

# 3. 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, and where;
3. Register for the auction;
4. Bid in the auction; and (if successful)
5. Pay the money you bid to the ACA.

## 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 4 - Spectrum Licensing**, and on the technical framework for spectrum licensing, in **Chapter 5 - Technical Framework**.

The ACA will be using the “simultaneous ascending auction” system to allocate spectrum licences. It is different from the traditional “English” open outcry auction often used to sell art or antiques, for example, and with which most people are familiar. You should carefully read the auction rules contained in the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000 (Attachment 5)* and understand what they mean before you apply to take part.

## 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.

### **Example**

Joe, from Joe's Telephone Systems, wants to operate a third generation mobile telephone service using 2 GHz band spectrum. He is interested in providing a service in the eight capital cities only. After seeking engineering advice and talking with vendors, he concludes that he needs 2x10 MHz as a minimum, but the additional capacity provided by 2x15 MHz and an additional unpaired 5 MHz would better serve his business plan.

Joe looks at the lots available in this allocation. He sees, from the tables in the Marketing Plan, that a number of lots are available "bundled" across the capital cities. He concludes that these would suit him best.

Joe notes that he could acquire the spectrum he desires by bidding on

- either Capital City 4 (2x10 MHz), or
- both Capital City 5 (2x5 MHz) and Capital City 6 (2x5 MHz).

However, Capital City 4 has the advantage, from Joe's point of view, of being adjacent to Capital City 3 (2x5 MHz), which would allow him to obtain a contiguous block of 2x15 MHz. Joe decides that the unpaired spectrum offered by Capital City 1 or Capital City 2 would be useful to him, and prefers Capital City 2.

Figure 1: Indicative diagram of lots on offer

	UNPAIRED 20 MHz				PAIRED 2 x 60 MHz							
	1x5 MHz	1x5 MHz	1x5 MHz	1x5 MHz	2 x 10 MHz	2x 5 MHz	2x 5 MHz	2 x 10 MHz	2 x 10 MHz	2x 5 MHz	2x 5 MHz	2 x 10 MHz
Sydney	CC1	CC2					CC3	CC4	Nat 1	CC5	CC6	Nat 2
Melbourne												
Brisbane												
Adelaide												
Perth												
Hobart												
Darwin												
Canberra												
Cairns										Nat 1		Nat 2
Mackay												
Maryborough												
Grafton												
Dubbo												
Albury												
Regional Vic.												
Regional Tas												
Regional SA												
Regional WA												

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 both the spectrum needs of the systems you want to operate, and their potential impact on other services that may be entitled to protection. The ACA makes no representations about the suitability of the spectrum to be offered for any particular use, including the uses set out in the various examples in this package.

## 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 *application closing date* of **Monday 12 February 2001**.

### Application Process

The ACA has introduced a two-stage application process.

In stage one, by the *application closing date* (see below), intending applicants must lodge:

- a completed application form;
- a Deed of Acknowledgement properly completed and executed; and
- payment of the entry fee.

In stage two, by the *eligibility closing date* (see below), which is five working days after the application closing date, intending applicants must deposit:

- the eligibility payment; and
- EITHER the performance payment, OR a Deed of Financial Security properly completed and executed.

Payment may only be made in accordance with section 1.9 of the Determination either by transferring funds to the ACA's bank account or by bank cheque. Payment must be in Australian currency. Full payments must be remitted, net of all financial transaction fees and charges. Fees and charges must be met by the applicant.

When payment is made other than by bank cheque, intending applicants must provide the ACA with evidence of payment to the ACA by the relevant closing date for the payment. Failure to meet the reporting requirements may mean that your payment cannot be identified and linked to your application, and this may render your application invalid.

Applicant registration will be complete only when the applicant has completed the above registration requirements and the ACA enters the names of the applicants in the register of applications. The ACA must refuse registration if all required forms, entry fee, eligibility payment and performance payment are not provided in accordance with the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000*.

***NOTE: The ACA cannot accept late applications.***

Where a payment is due to the ACA, the intending applicant must make payment by that time or produce evidence that it has made payment by that time.

***NOTE: A late payment or failure to provide a deed where appropriate, or failure to provide evidence of payment by a due date, will render an application invalid.***

## Closing Dates

The ***application closing date*** is 11.00 am (Canberra time) on Monday 12 February 2001.

The ***eligibility payment date*** is 11.00 am (Canberra time) on Monday 19 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 which were received in accordance with subsection 2.5(3) of the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000* by the closing date.

In summary, to register in this auction, you **MUST**:

- Fill out the application form (see **Attachment 13**).
- Work out your eligibility based on your business plan, and calculate your eligibility payment — you **MUST** nominate how much eligibility you require (this is a measure of how many lots and where you want to win) and you **MUST** pay the eligibility payment based on this. ***You cannot bid on more spectrum than authorised by your eligibility.***

- Make payment of the entry fee of \$50,000 for this allocation, which must be lodged at the time of application. The instrument setting the entry fee and rate of eligibility payment is at **Attachment 19**.
- Complete the Deed of Financial Security (**Attachment 15**) 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 (**Attachment 14**) *in every case*, which commits you to your actions in the auction.

