

# Auction Guidelines: Option to Deliver contracts for 25 – 26 March 2020 Emissions Reduction Fund auction

## Introduction

This document establishes the guidelines for the tenth Emissions Reduction Fund auction to be held on Wednesday 25 and Thursday 26 March 2020 to enter into an Option to Deliver contract (Option contract).

Potential applicants should read these guidelines in full.

The Clean Energy Regulator is offering Option contracts for the tenth Emissions Reduction Fund auction on a pilot basis, following positive feedback to a public consultation process held from 20 December 2019 to 31 January 2020.

There was general support from scheme participants for a more flexible and innovative contract to further assist investment in emissions reduction projects in Australia and enhance supply, by helping investors to better manage their price risks.

The outcomes of the Option contract pilot will inform the Clean Energy Regulator's approach to any future Option contract offering. New rules may be needed to help ensure future Option contract offerings align with our legislative obligations to purchase abatement at least cost, including preventing bidding behaviour in any subsequent auctions aimed at price gaming<sup>1</sup>. Any such rules would be developed through consultation with scheme participants and could include further refinements aimed at delivering administrative efficiencies. A possible approach might include allowing only one Option contract per project.

As a result, the framework for offering Option contracts may evolve overtime.

Applicants are reminded that bids must be competitive and bids for the Option contracts must reflect the increased value of the more flexible contract offering.

## Intent and features of the Option to Deliver contract

The Option contract is additional to the Fixed Delivery contract. The Option contract provides the right, but not the obligation, to sell carbon abatement to the Commonwealth at an agreed price. It

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<sup>1</sup> For example, where Australian Carbon Credit Units (ACCUs) were not delivered under an Option contract but were offered into a subsequent Option contract auction.

will allow contract holders to better manage their price and supply risks with a view to encouraging more carbon abatement projects as a result.

If a Seller is able to source higher pricing in the future from another party, or the anticipated abatement does not occur, or the Seller no longer requires the Option contract with the Commonwealth, then the Seller may reduce or cease deliveries to the Commonwealth under the Option contract without penalty under the contract.

In addition to providing the Seller with pricing certainty, an Option contract can be used to further underpin investment in carbon abatement projects across Australia. Option contracts may be used in negotiations with lenders or other parties to demonstrate what the Commonwealth will pay for abatement from a specified project, with no contractual barrier to seeking more lucrative contracts from other buyers. In effect the Option contract will provide assurance in the form of a minimum price for carbon abatement from a specified project.

In order to support the development of abatement projects, Option contracts offered as part of this auction will only be available to new projects or existing projects that are not connected to or identified as part of a portfolio of projects used to meet current contract obligations already committed to by the applicant<sup>2</sup>.

An Option contract with the Commonwealth has the following key features:

- it provides the Seller with the right, but not the obligation, to sell Australian Carbon Credit Units (ACCUs) to the Commonwealth at a set price within a set timeframe
- it provides security of a set price for ACCUs, which may be used to secure funding or other consents for project development
- flexible duration of up to 10 years for eligible projects
- the applicant has to be the participant of an Emissions Reduction Fund project (but not necessarily the participant of the project relating to the Option contract)
- all ACCUs delivered under the Option contract must be sourced from a single identified project
- where ACCUs are not delivered against a scheduled milestone (which may be extended to a later date in limited circumstances by mutual agreement), the right to deliver the ACCUs undelivered by the end of that milestone will lapse
- the contract can be held concurrently with a Fixed Delivery contract for the same project if the applicant successfully bids for both forms of contract during the 25-26 March 2020 auction process, noting that:
  - » The sum of the contracted abatement of the combined contracts must not exceed what could reasonably be generated by the project, as specified in the Forward Abatement Estimate for that project, and

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<sup>2</sup> This eligibility criteria will be reviewed as a part of the pilot's evaluation. It may be constrained in future auctions to newly registered projects only, to maintain a strong incentive for the development of new abatement projects.

