auction to assign land with the collection of land use levies or to lease land shall be close to the actual price of transfer of land use rights or land lease rights under normal

conditions at the time of determining the reserve price in accordance with the new use purpose of the auctioned land plot. The reserve price must not be lower than the land price or land rent promulgated by the provincial-level People's Committee under regulations of the Government.

b/ The reserve price of an auction to assign land with the collection of land use levies or to lease land shall be decided by the provincial-level People's Committee or decided under the decentralization of the provincial-level People's Committee.

2. The bid level means the difference between the highest bid of the immediate preceding round and the price level announced for the following round by the auction council or the state organization with the function to auction land use rights. Based on the local reality, the provincial-level People's Committee shall properly stipulate the determination of bid levels or need not to stipulate the determination of bid levels.

Article 11.- Organization of auctions

1. The auction councils shall organize auctions according to the plans approved by competent People's Committees.

In localities where state organizations with the function to auction land use rights have been set up, competent state bodies shall base themselves on the practical situation of the localities to decide to assign such organizations to hold auctions. When holding auctions, the organizations must organize auction councils. The members of such a council shall include representatives of agencies, boards and branches as provided for in Clause 2, Article 7 of this Regulation.

2. Procedures for opening an auction session

a/ Introducing the council members, the auctioneer and assistant (if any).

b/ Roll-calling the auction participation registrants, *announcing the qualified participants* in the auction.

c/ The auctioneer introduces the auction regulations.

d/ Presenting all information relating to the auctioned land plot, answering queries of auction participants; distributing auction cards (in case of auction by ballots) to each organization or individual participating in the auction; carrying other necessary procedures.

3. Forms and order of auction

a/ Auction by casting ballots in each round successively until nobody requests to continue the auction; the person who offered the highest bid shall be the auction winner.

For cases of not publicly announcing the reserve price as provided for in Clause 2, Article 8 of this Regulation, the council can only announce the reserve price after the first auction round and its highest bid; declare the following auction round, determine the number of persons who continue participating in the auction round, and announce the reserve price of this round. The auction shall end when the highest bid is determined and nobody continues participating in the auction.

In cases where all auction participants in the first round offer bids lower than the reserve price, the council shall declare the auction unsuccessful. The council shall consider and readjust the reserve price as appropriate and reorganize the auction at a time to be decided by its chairman.

b/ Oral public auction: For cases of not publicizing

the reserve price as provided for in Clause 2, Article 8 of this Regulation, the council may announce the reserve price at the time of starting the auction session. The auction participants shall directly give oral replies successively until nobody requests to continue the auction. The person who offers the highest bid shall be the auction winner.

c/ The auction council or the state organization with the function to auction land use rights shall stipulate the duration of an auction round for each *form of auction*.

d/ In cases where the auction winner refuses to receive land use rights or retract the bid, the person who offered the immediate lower bid shall be considered by the auction council for approval to win the auction, if the bid offered by this person is not lower than the reserve price of the last round. If the supplementary winner refuses to receive land use rights, the auction council shall issue a document to cancel the auction-winning result. The council shall consider the reorganization of the auction at another time.

4. In case of auctioning a land plot already divided into small lots for construction of dwelling houses of households, individuals, the provincial-level People Committee shall provide the form, procedures and order of auction to suit the local reality. Auction participants may register to bid for many different land lots. Where auction participants fail to win the auction of the previous land lot, if not violating the auction regulations, they shall be entitled to participate in the auction of subsequent land lots, but have to additionally pay the auction charge at the specific rate to be decided by the provincial-level People's Council to suit the local reality.

5. Contents of the minutes of each auction round

Apart from the necessary contents of an ordinary minutes, the minutes of each auction round shall also have the following major contents:

- a/ The auction venue.
- b/ The composition of the auction council.
- c/ The number of auction participants.
- d/ The reserve price.
- e/ The highest offered bid.
- f/ The lowest offered bid.
- g/ Conclusion.
- h/ Effect (for the last auction round):
 - The date of hand-over of land;
 - The date of signing the contract and paying the land use levies or land rents.
 - The date of completing the land dossiers.

Article 12.- Consideration and approval of the auction results

1. Based on the auction minutes, the auction council or the provincial/municipal Finance Service (in case of assigning the task of auction to the state organization with the function to auction land use rights) shall submit to the president of the competent People's Committee the auction results for approval.

2. The contents of approval of the auction results shall include: the full names, addresses, people's identity card numbers of the auction winner (the name of the organization or individual, account number), the land plot location, the winning bid, the total amount payable into the state budget and other necessary contents.

