

2. How to Get a Licence.

In this chapter ...

- a step-by-step guide to the allocation process
- details about how to fill in the application form
- what will happen after you apply and the auction progresses.

Introduction

To get a licence, follow these steps carefully:

1. Inform yourself - read and understand all of the information in this applicant information package!
2. Work out how much spectrum you want;
3. Apply to participate in the auction;
4. Register as a bidder;
5. Bid in the auction; and (if successful)
6. Pay for your licence.

Step 1 - Inform yourself

Before participating in this auction make sure that you read and understand all of the material in this Package. Understand the opportunities and responsibilities that spectrum licensing entails. You are strongly urged to seek your own legal and engineering advice to help you do this.

More information about spectrum licensing is in **Chapter 3 - Spectrum Licensing**, and on the technical framework for spectrum licensing, in **Chapter 4 - Technical Framework**.

IMPORTANT NOTES

Spectrum licences may be issued for fixed terms of up to 15 years. However, the ACA intends that all licences in the 800 MHz band will have a common expiry date of 17 June 2013.

Under the Radiocommunications Act 1992, spectrum licences must be re-allocated by a price-based allocation (eg. another auction) and can only be re-issued to the persons to whom they were previously issued without another price-based allocation process, when that would be in the public interest.

Take care in completing the application forms. These are important for establishing your right to participate and bid during the auction.

Step 2 - Work out How Much Spectrum You Want

How much spectrum you want will depend on what you want to do.

In allocating spectrum licences, the ACA is not just offering the opportunity to acquire spectrum and use it for communication systems. There is also scope for licensees to authorise other people to use the spectrum space authorised by their licence. If an applicant wishes to do this, they may be interested in acquiring a large amount of bandwidth in a number of areas.

Whatever your circumstances, you need to think carefully about how much spectrum you need and what you propose to do with it. Under spectrum licensing, the onus is on you to acquire enough spectrum to accommodate your systems, and, if appropriate, the systems of all of those people whom you wish to authorise to operate under your spectrum licence. You should seek expert engineering advice.

How much spectrum you want is up to you, but whether or not you get it depends on who else wants it, and how much you and they are prepared to pay.

When planning your spectrum requirements, the ACA recommends that you seek expert engineering advice regarding the spectrum needs of the systems you want to operate. The ACA makes no representations about the suitability of the spectrum to be offered for any particular use.

Step 3 - Register for the auction

If, after you have considered your spectrum needs, you decide that you want to participate in this spectrum auction, you **MUST** register with the ACA by the closing date for applications, **Thursday 1 February 2001**.

You should register as early as possible. This will enable the ACA to contact any applicants who have not completed or submitted all the necessary forms, and to accept corrections by the closing date.

To register in this auction, you **MUST**:

- Fill out the application form (see **Attachment 13**).
- Make payment of the entry fee of \$10,000 for this allocation, which must be lodged at the time of application. The instrument setting the entry fee is at **Attachment 20**.
- Complete the Deed of Financial Security *if you are required* to do so under the auction rules **OR** you will need to remit to the ACA the performance payment.
- Complete the Deed of Acknowledgment ***in every case***, which commits you to your actions in the auction.
- Complete one or more Forms of Authority, authorising individuals to bid on your behalf in the auction.

- Get your application form, **and** a payment for the total of the entry fee, **and** if required, the performance payment, **and** the completed Deed(s), **and** Form(s) of Authority, to the ACA by **11.00 am (Canberra time) on Thursday 1 February 2001**. Payment may be by bank cheque, or by electronic funds transfer to the ACA's bank account. Details for EFT payments are in the determination.

IMPORTANT NOTE

Late applications cannot be accepted.

The application form

Any individual or body that wishes to bid for a spectrum licence in this auction **MUST** complete the application form. Follow the instructions on the form carefully.

One copy of the Application form is included in this Applicant Information Package. Further copies are available from the ACA and the ACA's Spectrum Auction web site at:

<http://auction2.aca.gov.au>

An application form jointly submitted by more than one person must be signed by each of those persons. Each party to an application is jointly and severally liable in respect of the application.

Where the applicant is a company, the application form must be executed in accordance with section 127 of the Corporations Law.

The application form must have an original signature or other means of execution. A facsimile or a copy of a completed application form cannot be accepted. The ACA can only accept application forms that are complete and legible. To assist legibility all forms should be completed in block letters, or be typed.

Applicants must also submit one or more Forms of Authority which authorise individuals to make bids at the auction. The ACA will require each person nominated in a Form of Authority to complete a Bidder Identification Form which identifies them when they attend the auction.

The ACA will send Registered Applicants a Bidder Identification Form for the Applicant (if an individual) and for any Applicant Representative(s) for whom the Applicant has submitted Forms of Authority. The Bidder Identification Form enables an individual to register as a bidder on an auction day.