- » Sellers are reminded that non-deliveries under Fixed Delivery contracts could trigger the Seller’s liability to pay liquidated damages to the Buyer and affect the Seller’s future participation in schemes administered by the Clean Energy Regulator (the agency) so deliveries will need to be preferenced towards Fixed Delivery contracts.
- where an applicant participates in the 25-26 March 2020 auction process for both Fixed Delivery and Option contracts but is only successful in receiving one contract, the applicant accepts that they will meet the terms of that contract. Preferential bidding will not be offered, and
- where bids are made in the 25-26 March 2020 auction processes for both the Option contract and a Fixed Delivery contract for the same project, the unit price bid for the Option contract must be less than the unit price bid for the Fixed Delivery contract.

### Compare your Carbon Abatement Contracts

	Fixed Delivery	Option
<b>Multi-year contracts</b>	✓	✓
<b>Fixed price</b>	✓	✓
<b>No obligation to deliver</b>	-	✓
<b>Can deliver abatement from any source</b>	✓	-
<b>Reduced outstanding quantity where delivery is not made</b>	-	✓
<b>Short term and immediate delivery</b>	✓	✓

Applicants should not rely solely on these guidelines, and should ensure that they have read and understood the Option to Deliver Code of Common Terms and how the Option contract and auction process may relate to their individual circumstances. In case of any conflict between these guidelines and the Option to Deliver Code of Common Terms, the Option to Deliver Code of Common Terms will prevail.

These guidelines are in addition to the [Guidelines for the tenth Emissions Reduction Fund auction](#)<sup>1</sup> released on 15 November 2019 for an auction to enter into a Fixed Delivery contract.

### Overview of the auction process

The agency will make purchases using the Option contract at a price determined through the auction, which will be a pay-as-bid reverse auction. An auction process covering the Fixed Delivery Carbon Abatement Contract as per the [Guidelines for the tenth Emissions Reduction Fund auction](#) will also take place on the same dates.

### What is a pay-as-bid reverse auction format?

- A *reverse* auction is an auction with a single buyer (the agency) and multiple sellers.
- At a *pay-as-bid* auction, each successful bidder receives the price they specify in their bid, which means different bidders may receive different prices.

Carbon abatement purchases in an auction will be in the form of ACCUs. Cash cannot be used in lieu of Option contract deliveries.

The auction will include only one round, so sequential bidding is not an option. Bidding is confidential and applicants making bids will not see what others are bidding. Bids must be submitted through an online bidding platform approved by the agency. The bidding platform will be AusTender. Bids will succeed solely on the basis of price, as explained in section C.

In seeking value for the Commonwealth and to reflect the value of the Option contract to the Seller, where bids are made in the 25-26 March 2020 auction process for both an Option contract and a Fixed Delivery contract for the same project, the bid price for the Option contract must be less than that for the Fixed Delivery contract.

Where auction registrations are applied for in the 25-26 March 2020 auction for both forms of contracts, the agency will conduct an assessment to be satisfied that the Seller would be able to deliver under both contracts if the bids were to be successful.

If an applicant's bid for an Option contract is successful, the applicant will automatically enter into an Option contract with the agency on behalf of the Commonwealth of Australia to have the right to deliver the Agreed Quantity of ACCUs at the price bid in that auction.

The agency will conduct the auction for Option contracts in accordance with these guidelines. These guidelines are divided into five sections:

- A. Project registration and contract establishment – auction qualification, registration and participation
  - » This section summarises the general requirements an applicant must meet to participate in the auction and secure a contract
- B. Disqualification and obligations of applicants and authorised bidders
  - » This section identifies reasons why the agency may disqualify an applicant or authorised bidder from participating in auctions or any other carbon abatement purchasing processes, as defined in the [Carbon Credits \(Carbon Farming Initiative\) Act 2011](#)<sup>ii</sup> (CFI Act)
- C. Auction bidding
  - » This section describes the guidelines that will apply to determine whether bids made in the auction are compliant, and the criteria the agency will use to determine successful bids

#### D. Auction suspension and cancellation

- » This section identifies reasons why the agency may suspend or cancel the auction

#### E. Auction information publication and deadlines

- » This section identifies the auction and contract information that the agency may publish as well as the information that will not be published

### About applications and their assessment

Applications for [project registration](#)<sup>iii</sup>, [auction qualification](#)<sup>iv</sup> and [auction registration](#)<sup>v</sup> must be submitted in the form approved by the agency, and can be submitted at the same time or sequentially, although they can only be approved by the agency sequentially. All forms are available via the [Client Portal](#)<sup>vi</sup>.