## 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 (**Attachment 13**). Further copies are available from the ACA, and from the ACA's 2 GHz 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 accept only application forms that are complete and legible. To assist legibility all forms should be completed in block letters, or be typed.

## Nominate spectrum preferences

To participate in this auction, you must tell us how many spectrum lots you want as your first preference. We ask that you do this because if the ACA considers it may be able to satisfy every applicant's requirements for spectrum, it may not proceed to auction - instead, we 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**).

Items **F** to **K** of the application form are provided specifically to help you nominate your preference, and calculate your *eligibility* in the auction. Eligibility is important because it will be used to determine how much spectrum you can acquire in this auction, how much you have to pay as your *eligibility payment*, and how active you have to be during the auction.

## **IMPORTANT NOTE**

*Applicants can nominate any eligibility amount at Box L (up to that imposed by the Minister's Bidding Limits) and applicants are NOT restricted to nominating the amount calculated on the spectrum preferences part (Box K) of the application form.*

### **Calculate eligibility**

To nominate your allocation preferences, and calculate your eligibility in this auction:

1. ENTER in column **I** the number of lots you hope to win in the 2 GHz band. Following the example of Joe above, Joe wants to obtain 2×15+5 MHz in the capital cities. He would therefore enter “1” in column **I** for each lot that he wanted to win.
2. For each lot, multiply the number in column **I** by the lot rating for lots in this area in column **H** and ENTER the result in column **J**.
3. Total all the entries in Column **J** and ENTER the result in box **K**.

The result in box **K** is the amount of eligibility needed to bid on this nominated set of preferences. You may nominate any value of eligibility, provided that it does not exceed the amount set by the Minister's bidding limits as they apply to your circumstances.

### **Example (table next page)**

This example continues Joe's business model. Joe wants 2x15+5 MHz in each capital city.

Joe enters the number “1” in column **I** for each lot he wants listed on the eligibility calculation form.

He then multiplies this by the lot ratings in column **H** for each row and enters the result in column **J**.

He then totals column **J** and enters the result in Box **K**.

Box **K** is the amount of eligibility that Joe needs to nominate in order to be able to bid on the lots he has identified on the form. Joe may, if he wishes, nominate a different eligibility amount in box **L** for the auction, but always within the limits of the Minister's bidding caps and the total amount of spectrum on offer.

The actual amount of eligibility nominated by the applicant should be entered in box **L** on the application form. It may be the same amount as box **K**, but need not be.

	<b>G</b>	<b>H</b>	<b>I</b>	<b>J</b>
Lot	Notional Population	Lot rating	Required? [If yes, enter “1”]	Total Lot rating HxI
Capital city 1	12,383,700	75		
Capital city 2	12,383,700	75	1	75
Sydney 1	4,297,000	25		
Melbourne 1	3,246,700	20		
Brisbane 1	1,921,100	12		
Adelaide 1	1,094,900	6		
Perth 1	1,189,100	7		
Hobart 1	224,300	2		
Darwin 1	90,000	1		
Canberra 1	320,600	2		
Sydney 2	4,297,000	25		
Melbourne 2	3,246,700	20		
Brisbane 2	1,921,100	12		
Adelaide 2	1,094,900	6		
Perth 2	1,189,100	7		
Hobart 2	224,300	2		
Darwin 2	90,000	1		
Canberra 2	320,600	2		
Sydney 3	4,297,000	500		
Melbourne 3	3,246,700	40		
Brisbane 3	1,921,100	240		
Adelaide 3	1,094,900	120		
Perth 3	1,189,100	140		
Hobart 3	224,300	40		
Darwin 3	90,000	20		
Sydney 4	4,297,000	250		
Melbourne 4	3,246,700	200		
Brisbane 4	1,921,100	120		
Adelaide 4	1,094,900	60		
Perth 4	1,189,100	70		
Hobart 4	224,300	20		
Darwin 4	90,000	10		
Capital city 3	12,383,700	750	1	750
Capital city 4	12,383,700	1,500	1	1,500
National 1	16,184,100	1,750		
Capital city 5	12,383,700	750		
Capital city 6	12,383,700	750		
National 2	16,184,100	1,750		
Cairns 1	368,200	20		
Mackay 1	305,100	20		
Maryborough 1	583,500	30		

Grafton 1	39,500	20		
Dubbo 1	281,100	20		
Albury 1	641,200	40		
Regional VIC 1	773,200	50		
Regional TAS 1	258,200	20		
Regional SA 1	308,600	20		
Regional WA 1	241,800	10		
Cairns 2	368,200	20		
Mackay 2	305,100	20		
Maryborough 2	583,500	30		
Grafton 2	39,500	20		
Dubbo 2	281,100	20		
Albury 2	641,200	40		
Regional VIC 2	773,200	50		
Regional TAS 2	258,200	20		
Regional SA 2	308,600	20		
Regional WA 2	241,800	10		
		<b>K</b>	<b>TOTAL</b>	<b>2,325</b>