Nominate spectrum preferences

To participate in this auction, you must tell us which spectrum lots you want as your first preference. We ask that you do this because if the ACA is able to satisfy every applicant's requirements for spectrum, it may not proceed to auction — instead, it will offer you a licence covering the amount of spectrum and areas that you require, at the starting bid for the lots (see below - **Allocation of licences without an auction**).

Item E of the application form is provided specifically to help you nominate your preference.

Entry Fee

To Register in this auction, applicants MUST pay an Entry Fee of \$10,000 (Item F on the application form). The Entry Fee will not be waived. The Entry Fee is not refundable.

Nominating the method of Financial Security

Applicants may either:

- A. submit a Deed of Financial Security for the required amount; or
- B. submit a performance payment to the ACA for the same amount — this will be held in trust by the ACA as security against any financial liability of the applicant to the ACA under the Determination. This payment must be made by electronic transfer or bank cheque in accordance with section 2.5 of the *Radiocommunications (Spectrum Licence Allocation Open Outcry Auction – 800 MHz Band) Determination 2000* (the Determination).

Nominate your preference by ticking either one or other box at item G on the application form.

The Financial Security Payment

Whether an applicant submits a performance payment or a Deed of Financial Security, the applicant still needs to determine the value of the Deed, or the amount to be paid. The amount to be paid or nominated in the Deed is set by the ACA under paragraph 2.1(b) of the Determination. In this allocation, the financial security amount has been set as \$1,000,000. If electing to pay a performance payment, enter the amount of \$1,000,000 in box H.

IMPORTANT NOTE

If you plan to submit a Deed of Financial Security, DO NOT enter anything in box H, but instead, enter the amount to be paid on the Deed of Financial Security Form.

Total Amount Payable

To work out the total amount payable to the ACA in order to participate in this auction, add the amounts in boxes F and H and enter the amount in box I. Remember, if you are submitting a Deed of Financial Security, DO NOT enter anything in box H.

IMPORTANT NOTE

When you lodge your application form with the ACA, the Form MUST be accompanied by payment of the amount in box I on the application form.

Deed of Financial Security

Applicants must provide a Deed of Financial Security or pay a performance payment before they can be registered unless they are exempted from providing a Deed of Financial Security under the Determination. A copy of the Deed of Financial Security is at **Attachment 15**.

Under the Deed of Financial Security, the promissor undertakes to pay the amount nominated in the Deed to the ACA, on demand.

All applicants **must** provide Deeds unless they satisfy the ACA that they:

- are an authority of the Commonwealth, or of a State or Territory; or
- are a subsidiary of an authority of the Commonwealth or of a State or Territory (within the meaning of the Corporations Law); or
- are an Australian company which does not carry on a business for a profit; or
- submit a performance payment.

IMPORTANT NOTE

Unless an applicant makes a performance payment, it is not automatically exempt from the requirement to provide a Deed of Financial Security just because it thinks it falls into one of these categories. The ACA must be satisfied that the applicant falls into one of these categories for the exemption to apply. This means that an applicant must take action to satisfy the ACA that it meets the criteria. If the ACA is not satisfied, the applicant must provide a Deed of Financial Security.

To be satisfied that the applicant falls into one of the exempt categories, the ACA requires that evidence produced be in the form of a properly made statutory declaration. The statutory declaration should:

- be made by a director, or member of the governing body of the applicant; and
- state the capacity in which the person is making the declaration; and
- state the matters relied upon in order to establish that the company or body is exempt.

Applicants should also provide full details of all other matters of which they are aware that may be relevant to the ACA's consideration of the issue.

Promissor must be qualified to give Deed of Financial Security

An Applicant who must provide a Deed of Financial Security must also satisfy the ACA that the guarantor is **qualified** to give it (as set out in subsection 3.3(4) of the Determination.)

Submitting a Deed of Financial Security

The Deed of Financial Security may only be provided by completing and submitting a Deed in the form approved by the ACA. A copy of the Deed form is included in application documents included in this Applicant Information Package (**Attachment 15**). You can obtain more Deeds from the ACA website.

Instructions for completing the Deed of Financial Security are provided on the form. These instructions should be followed carefully. The Deed, must have an original signature or other means of execution. **Photocopies and facsimile transmissions are not acceptable.** A Deed of Financial Security must be complete and legible to be accepted by the ACA.

Deeds of Financial Security must be received by the ACA at the same time as the application form (before closing time on the closing date).

If a Deed of Financial Security has not been received from an applicant by the closing date, then the applicant will be excluded from participating in the auction unless it satisfies the ACA that it falls within one of the categories referred to in subsection 3.3(1) of the Determination.