The agency will assess each auction qualification and registration application in accordance with a standardised assessment process, which has regard to the principles set out in sub-section 20G(3) of the CFI Act. This will include, but not be limited to, assessment of:

- the applicant's suitability to contract with the Commonwealth,
- the applicant's previous engagement with the agency's schemes, in particular, any other contracts or projects under the Emissions Reduction Fund, and any historical ability (which may include the agency's assessment of the applicant's performance, if any, under other projects and contracts under the Emissions Reduction Fund) to deliver the proposed Agreed Quantity of ACCUs from the relevant project, and
- the performance of the applicant or any of their Authorised Representatives in relation to any contracts entered into by them, which may include, but not be limited to, assessing whether:
  - » the applicant has demonstrated reasonable endeavours to fulfil any applicable Conditions Precedent under contracts to which it is or was party
  - » the applicant has breached in any manner any contract to which it is or was party
  - » the applicant has provided any representation or warranty in relation to any contract to which it is or was party or any of its projects that the agency believes is or was untrue, inaccurate, incomplete or misleading
  - » the applicant's behaviour in relation to contracts or projects unduly created unreasonable administrative effort for the agency.

The agency is not obliged to accept or approve an auction qualification or registration application. For clarity, and as provided under sub-section 20G(4) of the CFI Act, the mere fact that an applicant has a registered project does not automatically entitle the applicant to participate in the auction or have their auction qualification, auction registration or bid application accepted.



### **Authority to rectify minor and immaterial errors**

The agency is authorised to rectify any errors in any submitted auction qualification application, auction registration application or auction bid that the agency considers, in its sole discretion and acting in good faith, to be minor and immaterial. This authorisation does not place an obligation on the agency to rectify errors considered by it to be minor and immaterial.

## A. Project registration and contract establishment - auction qualification, registration and participation

Applicants who wish to enter into an Option contract will need to complete steps 1–4 outlined below for each contract.

The agency will only accept bids on behalf of, and contract with, applicants who are also participants of an Emissions Reduction Fund project(s) and who complete all the steps.

The auction processes for both the Fixed Delivery contract and the Option contract will be held concurrently. Applications for each process must be submitted separately.

### Step 1: Project registration

The project related to the bid must be registered by the agency and must meet all eligibility criteria required by the [Carbon Credits \(Carbon Farming Initiative\) Act 2011](#). For additional information, see [Step 1 – Apply](#).

### Step 2: Auction qualification

The applicant must be qualified by the agency to participate in auctions. This step establishes the commercial terms of the contract covering the project that will be entered into by the applicant if their bid is successful. The ACCU Delivery Schedule and price per unit is determined in later steps. For additional information, see [Auction qualification](#).

An Option contract can be secured for a new or existing project, providing that an existing project is not connected to, or identified as part of a portfolio of projects used to meet current contract obligations already committed to by the applicant. This exclusion covers projects that are either listed in existing contracts, have been used to deliver against existing or current contracts, or projects for which forms of assurance have been provided to the agency that the specified projects will be used to deliver towards existing contractual commitments.

- » As part of auction qualification, an applicant will be nominating one or more authorised bidders to submit, on their behalf, an auction registration application and an auction bid. If an applicant is an individual, the applicant may nominate themselves as their authorised bidder.
- » As part of the auction qualification process, the agency may enquire of applicants through a request for further information whether they have commenced engagement and/or how far advanced negotiations are with native title holders on eligible-interest holder consents.
  - › If undertaking a project on which there is a native title determination or claim, participants are encouraged to familiarise themselves with the agency's detailed [guidance on Native title, legal right and eligible interest-holder consent<sup>vii</sup>](#).
- » Where the registered project operates under the Human-Induced Regeneration and Native Forest from Managed Regrowth methods, participants are encouraged to familiarise themselves with the [method guidelines<sup>viii</sup>](#).