### **IMPORTANT NOTE**

*You can, if you wish, nominate all of the spectrum in all of the markets, up to the limit of the Minister's bidding limits. However, you will be required to have active bids on lots that, in total, meet an increasing percentage of your nominated eligibility. If you don't, your eligibility will be reduced, which will mean that the amount of spectrum you can acquire at the auction will also be reduced!*

### **Activity**

Each lot on offer has a *lot rating* (see section 2.5 of the *Radiocommunications Spectrum Marketing Plan (2 GHz Band) 2000 (Attachment 3)*). Lot ratings have been set for each lot by the ACA.

Each applicant's *activity* in each round of the auction will be calculated by adding the lot ratings of all the lots on which they are *active*.

**Active** means they must either be recorded as the highest bidder on a lot in the previous round's results, and not withdraw the bid in the current round (see **Bid Withdrawal** below), or they must have made a valid bid on the lot in the current round. *Activity* relates to **valid** bids, not **highest** bids. A bid does not have to be the highest bid on a lot in a round to count towards activity.

### **IMPORTANT NOTE**

*During the auction, applicants do not have to bid on the lots that they have nominated as being the lots they require on the application form. Applicants can use their eligibility to bid on any lot on offer in the auction, once the auction is under way, provided that in doing so they do not exceed the Minister's bidding limits.*



## Eligibility Payment

To participate in this auction, in addition to the entry fee (see below), applicants **MUST** lodge with the ACA an Eligibility Payment calculated as AUD\$50,000 for *each unit* of eligibility nominated by the applicant in box **L** on the application form. Calculate the eligibility payment required by multiplying the eligibility nominated in Box **L** by \$50,000 and enter the result in box **M** on the application form.

### Example

Joe has calculated the firm's required eligibility for his preferred bidding to be 2,325 (continuing the example above) and enters this in box **K**. He wishes to nominate his eligibility at the same level so he enters 2,325 in box **L** on the application form. Joe calculates the Eligibility Payment as  $2,325 \times \$50,000 = \$116.25$  million. He enters \$116.25 million in box **M** on the application form.

Under the auction system it is possible to withdraw bids, but this may be subject to withdrawal penalties. The Eligibility Payment will be held against such a liability for penalties (see below - **Bid Withdrawals** and **Bid Withdrawal Penalties**).

The Eligibility Payment will be credited to the final bid price payable if you are the highest bidder on lots during the auction.

If you are unsuccessful, and you do not incur bid withdrawal penalties, your Eligibility Payment will be returned to you in full.

## Entry Fee

To Register in this auction, applicants **MUST** pay an Entry Fee of \$50,000. 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 under the Determination; or
- (b) make 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. These payments must all be made using either electronic transfer or bank cheque, in accordance with section 1.9 of the Determination.

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

### Example

Joe does not want to obtain a Deed of Financial Security from a bank, and he has plenty of cash on hand. He nominates to submit a performance payment instead of submitting a Deed of Financial Security.

## Calculate 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 obtained by multiplying the financial security amount set by the ACA under paragraph 2.1(c) of the Determination, by the eligibility nominated by the applicant at box **L** on the application form. In this allocation, the financial security amount has been set as \$50,000 per lot rating (the same as the rate for eligibility payment). If electing to pay a performance payment, multiply the nominated eligibility at box **L** by \$50,000 and enter the result in box **O**.

### IMPORTANT NOTE

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

### Example

Joe has elected to pay a performance payment. Joe multiplies his nominated eligibility in box **L** (2,325) by \$50,000 and enters the result (\$116.25 million) in box **O**.

## 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 **M** and **O** and enter the amount in box **P**. Remember, if you are submitting a Deed of Financial Security, DO NOT enter anything in box **O**.

### Example

Joe adds his eligibility payment (\$116.25 million) and the performance payment that he has elected to make instead of submitting a Deed of Financial Security (\$116.25 million) and enters the amount \$232.5 million in box **P**.

*Remember there is also an entry fee of \$50,000.*

## 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 exempt from providing a Deed of Financial Security or performance payment under the determination. A copy of the Deed of Financial Security is at **Attachment 15**.

Under the Deed of Financial Security, the promisor 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 promissor is **qualified** to give it (as set out in subsections 2.8(5) and (6) of the Determination - **Attachment 5**.)

### **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 copies of the Deed 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.

If a Deed of Financial Security has not been received from an applicant by the *eligibility payment 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 2.8(1) of the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000* (**Attachment 5**).

## **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 it makes 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.

## **Associated Persons Procedures**

As noted in **Chapter 2 - How is it being Allocated?** under the heading **Associated Persons**, the ACA has implemented procedures designed to assist associated persons in complying with the Minister's bidding limits.