Article 13.- Assignment of land, grant of land use right certificates to auction winners

1. Based on competent state bodies' decisions to approve the auction results and the written certification of full payment of land use levies or land rents by the auction winners, the Natural Resources and Environment offices shall propose competent state bodies to decide on the assignment or lease of land according to the current provisions of land law.

2. The Natural Resources and Environment Services of the provincial-level People's Committees or the Natural Resources and Environment Sections of the district-level People's Committees shall, according to the decentralized competence, have to hand over the land on site and make land dossiers and grant or propose competent state bodies to grant land use right certificates according to the provisions of law and other relevant papers to the auction winners according to the auction minutes and the decisions on land assignment or land lease, register land use rights and complete relevant procedures for land users.

The provincial-level People's Committees shall stipulate the time limits for performance of these tasks of the Natural Resources and Environment offices in accordance with current provisions of land law.

3. Land assignment or land lease decisions, auction documents and other relevant papers shall serve as bases for land assignees or land lessees to register land use rights.

Article 14.- Interests and responsibilities of auction winners

1. Interests: To be assigned or leased land by the State according to the results of winning the auction of land use rights, approved by competent state bodies.

2. Responsibilities: To fulfill commitments made when participating in the auctions and the results of winning the auctions, approved by competent state bodies.

Article 15.- Payment, accounting and management of proceeds from auctions

1. For the case of auction of land plots under projects on using the land fund to generate capital for construction of infrastructures: the remainder after the payment of the value of the constructed infrastructures to the investors and the advance for compensations and supports for persons having their land recovered shall be paid into separate State Treasury accounts opened by provincial/municipal Finance Services and be used for investment in the construction of common infrastructures under projects approved by competent authorities.

2. For the case of auction of land lots convenient for production, business and services in order to generate capital for construction of common infrastructures of localities: the proceeds therefrom, after payment of advance for damage compensations to persons with land being recovered, expenses for investment in construction of technical infrastructures (if any), shall be included into annual state budget revenues and be used for investment in the construction of common infrastructures under projects approved by competent authorities. The division of this revenue among the budgets of different levels shall be stipulated by provincial-level People's Councils.

3. For the case of auction to assign land with the collection of land use levies or to lease land not covered by Clause 1 or Clause 2 of this Article, the proceeds, after the payment of advance for damage compensations to persons with land being

recovered and expenses for investment in construction of technical infrastructures (if any), shall be included into annual budget revenues. The division of this revenue among the budgets of different levels shall be stipulated by provincial-level People's Councils.

Chapter III

ORGANIZATION OF IMPLEMENTATION

Article 16.- Responsibilities of state bodies

1. Provincial-level People's Committees shall have the responsibilities:

a/ To decide on or assign the district-level People's Committees to decide on the plans for ground clearance compensations and plans for infrastructure construction (if any) for organization of auctions.

b/ To decide on or assign the district-level People's Committees to set up auction councils or decide to assign the organization of auctions to state organizations with the function to auction land use rights and direct the auctions.

c/ To promulgate local auction regulations under the provisions of this Regulation.

d/ To approve, decentralize or authorize the approval for the plan for each auction session.

e/ To approve the auction results to assign land with the collection of land use levies or to lease land according to regulations.

f/ To direct the land assignment or land lease, to complete the land dossiers for the auction winners.

g/ To inspect and supervise the execution of projects by auction-winning organizations or

individuals to ensure compliance with the approved plannings.

h/ To report on results of auctions for land assignment or land lease to the Finance Ministry for periodical sum-up reports to the Prime Minister.

2. The Finance Ministry shall have to assume the prime responsibility for, and coordinate with the concerned ministries and branches in, inspecting and guiding the implementation of this Regulation; if any problems arise in the course of implementation, it shall provide guidance for the settlement thereof in accordance with the provisions of law.

Article 17.- Handling of violations

If members of the auction councils or state organizations with the function to auction land use rights, who are assigned to conduct auctions, and other individuals involved in the auctions deliberately act against this Regulation and the Auction Regulations promulgated by provincial-level People's Committees, commit acts of disclosing secrets, colluding with or acting as brokers for auction participants and cause damage to the State or make auctions fail, they shall, depending on the seriousness and nature of their violations, be administratively handled or examined for penal liability according to the provisions of law.

Article 18.- Settlement of complaints, denunciations

Complaints and denunciations related to the process of organizing auctions shall be resolved under the provisions of law on complaints and denunciations; the law on land; and the law on auctions.

Article 19.- Implementation provisions

1. The provisions on auction in this Regulation shall apply to cases of land auction for handling of contracts on mortgage or guarantee with the land use right value to recover debts under decisions of competent state bodies.

2. Based on the provisions of this Regulation and the local realities, provincial/municipal People's Committees shall detail the implementation of this Regulation in their respective localities.

Prime Minister
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