- » To participate in the auction, applicants must agree to the Option to Deliver Code of Common Terms v1.0. For a Fixed Delivery contract, version 3.0 of the [Code of Common Terms](#)<sup>ix</sup> applies.

### Step 3: Auction registration

This step establishes the delivery terms of the Option contract covering the project that will be entered into by the applicant if their bid is successful. See [Auction registration](#).

An applicant may register for an Option contract in relation to the project either concurrently with a Fixed Delivery contract, or solely for the Option Contract, providing that:

- the Option contract is only connected to a single identified project
- the total Agreed Quantity offered for sale by the applicant through that registration is not less than 2,000 ACCUs per year on average over the term of the delivery period
  - » The right to deliver ACCUs under an outstanding Scheduled Delivery milestone will lapse when the delivery milestone (which may be extended by mutual agreement in limited circumstances) expires. Actual deliveries may be less than 2,000 ACCUs per year.
- the Delivery Schedule should align with the timing and amount of abatement likely to be generated by the identified project
- the project is not related to an existing Fixed Delivery contract awarded at a previous auction, and
- the project is not related to an existing Option contract registration application for the same auction.

Multiple auction registrations for the same project will only be permitted where that particular project is utilised for registering only one of each Fixed Delivery contract and Option contract. Consequently, two registrations is the maximum number allowed for one identified project.

#### Flexible options

In addition to providing the right but not the obligation to sell ACCUs to the Commonwealth under an Option contract, other flexible options include:

- Delivery Schedules proposed by the Seller in accordance with the project's abatement profile
- partial contracting, which provides the Seller the opportunity to bring forward for contracting only part of the expected abatement generated from the project, and
- short term and immediate delivery contracts.

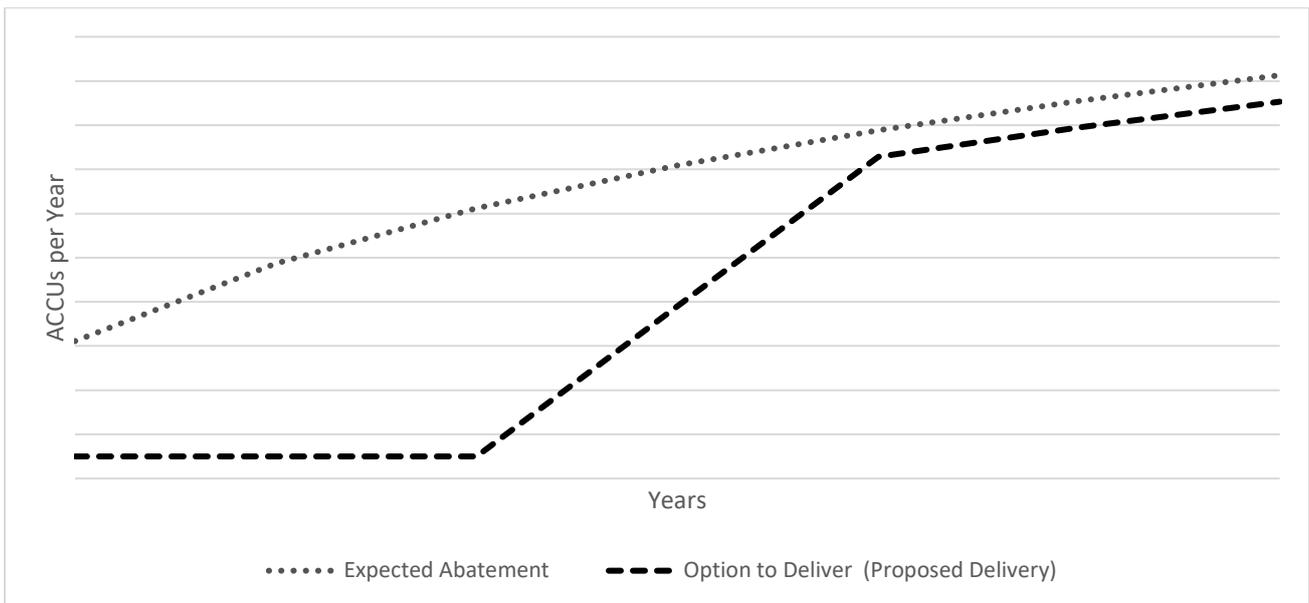
## Delivery Schedules

The agency encourages applicants to have regard to the following when developing their Delivery Schedule:

- sufficient time to set up the project and generate ACCUs
- sufficient time for [auditing<sup>x</sup>](#) and [reporting<sup>xi</sup>](#) on the project
- sufficient time to apply for ACCUs, including allowing up to three months for ACCUs to be issued by the Clean Energy Regulator, and
- how many deliveries of ACCUs (milestones) may be possible under an Option contract.

The Delivery Schedule should reference the timing and amount of abatement likely to be generated by the identified project. Where an Option contract is the sole contract connected to a project, the Delivery Schedule should not be unduly weighted towards the end of the contract period. For example, where more than two thirds of the contracted volume are scheduled for delivery in the second half of the contract period (and it is clearly not aligned with the expected issuances of ACCUs from the project), the agency would consider it to be backloaded and not consistent with the intent of the Option contract to facilitate the development of projects. Offers of Option contracts with backloaded Delivery Schedules will be adversely considered by the agency as they commit long term Commonwealth funding for abatement, which may be of higher risk of non-delivery.

### Example 1: Unacceptable profile – contracted abatement backloaded



The agency will only register the applicant for an Option contract at auction if the agency, acting in its sole discretion, is satisfied that the proposed Delivery Schedule is based on the capacity of the project to deliver.

Where modelling is available, it can be used to demonstrate the likely abatement that a project can deliver. For methods or projects where modelling is not available, other evidence may be provided.

### Delivery dates

- Early deliveries in the same financial year are permitted without prior approval from the Buyer.
- Avoid making deliveries too close to 30 June as they may take longer to process, slowing down the payments to you.
  - » *Please note: the undelivered Periodic Quantity associated with the Scheduled Delivery Date (which may be extended to such later date as may be mutually agreed by the parties) will lapse without contractual penalty.*

### Step 4: Auction participation

The final step<sup>xii</sup> in the formation of the Option contract involves the authorised bidder making a successful bid for the project at this auction through AusTender. This step establishes the financial terms of the contract, including the unit price to be paid by the Buyer to the Seller for each ACCU delivered.

#### Authorised bidder

An applicant must nominate an authorised bidder to submit, on the applicant's behalf, an auction registration application and an auction bid.

- If an applicant is an individual, the applicant may nominate themselves as an authorised bidder
- Initially, the nomination must be submitted to the agency through the auction qualification form. Authorised bidders may be removed, new or additional authorised bidders may be nominated, or details of existing authorised bidders may be modified, through an approved form given to the agency

The following persons cannot be an authorised bidder:

- an 'official of the Regulator', as this phrase is defined in section 4 of the *Clean Energy Regulator Act 2011*, or
- a person who has an account in the Australian National Registry of Emissions Units that is suspended under section 28D of the *Australian National Registry of Emissions Units Act 2011*

## B. Disqualification and obligations of applicants, participants and authorised bidders

### Disqualification from participating in carbon abatement purchasing processes

The agency may disqualify an applicant or authorised bidder from participating in carbon abatement purchasing processes indefinitely or for a specified period, if it believes on reasonable grounds that the applicant or authorised bidder has engaged in misconduct in relation to any scheme administered by the agency. In deciding whether to disqualify an applicant or authorised bidder, the agency may take into account whether the applicant, participant or authorised bidder has:

- breached a provision of these guidelines or any previous guidelines, or
- breached any reasonable direction given by the agency in relation to any current or previous auction, or
- is suspected of breaching any of the following that affects any carbon abatement purchasing process or relates to the conduct of the applicant, participant or authorised bidder:
  - » the *Carbon Credits (Carbon Farming Initiative) Act 2011*
  - » the *National Greenhouse and Energy Reporting Act 2007*
  - » the *Renewable Energy (Electricity) Act 2000*
  - » the *Australian National Registry of Emissions Units Act 2011*
  - » the *Corporations Act 2001*
  - » the *Competition and Consumer Act 2010*
  - » the *Criminal Code Act 1995*
  - » any other Commonwealth, State or Territory law that is relevant to a carbon abatement purchasing process, or the conduct of the applicant, participant or authorised bidder, or
- engaged in, is suspected to have engaged in or is, in the agency's sole view, likely in future to engage in conduct intended to affect the integrity of any carbon abatement purchasing process, or
- engaged in, is suspected to have engaged in or is, in the agency's sole view, likely in future to engage in any other conduct that the agency considers relevant.

The agency may publish on its website the name of any applicant, participant or authorised bidder who has been disqualified from participating in carbon abatement purchasing processes and the period of disqualification. Notice of disqualification will be given to the disqualified applicant, participant or authorised bidder.

## **Obligation not to disclose bidding strategy**

An applicant or authorised bidder must not disclose:

- a bid
- a proposed bid, or
- bid-related information that could reasonably be expected to affect or be capable of affecting the integrity or outcome of an auction

For clarity, this obligation does not expire once the auction is completed or bids made at the auction are determined as successful or otherwise.

An applicant or authorised bidder is not prevented from disclosing a bid, proposed bid or bid-related information:

- to the agency
- in the case of an authorised bidder, to their applicant
- to an authorised bidder for the same project during the 25-26 March 2020 bidding window for a Fixed Delivery contract and an Option contract
- to an authorised bidder who is nominated, in writing, by the applicant to submit a bid on behalf of the participant
- for the purpose of obtaining finance
- for the purpose of obtaining legal or financial advice, or
- if the disclosure is required or permitted by or under any law.

## **Obligation not to cause a carbon abatement purchasing process to become unfair or disorderly**

An applicant or authorised bidder must not:

- act in a manner that disrupts, or is likely to disrupt, the fair and orderly conduct of a carbon abatement purchasing process, or
- fail to act if a failure that occurs disrupts, or is likely to disrupt, the fair and orderly conduct of a carbon abatement purchasing process, or
- take advantage of a fault or malfunction in the carbon abatement purchasing process bidding platform, or another system operated by the agency, or
- take advantage of any other circumstance that may affect the integrity of a carbon abatement purchasing process.

## C. Auction bidding

### Eligible bids

An eligible bid for the auction is a bid which:

- is submitted in the form approved by the agency for that action through AusTender (the form **must not be converted to a pdf** format)
- contains no errors other than errors that the agency considers, in its discretion and acting in good faith, to be minor and immaterial
- is submitted within the bidding window for that auction, as published by the agency
- is submitted by a person who is an authorised bidder of an applicant for the project covered by the bid and that person is not excluded from being an authorised bidder
- is submitted on behalf of an applicant that has registered for that auction in relation to the project relating to the bid
- is submitted by an authorised bidder where neither the authorised bidder nor, if the authorised bidder is different from the applicant, the applicant is currently disqualified from participating in carbon abatement purchasing processes
- if bids are made in the 25-26 March 2020 auction process for both an Option contract and a Fixed Delivery contract for the same project, the Option contract bid is for a lower bid unit price than the bid unit price of the Fixed Delivery contract
- includes the GST-exclusive unit price per ACCU and is an amount rounded to the nearest cent, and
- is the first eligible bid made for the Option contract.
  - » Any subsequent bid for an Options contract made in this auction on behalf of the applicant relating to the same project will be disregarded.

For the avoidance of doubt, a non-compliant bid is not precluded from being an eligible bid if it is rendered non-compliant by any errors that the agency considers, in its discretion and acting in good faith, to be minor and immaterial and if the agency has rectified those errors pursuant to its authority to do so given under these guidelines.