### **Before the Auction**

After the closing date for applications, the ACA will send all applicants a letter with details of all the other applicants and their associates as submitted by each on the Application Form. You will have 10 working days from the date of this letter to forward to the ACA a statutory declaration, either:

- stating that you are not an associate of any other applicant; or
- identifying the other applicant(s) with whom you are associated.

“Associate” for this purpose has the meaning given in the *Radiocommunications (Spectrum Licence Limits — 2 GHz Band) Direction No. 2 of 2000* (see **Attachment 2**). Applicants not fulfilling this requirement will be excluded from the auction and their eligibility payment will be refunded.

The ACA will also send details of the applicants to the Australian Competition and Consumer Commission (ACCC). The ACA will review the information provided by the applicants and any report from the ACCC, and will then decide whether any of the applicants are associated.

If the ACA decides that you are an associate of one or more other applicants, the Auction Manager will write to you and each person with whom you are associated to advise you of the person or persons with whom you have been found to be associated. The application documents will be returned at this time.

Applicants who are found to be associated with each other may:

- withdraw all but one of their applications; or

- withdraw all of their applications and join together in another single application made by a new applicant using the prescribed form; or
- remain registered as individual applicants, but be treated as a *designated applicant group*.

If applicants who are associated with each other do not either withdraw all but one of their applications, or do not substitute a single new application for their applications, they will be designated as *associated applicants*. This means that they will all receive the same bidder identification number (BIN) and encryption code keys as their associates.

When multiple copies of the BIN and encryption code keys are issued to members of a designated applicant group, the ACA will accept only the first set of bid instructions received using that BIN. The ACA will reject any other bid instructions purporting to come from any other member of the designated applicant group using the same BIN. All members of the group will be regarded as having bid in this way, and so they will all be affected equally by bidding, bid withdrawal, exercise of waivers and reductions in eligibility.

Effectively, all members of a designated applicant group will be treated a single bidder. Before the auction starts, the eligibility of the members of the group will be summed, but the total may be altered by the ACA. This is because the ACA will not accept a total eligibility for associated applicants which would exceed the total of the lot ratings of all of the lots that could be bid without exceeding the Minister's bidding limits. If applicants apply for eligibility in excess of that amount, the ACA will reduce the total eligibility of the associated applicants to the limit set by the Minister. Any excess in eligibility payments will be refunded in proportion to the amounts originally paid by the applicants.

Members of a designated applicant group will all carry the same amount of eligibility as each other. They will all have the same number of waivers. If the bidding of a member of a designated applicant group would result in a loss of eligibility or the use of a waiver, then the reduction in eligibility or the use of the waiver will be applied to all members of the group.

### During the Auction

If the ACA becomes aware during the course of the auction that an applicant may have become an associate of another applicant, the ACA will suspend the auction, and write to these applicants asking them to submit within 5 working days a statutory declaration about whether they are or are not associated.

If the ACA decides that the applicants are associated, the ACA will:

- advise the affected applicants and associates that the ACA has found them to be associates;
- advise all other applicants of the association;

- issue a new BIN and encryption keys for use by all the associated bidders from the time the auction resumes (and revoke the previous individual BIN and encryption keys). From that point on they will be treated as members of a designated applicant group.

### IMPORTANT NOTE

*This will have the effect of invalidating all previous bids by the associates; to preserve eligibility in the auction, they will need to re-bid (or take waivers) from the first resumed round.*

Where a designated applicant group is formed while the auction is suspended, the eligibility for the associated bidders will be set as the sum of the current eligibility of each member of the association at the round immediately before the suspension came into effect, provided that this would not exceed the total of the lot ratings of all of the lots that could be bid for without exceeding the Minister's bidding limits. (If the ACA reduces eligibility to this limit, refunds of eligibility payments will not be made until after the conclusion of the auction.) The number of waivers that may be exercised under the new BIN will be set at the highest number of waivers held by any member of the association at the end of the round immediately before the suspension.

### After the Auction

After the auction, if you are a successful bidder, the ACA will send you details of all other successful applicants. You will then be required to complete another statutory declaration that, either:

- you are not an associate of any other successful applicant; or
- naming the other successful applicant(s) with whom you are associated.

Where successful applicants are then found to be associated, the ACA will combine the lots where they are successful with the lots where each of their associates are successful. If the total of the lots of all of the parties to an association exceeds the Minister's bidding limits, then:

- the associated parties will be required to nominate how the lots should be allocated among them, up to the limit of the bidding limits, and spectrum licences will be allocated for these lots; however
- the applicants will still be liable to pay the balance of the bid price on all the lots they have successfully bid for at the auction, not just those within the Minister's limits. No spectrum licence will be issued to an applicant who has not paid the balance of the bid price in respect of all of the lots on which that applicant was the highest bidder at the end of the auction. Further, the parties will be required to pay the deposit and balance of bid price in respect of the total lots. If they fail to do so, they will be regarded as defaulting on these requirements and will be treated in the same way as any other party who defaults on payment (see **Default** below).

Any lots which remain unallocated because of the operation of these provisions will be offered for allocation in a separate, later allocation.