Deed of Acknowledgment

All applicants **MUST** complete a Deed of Acknowledgment. This Deed acknowledges, amongst other things, that an applicant will honour all bids that are made by them during the auction. A copy of the Deed of Acknowledgment is included in the application documents included in this applicant information package (**Attachment 14**). You may request more copies from the ACA at the address below.

Completing and Submitting a Form of Authority

Forms of Authority are provided to permit an applicant to authorise an individual to act on the Applicant's behalf in applying for a licence under the Determination. An individual applicant may authorise one or more persons to act on his or her behalf in an allocation, if the application wishes to do so. An applicant that is not an individual *must* authorise at least one individual to act on its behalf, for only individuals may bid in the auction.

Applicants should note that a Form of Authority authorises an individual to represent an applicant generally during the process. This will include bidding on the applicant's behalf and tendering money. (For details of the extent to which bidders are authorised see the Form of Authority). Applicants will be bound by any action of their representatives taken under the Form of Authority.

A copy of the Form of Authority is included in the application documents in this information package (**Attachment 16**).

There is no limit to the number of representatives an Applicant may authorise to act on its behalf. Applicants must complete a separate Form of Authority for each individual.

The Applicant named on the Form of Authority must be the same as on the Application Form. Where there are joint Applicants, each Applicant must execute the Form of Authority. In the case where a company is the Applicant, the form must be executed in accordance with section 127 of the Corporations Law.

Individuals authorised to represent Applicants do not need to sign the Form of Authority. It is the responsibility of Applicants to make their representatives aware of their duties and obligations.

A facsimile or a copy of a signed Form of Authority cannot be accepted. The ACA can only accept Forms of Authority that are both complete and legible. To assist legibility, Forms of Authority should be completed in block letters or typed.

Forms of Authority must be received by the ACA with the Application Form, unless another form is submitted in accordance with section 3.9 of the Determination (see following section). In the case of Applicants that are companies, *at least one* Form of Authority must be provided prior to the closing date in order for an Applicant to be registered.

Receipt of Another Form of Authority

Registered Applicants may lodge Forms of Authority after the close of registration as set out in section 3.9 of the Determination. No additional Forms of Authority will be accepted within two hours of the auction commencing at which the bidder intends to represent the Applicant.

Allocation of licences without an auction

On the application form, there is provision for applicants to nominate which lots they want to acquire in the 800 MHz band in this auction. If the ACA can satisfy every applicant's preference without needing to go to an auction, it will offer all of the applicants a licence based on their nominated preference at the price of the starting bid for the lots that would comprise the licence. If all applicants accept the offer, the ACA will not proceed with the auction (see section 5.4 of the Determination).

If the ACA is unable to satisfy every applicant's preference, it will proceed to auction. In this event, the ACA will set an auction date and move into the process of confirming auction details with applicants.

Confirmation of Registration

Applicant registration will be complete only when the applicant has completed registration requirements and the ACA enters the names of Applicants in the register of applicants (section 3.7 of the Determination). The ACA must refuse registration if the application form, entry fee or required Forms of Authority and Deeds of Financial Security/evidence of exempt status are not provided in accordance with the Determination.

Where all necessary and completed forms and entry fee have been received, and the Applicants registered, the ACA will make available Bidder Identification Forms to

Registered Applicants. A separate Bidder Identification Form will be issued for each applicant who is an individual, and for each individual authorised by a Form of Authority (section 3.10 of the Determination).

Bidder Identification Forms will be sent to Registered Applicants. It will be the responsibility of the Applicants to distribute the forms to their Applicant Representatives as necessary.

An original Bidder Identification Form must be presented by the individual named in it, in order to register as a Bidder on the allocation day.

If the ACA decides to proceed to an auction, the ACA will send a package of information to registered applicants (see section 3.8 of the Determination). This package, which will be sent at least 5 working days before the starting date of the auction set by the ACA, will contain:

- advice that the applicant is registered;
- advice of the date, time and place of the auction; and
- advice on starting bids.

Publication of applicants' names and bidder identification numbers

The ACA will publish in the national press the names of all the applicants who have been registered to take part in the auction. The ACA will only publish the names of natural persons if those persons have consented to the release of this information.

Step 4 - Register Bidders

Bidders are advised not to leave their registration to the last moment.

Individuals holding Bidder Identification Forms who wish to bid must register as a bidder on the day of the allocation. Only registered bidders may bid in an allocation period (section 4.4 of the Determination). Any person who intends tendering a deposit on behalf of an Applicant must also be registered as a bidder (section 4.5 of the Determination).

Bidder registration will take place on the day of the allocation, as notified by the ACA, before bidding on the lot is called.