### Withdrawal or cancellation of an eligible bid

An authorised bidder of an applicant may withdraw an eligible bid made at the auction during the bidding window for the auction, via the form (available via AusTender) and means approved by the agency. Withdrawal of an eligible bid will result in cancellation of the applicant's registration to participate in the auction for the project to which the bid pertained.

Following withdrawal, all bids submitted for the project at the Option contract auction process will become ineligible bids and will not be considered by the agency. The applicant may register to participate and bid for the project relating to the bid at other auctions for which the applicant is auction qualified if an Option contract is offered.

The agency may cancel an eligible bid made at the auction on behalf of an applicant:

- if requested during the bidding window for the auction by an authorised bidder of the applicant, and
- if the agency is satisfied that the authorised bidder is unable to submit an auction registration withdrawal form during the bidding window due to a fault or malfunction relating to:
  - » a computer system
  - » a facility (within the meaning of the *Telecommunications Act 1997*), or
  - » a carriage service (within the meaning of that Act) provided to the public.

The agency's cancellation of an applicant's eligible bid made at the auction will also result in cancellation of the applicant's registration to participate in the auction for the project to which the bid pertained.

Once the bidding window for the auction has closed, an eligible bid submitted during the bidding window cannot be withdrawn.

### Ranking eligible bids

All eligible bids will be placed in a bid stack and ranked by price offered, with the lowest price bid being ranked first and the highest price bid being ranked last.

Eligible bids within a bid stack offering the same price will be ranked equally and treated equally.

Auction processes held at the same time will have separate bid stacks and will be assessed separately. However, each purchasing decision may be informed by the bid stack of the other process as it may help to determine what value for money is and ensure the purchasing principles of the CFI Act are met. Concurrent bids for the same project made by the same applicant will be cross checked to ensure that bids for Option contracts are less than bids for Fixed Delivery contracts.

### Determining successful bids

In determining which eligible bids are successful the agency will have regard to the principles set out in sub-section 20G(3) of the CFI Act.

#### Where a pre-determined threshold of eligible bids is met or exceeded:

The agency will apply a bid analysis tool to the ranked bid stack to assess bid prices and volumes based on value for money parameters determined before the auction. Successful bids will be selected up to the point that, in the sole discretion of the agency, allows it to select the combination of price and volume that offers the best balance between the principles of purchasing at the lowest cost and securing the highest volume.

All eligible bids will be considered and will be assessed in ranked order, starting with the first ranked bid(s). Applicants are reminded of the need to bid competitively as bids will be assessed on the basis of their ability to contribute to least cost abatement.

The agency will have regard to the pricing of the concurrent process for Fixed Delivery contracts in determining the overall value for money for both auction processes.

The above process for determining successful bids from the bid stack is subject to sufficient funds being available to the agency as part of the Emissions Reduction Fund.

If the selection of bid(s) according to the above process would cause the available funds to be exceeded then the agency will select whole bids from the bid stack starting from the first ranked bid(s) until the available funds are exhausted.

If selecting all the bids that are ranked equally would cause the available funds to be exceeded, then none of those bids will be selected nor will any further bids be selected. If selecting the first ranked bid/s would cause the available funds to be exceeded, then no bids will be selected.

All bids selected as a result of the above process will be successful for the auction.

## D. Auction suspension and cancellation

The agency may suspend or cancel the auction if the agency believes on reasonable grounds that:

- the auction cannot continue, or be conducted, in a fair and orderly manner
- it is likely that the auction will not be able to continue, or be conducted, in a fair and orderly manner, or
- the agency forms the view, in its sole discretion, that it is likely that the outcome of an auction may not align with the purchasing principles as set out in subsection 20G(3) of the CFI Act.

The agency may suspend or cancel the auction at any time before it publishes the final outcome of the auction.