### **IMPORTANT NOTE**

*Applicants are warned that the operation of these requirements could result in their becoming liable to pay for lots even though those lots are in excess of the Minister's bidding limits if the association only becomes known during the course of, or after, the auction. It is therefore in the interests of applicants to notify any association with other applicants before the auction commences.*

### **Allocation of licences without an auction**

On the application form, there is provision for applicants to nominate the lots they want to acquire in the 2 GHz band. If the ACA believes it can satisfy every applicant's requirements without needing to go to an auction, it will offer all of the applicants a licence based on their nominated requirements 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 Part 3 of the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000 (Attachment 5)*).

If the ACA is unable to satisfy every applicant's requirements, 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**

If the ACA decides to proceed to an auction, the ACA will send a package of information to registered applicants in accordance with the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000* (see **Attachment 5**). This package, which will be sent at least 10 working days before the starting date of the auction set by the ACA, will contain:

- advice of the starting date and time of the auction;
- advice that the applicant is registered;
- confirmation of the applicant's initial eligibility in the auction (see section 2.5 of the Determination);
- advice of the number of waivers issued to applicants for the auction;
- the schedule for the first round of the auction;
- telephone and fax numbers to be used in communication with the ACA during the auction;
- the applicant's bidder identification number, passwords, encryption keys and transaction code keys for use in the auction;
- information about how to obtain important data to be used in preparing bids in the first round of the auction;

- advice of the number of stages set for the auction and the activity percentage required for each stage;
- advice on starting bids and the minimum bid increments (see below - **Minimum Bid Increments**).

### **Publication of applicants' names and bidder identification numbers**

The ACA will publish in the national press the name of all the applicants who have been registered to take part in the auction, together with their eligibility and their bidder identification numbers. The ACA will only publish the names of natural persons if those persons have consented to the release of this information. During the auction, applicants are identified in the auction results by their bidder identification number.

### **Getting Ready for the Auction**

#### Training

Before the start of the auction, the ACA will contact all registered applicants to advise them of the time, date and place of training on how to participate in the auction, and how to use the bidding software.

You are strongly advised to attend the training!

Nothing requires the ACA to provide training to clients outside Australia.

The ACA will also provide all applicants with an auction manual to assist them in participating in the auction.

#### Computer Bidding

The ACA has developed computer software to enable applicants to prepare their bids and transmit them to the ACA during the auction. This software is designed with point-and-click functionality to make bidding on lots easier. The ACA will provide the software, manuals and training. The ACA will grant a licence for the software to registered applicants. A copy of the licence is included in the application documents (**Attachments 16 and 17**). Applicants agree to the licence conditions by signing the Deed of Acknowledgement (**Attachment 14**).

Applicants will need to install the software on their computer and test it thoroughly to become familiar with it. Installation will take around 10 minutes. Applicants will need to ensure that they have appropriate archiving facilities for auction results files. One results file is produced for each round of the auction, and each file is likely to be of the order of 350 kB (uncompressed) in size.

The auction software communicates with the ACA using TCP/IP (internet) protocols. Bidders may connect to the auction system in any of the following ways:

- using a dial-up connection directly to a modem pool operated by the ACA specifically for spectrum auctions; or



- using an internet service provider (ISP); or
- using an internet connection over the bidder's local area network (LAN) connected to the internet.

### **IMPORTANT NOTE**

***If you intend bidding using an internet connection via a local area network, you must ensure that your network system administrator is available when the ACA Team visits to install your software. Your network administrator must have the authority to open ports on your firewall device as nominated by the ACA for file transfer protocol (FTP) traffic (ports 20 and 21).***

Prior to the auction the ACA will conduct a trial auction so that applicants can become familiar with the auction procedure before the allocation process begins. Details of the trial auction will be sent to all applicants.

### **Important Information for Overseas Applicants**

This ACA auction software contains high-level encryption systems that may be illegal in some other countries and which cannot be exported from Australia without a permit. The ACA therefore provides two versions of the bidding software. One for bidders in Australia, the other, without the encryption components, for use outside Australia.

### **IMPORTANT NOTE**

***Applicants intending to bid from overseas will need to obtain their own copy of the encryption software from a supplier. They should then insert the encryption software into the working directory of the ACA software.***

***The auction computer system works with the PGP 2.6.x encryption software. Details about some potential sources for PGP 2.6.x can be found on the internet at:***

<http://www.pgpi.com/download>

### **Minimum System Requirements for ACA Auction Software**

To run the ACA's auction software, applicants will need:

- a personal computer with a Pentium or higher microprocessor;
- Microsoft Windows 95, 98, NT 4.0 or Windows 2000 operating system - applicants should make sure the computer BIOS and operating system are up-to-date and y2k compliant;
- Screen resolution of 800x600 pixels;
- Minimum 16 MB of random access memory (RAM) (32 MB for NT 4.0);
- 10 MB of hard disk space for programs and local files plus capacity to store results files;
- 1x1.44 megabyte floppy disk drive;

- a modem or LAN connection to the internet; and
- Microsoft Office 97 or later, or at the very least, a complete installation of the latest version of the Microsoft Access 97 ODBC 3.0 driver set.