Once closed, bidder registration cannot be re-opened. Arrangements for bidder registration will be notified to all applicants.

To become registered bidders, individuals must produce an original Bidder Identification Form provided to them and meet the other requirements of section 4.3 of the Determination. Photocopies of the Bidder Identification Form will not be accepted. Persons wishing to register as Bidders must also provide the evidence of their identity referred to in the Bidder Identification Form. The evidence required is:

- photographic identification being either a driver's licence or passport; or

- two forms of other identification (such as a birth certificate or credit card), one of which must include a signature.

A photocopy of the identification will be retained by the ACA for record purposes.

After showing the ACA a Bidder Identification Form and identification, bidders will be asked to sign a Bidder's Acknowledgement stating, amongst other things, that they are the person authorised by the relevant applicant and they understand the obligation of bidders (section 4.3 of the Determination). A copy of the Bidder's Acknowledgement Form is included in the application documents at **Attachment 18**.

Bidders who do not show the ACA a Bidder Identification Form and identification on the allocation day will not be able to bid for spectrum allocation lots.

Replacing Lost or Destroyed Bidder Identification Forms

Lost or destroyed Bidder Identification Forms can be replaced (subsection 3.10(3) of the Determination). The ACA can also replace a Bidder Identification Form if satisfied that the Form cannot reasonably be made available.

The ACA will accept a statutory declaration as evidence of loss or destruction, and of the reasons for unavailability. Prior to the allocation period, the ACA would prefer that Applicants, rather than their representatives, seek replacement Bidder Identification Forms.

Bidder's Paddle

Registered Bidders will be provided with a bidder's paddle with which they may bid (section 4.3 of the Determination).

Only one paddle will be issued for each Bidder Identification Form presented.

Step 5 — Bid in the Auction

Reserve Prices

The ACA reserves the right to set reserve prices after applications close.

Process

The ACA will manage the allocation process.

An Auctioneer will be appointed by the ACA. The Auctioneer will conduct an auction-style allocation process in accordance with the Determination.

Timetable

The timetable for the allocation, including for bidder registration, will be notified to applicants after applications close. Any changes to this proposed timetable will be made known to Registered bidders.

Identifying the Highest Bidder

The Auctioneer will identify the registered bidder who bids the highest amount for a particular spectrum allocation lot (section 4.4 of the Determination).

To assist identification the Auctioneer will ask the bidder to show the bidder's paddle for the relevant Applicant.

The registered bidder who makes the highest bid above the reserve price becomes the *successful applicant* for the lot.

Persons intending to bid should note that section 302 of the Act provides that a person may be prosecuted for making a false or misleading statement for the purposes of or in connection with the Act.

Payment of Deposit

Immediately on being notified, the successful applicant must meet with ACA staff, and will be required to prove that he or she is registered to bid as, or on behalf of, the nominated applicant (section 4.5 of the Determination). The successful applicant or a registered bidder representing the nominated applicant must tender 10% of the bid price as a deposit immediately after all lots have been sold or passed in.

Following payment of the deposit, the nominated application will be given a receipt. Failure to tender the deposit as directed by the ACA will exclude the applicant from being allocated that lot. The ACA may offer the lot again on the same auction, or another allocation (section 4.6 of the Determination).

Step 6 – Paying for Your Licence

A deposit of 10% of the amount of the bid price is paid to the ACA immediately after all lots have been sold or passed in. This must be paid by cheque.

Payment of the balance of the bid price must be paid within 20 working days of the allocation.

Payment of the balance of the bid price may be made by bank cheque or electronic funds transfer in accordance with section 2.5 of the Determination.

IMPORTANT NOTE

Personal or company cheques cannot be accepted for payment of the balance of the bid price.

If a successful applicant fails to pay the deposit the applicant ceases to be entitled to be allocated the licence for the lot and remains liable to pay the ACA in accordance with subsection 5.2(1) of the Determination.

If a successful applicant defaults by failing to pay the balance of the bid price, the allocation of the licence will be set aside (subsection 5.2(2) of the Determination). The deposit paid will be forfeited.

The ACA may proceed under any relevant Deed of Financial Security or performance payment to meet any undischarged liability. If the successful applicant had lodged a performance payment, that performance payment may be called by the ACA in satisfaction of any amount owing.

As soon as practicable after payment of the balance of the bid price the ACA will issue a spectrum licence or licences.

The ACA will make the following information public with regard to allocated licences:

- name of licensee;
- spectrum allocation lot or lots assigned to the licensee; and
- amount paid by the applicant for the allocation of the spectrum allocation lots.

Unallocated Lots

Any unsold or defaulted lots may be allocated by the ACA by another auction, by tender, or by a pre-determined or negotiated price.