Circumstances that might prevent an auction continuing, or being conducted, in a fair and orderly manner include, but are not limited to, the following:

- a fault or malfunction in the carbon abatement purchasing process bidding platform, or another system operated by the agency
- a circumstance that compromises the integrity of the auction process
- a failure or suspected failure by an applicant or an authorised bidder to comply with these guidelines
- a failure or suspected failure by an applicant or an authorised bidder to comply with a direction given by the agency relating to the auction process
- a breach or suspected breach of any of the following that affects the auction or the conduct of applicants, participants or authorised bidders:
  - » the CFI Act
  - » the *Corporations Act 2001*
  - » the *Competition and Consumer Act 2010*

- » the *Criminal Code Act 1995*
- » any other Commonwealth, State or Territory law that is relevant to an auction, or the conduct of applicants, participants or authorised bidders, or
- » the occurrence, suspected occurrence or possible future occurrence of conduct intended to affect the integrity of an auction.

If an auction is suspended, the agency will restart or cancel the auction, within a reasonable timeframe. If the agency is satisfied that a suspended auction can continue and be conducted in a fair and orderly manner, the auction will be restarted and will continue. If an auction is cancelled, it may be rescheduled and the date(s) and bidding window of the rescheduled auction will be published on the agency website.

## E. Auction information publication and deadlines

For the purpose of this section, **business day** means any day (other than a Saturday or Sunday or any day between 26 December in a year and 1 January in the following year) on which commercial banks are open for general banking business in Sydney and the Australian Capital Territory.

### Notifying authorised bidders

The agency will notify each applicant and authorised bidder of the result of their bid made at this auction, within five business days of the closing of the auction.

If the agency does not notify an applicant or its authorised bidder of the result of their bid made at this auction within ten business days of the closing of the auction, and no information is published on the Emissions Reduction Fund Register (published as the Carbon Abatement Contract Register) by the agency during that time which indicates that the applicant's bid has resulted in an Option contract having been entered into with the agency on behalf of the Commonwealth, the applicant may revoke their bid. An applicant cannot revoke their bid in any other circumstances.

### Information publication

The agency:

- may publish on its website information about an auction, including any summary information or statistics relating to the auction that the Agency considers appropriate, and
- will publish on its website annual (financial year) reports about purchases of ACCUs as required by section 163A of the CFI Act.

The Carbon Abatement Contract Register will also set out information about each contract that the agency has entered into, on behalf of the Commonwealth, including the:

- name of the Seller and their project
- duration of the contract and the number of ACCUs that may be delivered under it,
- the delivery conditions of the contract (Option or Fixed Delivery contract),
- number of ACCUs the Seller has delivered to the agency, and

The agency will not publish confidential commercial information such as the unit price to be paid under any contract.

### Key deadlines for the tenth Emissions Reduction Fund auction

Activity	Timeframe	Date
<a href="#">Project registration application</a> deadline	30 business days before the auction	10 February 2020 (midnight AEDT)
<a href="#">Auction qualification application</a> deadline	25 business days before the auction	17 February 2020 (midnight AEDT)
<a href="#">Auction registration application</a> deadline	Five business days before the auction	17 March 2020 (midnight AEDT)
Closing time for declaration of eligible projects	Five business days before the auction	17 March 2020 (midnight AEDT)
Auction window		25 March 2020 (9am AEDT) to 26 March 2020 (5pm AEDT)
Results released, authorised bidder notified and average price per tonne of abatement published	Within five business days after auction close	2 April 2020

<sup>i</sup> <http://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/Guidelines-for-the-tenth-Emissions-Reduction-Fund-auction.aspx>

<sup>ii</sup> <https://www.legislation.gov.au/Series/C2011A00101>

<sup>iii</sup> <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-1-Apply>

<sup>iv</sup> <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/auction-qualification>

<sup>v</sup> <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/auction-registration>

<sup>vi</sup> <http://www.cleanenergyregulator.gov.au/OSR/CP/Pages/default.aspx>

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vii <http://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/Native-title-legal-right-and-eligible-interest-holder-consent-guidance.aspx>

viii <http://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/Guidance-on-stratification-evidence-and-records-under-HIR-and-NFMR-methods.aspx>

ix <http://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/code-of-common-terms-v3.aspx>

x <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-3-Reporting-and-auditing/Audit-Requirements>

xi <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-3-Reporting-and-auditing/reporting>

xii <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/bidding-at-an-auction>