## Step 4 — Bid in the Auction

The ACA is using the simultaneous ascending auction system to allocate licences.

An introduction to the auction system is in **Chapter 2 - How is it Being Allocated?**

### Auction Rules

This form of auction has a number of rules which govern its progress, and serve to keep it fair. These rules are set out in the accompanying *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000* (**Attachment 5**).

### IMPORTANT WARNING

*The following information is intended to provide only a general overview of the allocation scheme which is contained in the Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000 ('the Determination'). Potential applicants should not rely on this information, but should instead rely on the content of the Determination itself. Potential applicants are also urged to seek appropriate independent legal and other advice in relation to the Determination. A copy of the Determination is at Attachment 5.*

### Auction Rounds

Bidding takes place over a number of rounds. In a round, applicants will be able to submit bids on the lots they want to win, or withdraw bids on lots they no longer wish to pursue; that is, it is possible in this form of auction to change bidding strategies. The ACA will then prepare results for this bidding.

Initially, the ACA plans two bidding rounds per day for the first week of the auction. At the beginning of the second week, the ACA plans to increase the pace of the auction to four rounds per day (one hour for bidding, one for results and analysis). The ACA reserves the opportunity to further increase the pace of the auction to up to eight rounds per day if it is in the interests of the management of the auction to do so. The ACA will consult with all bidders before changing the number of rounds per day.

Once all bidding has stopped the auction manager will declare the auction closed and will advise all applicants of the closure.

The auction manager has the discretion to stop the auction at a specified round, but must advise all registered applicants of this at least two rounds before the proposed closure.

## Electronic Bidding

The ACA will assign a Bidder Identification Number (BIN), a password, transaction codes keys, and encryption keys to each applicant. These are distributed by receipted courier delivery.

Each applicant will be offered access to a dial-in facility to the ACA similar to those offered by commercial internet service providers. Alternatively, the ACA software can transmit bids over the internet using third-party dial-up internet connections. The dial-in facility will allow applicants to connect to the auction computer by modem using a telephone number supplied by the auction manager.

The auction software is designed so that applicants need only connect to either upload bid files or download result files. All of the processing and preparation of bids can be done without being connected to the ACA.

To establish a connection, the auction software will transmit the applicant's *userid* (BIN) and a *password* issued by the ACA. This will be a different password to the one used for signing and encrypting bids.

Once connection is established, the applicant will be able to:

- download from the auction computer system a file containing the latest auction results; or
- upload to the auction computer system the applicant's bid file during a round.

An applicant may need to connect to the Auction Centre a number of times during a round:

- to bid; and
- to obtain the final results of the round.

The schedule for a round, made available to applicants one round in advance, will provide information to applicants about when to make these connections. This information will be contained in the results file at the end of each round.

### **IMPORTANT NOTE**

***Once the auction is underway, applicants are strongly encouraged to download EVERY results file produced by the ACA. An applicant's status can vary quite markedly from round to round, and you will need to view the results of every round to ensure that your eligibility is maintained.***

***Further, the results file for each round contains the schedule for the next round, and so contains important information about the times for bidding and for connecting to download auction results.***

***The ACA accepts no liability for the failure of an applicant to make or withdraw a bid as a result of that applicant being unaware of changes to the auction schedule.***

The results file will be published in Microsoft Access 97 format. A complete specification of the files and their contents is at **Attachment 21**.

## **Emergency Telephone Bidding**

In the event of what the ACA considers a technical emergency that precludes a bidder bidding on-line, the ACA may accept placement of bids by telephone. When an applicant contacts the ACA with their bids, the ACA needs to *authenticate* the instructions.

For each applicant in the auction, the ACA will prepare a list of ‘one-time’ transaction code keys for use in authenticating bids. Each list will contain a minimum of 100 transaction key codes. No two lists will be the same. No two codes will be the same, except as generated by chance. Each key will consist of eight randomly generated letters. Each key will be used once, in the order in which the keys are listed. The ACA will retain a copy of each list issued to the applicant.

Applicants bidding by telephone must identify each communication of bidding instructions to the ACA using the next available transaction code key by quoting the key to the ACA operator when asked.

Once a transaction code key is used, the applicant must strike through that key on their copy of the list and note the round and the date and time that it was used. The ACA will do the same.

Transaction code keys will be distributed by receipted mail or by safe-hand. Applicants should note that they will be bound by any bid made using their own transaction code keys, and will be required to pay the balance of bid price on any lot on which they are the highest bidder at the close of the auction as a result of such a bid. Consequently, if the applicant has any suspicion that the integrity of the keys has been compromised in transit or otherwise, it **MUST** advise the ACA immediately so that new keys can be prepared.

### ***IMPORTANT NOTE***

***Bidders should note that telephone bidding takes time, and bidders should try to avoid using such a facility when a round is near to closing. In placing a telephone bid, bidders should allow sufficient time for the bid to be entered by the ACA operator.***

## **Making Bids**

The ACA auction software is designed to help applicants see the implications of their strategy in terms of their commitment to pay, and their activity levels, which are important to preserving eligibility in the auction.

Applicants may bid on any lot or any combination of lots **provided that the total of the lot ratings of the lots on which they are active never exceeds their eligibility or the Minister’s bidding limits**. Bids that exceed an applicant’s eligibility or the Minister’s bidding limits will be rejected by the auction system.

The lots on which you may bid are not restricted to the lots nominated when working out your eligibility. The auction software will revise and display the activity status after every new bidding instruction or bid withdrawal instruction is added.

These bidding instructions can be changed by an applicant at any time ***until they are transmitted to the ACA***. Bidding instructions cannot be changed after transmission, but bids can be withdrawn in certain circumstances (see sections 4.21 - 4.23 of the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000 (Attachment 5)*).

Applicants can lodge their bid instructions only once in a round. Their instructions may contain bids on any lot or any combination of lots, subject to compliance with the Minister's bidding limits. Associated applicants (see **Associated Persons Procedures** section in this Chapter) will be required to either withdraw all but one of their applications, bid through a substituted applicant, or (if they decide to bid as separate entities) be restricted to only one set of bid instructions per round between them.

Applicants will use the ACA software to prepare a bid file which contains bid instructions referring to the lots and the amount bid on each lot. Each bid file will be transmitted to the ACA auction centre and will be automatically receipted. Bid files will be check-summed and encrypted prior to transmission to help preserve their integrity.

Telephone bidders will be asked to quote their BIN and transaction code key to the operator. The operator will then accept bid instructions identifying the lots being bid on and the amount of each bid. Telephone bidders will receive a fax-back confirmation of receipt of their bids.

Bidders should note, however, that telephone bidding takes time, and bidders should try to avoid using such a facility when a round is near to closing.

## **Auction Results**

The ACA will publish the results file for every round in the auction. Results files are published on the internet and are freely available.

The results will be available for download by registered applicants using the auction software, because the software uses the information in the results to help construct the next bids. The ACA will also release auction results for all rounds (and all auctions) on its spectrum auction web site at:

<http://203.37.2.230/Results/archive.htm>

## **Close of Auction**

The auction will be closed when a round passes with no new bids being made, and no “pro-active waivers” being exercised in the final stage of the auction.

The auction manager must advise all registered applicants of the close of the auction. Applicants who made the highest bids on lots at the close will be issued with a notice of payment due.

## Step 5 - Paying for Your Licence

When the auction closes, the ACA will send to each successful applicant a notice setting out:

- each lot on which they were successful;
- their high bid for that lot;
- the total of bid withdrawal penalties, and the lots on which they incurred bid withdrawal penalties; and
- the balance of the bid price after deduction of the eligibility payment.

This notice will be sent by receipted mail to the address provided in the application form.

Applicants will have 10 working days from the date of the notice in which to pay 10 per cent of the balance of the bid price.

Applicants will then have a further 20 working days to pay the remainder. If either payment is missed, all bids will be regarded as withdrawn bids and bid withdrawal penalties will be applied. These will be deducted from the eligibility payment, and where the eligibility payment is not sufficient to cover the penalty, the remainder may be deducted from any performance payment, or from monies paid to the ACA under the Deed of Financial Security. Payment must be made in accordance with s.1.9 of the Determination.

Defaulted lots may be allocated at another price based allocation process.

## Examples of How the Auction Procedures May Operate

To illustrate how the auction procedures might operate in practice, a number of examples are given below. Prospective applicants should, however, note that these examples are not exhaustive, contain only brief descriptions of the relevant procedures in each case, and are based on the ACA's understanding of the procedures.

Prospective applicants should not rely on these examples, nor on the more detailed descriptions of the ACA's interpretations of the auction procedures given above, but should satisfy themselves of the meaning of the procedures, and take such legal and other advice as they consider necessary.

### Minimum Bid Increments

For the purposes of the following example, assume that the Auction Manager has set the minimum bid increments as follows:

- s.2.17(1)(b) price per lot rating increment = \$10,000; and
- s.2.17(1)(c) percentage of high bid increment = five per cent (5%).

Until advised further by the Auction Manager, the minimum new bid that would be accepted by the ACA on any lot after a starting bid has been made would be the current highest bid on that lot, plus the higher of:

- \$10,000 per lot rating unit for the lot; or
- 5 per cent of the high bid currently recorded in the results.

### **Example**

Joe was not successful in his bid for Capital City 3. This lot has a lot rating of 750, and the last high bid was \$100 million, from Erica of Strategic Spectrum Management.

Joe calculates the minimum bid that he must make in order to continue bidding on these lots:

- \$10,000 per lot rating = \$7,500,000 ( $\$10,000 \times 750$ )
- 5% of \$100,000,000 = \$5,000,000

Therefore, the minimum acceptable bid in the next round on this lot would be  $\$100,000,000 + \$7,500,000 = \$107,500,000$

Joe bids.

The minimum bid is calculated by the auction system for every lot and is included in every results file produced by the ACA.

### **Activity requirements**

To prevent the auction stalling, applicants will have to be active in every round on lots with lot ratings equal to or greater than a specified percentage of their eligibility. Activity requirements are explained in **Chapter 2 - How is it Being Allocated?**

**Active** means they must either be recorded as the highest bidder on a lot in the previous round's results, and not withdraw the bid in the current round (see **Bid Withdrawal** below), or they must have made a valid bid on the lot in the current round. Activity relates to **valid** bids, not **highest** bids. A bid does not have to be the highest bid on a lot to count towards activity.

### **IMPORTANT NOTE**

***Any applicant that does not meet this activity target will have their eligibility reduced!***

### **Example**

In round 1, the ACA has set an activity target of 60 per cent.

Joe has initial eligibility of 2,325. To reach an activity percentage of 60 percent, Joe must either make new bids, or be recorded as the highest bidder in the previous round, on lots that have combined lot rating of  $60\% \text{ of } 2,325 = 1,395$ .

If Joe bids on Capital City 3 only (lot rating 750) he will not meet his activity target, because his activity will be only 750. His eligibility will be reduced. If he also bids on Capital City 4 (lot rating 1500), his activity will be  $750+1500 = 2,250$  which is *above* his activity target, and his eligibility will not be reduced.

Applicants not complying with the activity requirements will have their eligibility reduced unless they use a waiver. Applicants who lose eligibility for under-activity will only be able to bid in accordance with their reduced eligibility level. Eligibility is re-calculated every round, based on activity in the round. Bidders who do not meet their activity requirements will have a new reduced eligibility in the next round. That new eligibility will be calculated as their **current activity** divided by the **activity target** for the round (see section 4.19(2) of the *Radiocommunications (Spectrum Licence Allocation — 2 GHz Band) Determination 2000 (Attachment 5)*).

To avoid reductions in eligibility, applicants will need to meet the activity target for the round of the auction.

### Example

Continuing the example above, Joe decides to only bid on the Capital City 3 lot only, and not Capital City 4.

His activity, therefore, is 750.

At a 60 per cent activity target, Joe's new eligibility is:

$$= 750 \div 0.60$$

$$= 1250$$

which is only 53 per cent of his initial eligibility.

This is still enough eligibility to cover future bidding on Capital City 3, and some other lots.

### Bid Withdrawal Penalties

Applicants can withdraw their bids from a previous round. To prevent people making and then withdrawing bids frivolously, and perhaps delaying the auction process, all bid withdrawal is subject to a bid withdrawal penalty.

When a bid on a lot is withdrawn, the amount that the person making the withdrawal will be liable for will first depend on whether or not the lot is allocated in the auction, and then on the amount of the withdrawn bid, and whether another bid is made on the lot in question and not subsequently withdrawn. Applicants who have incurred a withdrawal penalty will be informed of their obligations at the end of the auction. Of course, there is no penalty if the lot eventually sells for a sum greater than the withdrawn bid.

If the lot that is the subject of the withdrawn bid is allocated to another applicant at the auction, the withdrawal penalty for the lot will be either 10% of the withdrawn bid, or



the difference between the withdrawn bid and the successful bid, whichever is the greater.

However, if the lot is not allocated at the auction, the withdrawal penalty for the lot will be the greater of 10% of the withdrawn bid, and the difference between:

- (a) the value of any lower bid that is made after the withdrawal and not later withdrawn; or
- (b) if there is no later bid made, zero.

### **Example**

Joe is the high bidder at \$100 million on Capital City 3. The history of bidding on this lot over a number of rounds is:

Erica    \$65 million

Joe       \$70 million

Erica    \$85 million

Joe       \$100 million

Joe notices that a different lot from the one he has been bidding on requires a minimum bid of only \$80 million.

Joe decides to switch his bidding to the cheaper lot, and withdraws his current standing \$100 million bid.

In the results file for the round when Joe withdrew his bid, the lot will show the default bidder (bidder 9999) as the highest bidder. The highest bid shown in the results will be \$85 million, which was the next highest bid made. The minimum bid for the next round will not include an increment, and will also show \$85 million.

In this situation, if Erica still wants the lot, she will have to re-make the previous \$85 million bid.

Assuming Erica does bid, if at the end of the auction no other bid is lodged on the lot, Joe will be liable for a bid withdrawal penalty of \$15 million, ie. the difference between his withdrawn bid and Erica's subsequent successful bid. (If Erica's bid had been \$95 million, Joe's liability would be 10% of his withdrawn bid, ie. \$10 million.)

If another bidder bids \$100 million or more on that lot, Joe will not be liable for any withdrawal penalty.

If an applicant withdraws a bid in the round in which the bid is made, the bidding on that lot will not count towards the applicant's activity in the round.