



Guidelines for the tenth Emissions Reduction Fund auction to be held on 25 - 26 March 2020

Introduction

This document establishes the guidelines for the tenth Emissions Reduction Fund auction to be held on Wednesday 25 and Thursday 26 March 2020.

Except as provided otherwise in this document, previous auction guidelines do not apply in relation to the tenth auction.

The Clean Energy Regulator (the agency) purchases carbon abatement through a carbon abatement purchasing process. The process can include a reverse auction, tender or other process.

Carbon abatement purchases in the tenth auction will be in the form of Kyoto Australian carbon credit units (ACCUs). The agency will make these purchases through a carbon abatement contract (contract) at a price determined through the auction, which will be a pay-as-bid reverse auction.

The tenth auction will continue the 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.

For the purposes of entering into a contract, one or more projects must be nominated that have or could generate ACCUs. However, ACCUs generated by non-nominated projects can be delivered in satisfaction of contractual delivery obligations. Where project participants (participants) have ACCUs available for immediate sale, the agency encourages them to register and bid for a short term, partial or immediate delivery contract. Please see [contract duration](#) for more information.

The auction will include only one round, so sequential bidding is not an option. Bidding is confidential and participants making bids will not see what others are bidding.

If a participant's bid is successful, the participant will automatically enter into a contract with the agency on behalf of the Commonwealth of Australia covering the project(s) related to the bid. A

participant making a successful bid will secure a contract with the Commonwealth to deliver the agreed quantity of ACCUs at the price bid in that auction.

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.

The agency will conduct the auction 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 a participant must meet to participate in the auction and secure a contract.
- B. Disqualification and obligations of participants and authorised bidders
 - » This section identifies reasons why the agency may disqualify a participant 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](#)ⁱ (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](#)ⁱⁱ, [auction qualification](#)ⁱⁱⁱ and [auction registration](#)^{vi} 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](#).

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 participant’s suitability to contract with the Commonwealth
- the participant’s ability to deliver the proposed agreed quantity of ACCUs from the relevant project(s), and
- the performance of the participant or any of their authorised representatives in relation to any carbon abatement contracts entered into by them or any of its projects, which may include, but not be limited to, assessing whether:

- » the person has demonstrated reasonable endeavours to fulfil any applicable conditions precedent under contracts to which it is or was party
- » the person has failed to deliver ACCUs (whether in whole or in part, or in accordance with one or more agreed or varied delivery schedules) under, or has in any other manner breached, any contract to which it is or was party
- » the person 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 person has used the flexibility provisions under a carbon abatement contract to which it is or was party to preference deliveries of ACCUs to a third party, and
- » the person'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 section 20G(4) of the CFI Act, the mere fact that a participant has a registered project does not automatically entitle the participant to participate in the auction or have their auction qualification, auction registration or bid application accepted.

The contract covering the project(s) commences automatically upon notification by the agency of the bid's success and acceptance of the participant's offer made at the auction qualification step.

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

Participants, who wish to enter into a contract, will need to complete steps 1–4 outlined below for each contract.

The agency will only accept bids from, and contract with, participants of projects who complete all the steps.

Step 1: Project registration

Project(s) 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](#)ⁱⁱ.

Step 2: Auction qualification

The participant must be qualified by the agency to participate in auctions. This step establishes the commercial terms of the contract, covering the project(s) that will be entered into by the participant if their bid is successful, with the ACCU delivery schedule and price determined in later steps. For additional information, see [Step 2 - Auction qualification](#)ⁱⁱⁱ.

Flexible options

You may choose to use flexible contract options including:

- partial contracting which provides you with the opportunity to bring forward part of the expected abatement generated from the project/s.
- securing a conditional Commonwealth contract which is contingent on you entering into a further contract with a third party to sell part of the project's abatement
- conditional contracts providing you with time to establish third party agreements, obtain regulatory approvals, or meet other specified conditions that are required to establish your project, and
- short term and immediate delivery contracts

Please note: there are limits on short term and immediate delivery contracts. A project can have a maximum of three short term contracts, or a maximum of 10 immediate delivery contracts over the project's crediting period.

See [contract duration](#) for more information.

- » As part of auction qualification, a participant will be nominating one or more authorised bidders to submit, on the participant's behalf, an auction registration application and an auction bid. If a participant is an individual, the participant may nominate themselves as their authorised bidder.
- » As part of the auction qualification process, the agency may enquire of participants 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](#)^{iv}.
- » 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](#).
- » To participate in the auction, participants must agree to version 3.0 of the [Code of Common Terms](#)^v.

Step 3: Auction registration

This step establishes the delivery terms of the contract covering the project(s) that will be entered into by the participant if their bid is successful. See [Step 2 - Auction registration](#)^{vi}.

The agency will not register a participant for the auction in relation to the project(s) if:

- (1) a registration for the project(s) for the auction already exists (i.e. only one auction registration is allowed for each project at any one auction), or
- (2) the project(s) is already subject to an outstanding contract (except in the circumstances of the exceptions outlined below), or
- (3) the total quantity offered for sale by the participant through that registration:
 - (a) will be less than 2,000 ACCUs per year on average over the term of the delivery period, where the delivery period specified in the delivery terms provided through that registration relates to a [standard or short term duration contract](#)^{vii}. However, this minimum total quantity requirement does not apply if all the projects covered by an auction registration have been registered under the Carbon Farming Initiative before 13 December 2014, or
 - (b) will be less than 10 per cent of the cumulative forward abatement estimate of all such projects, or 15,000 ACCUs, whichever is lower, where the delivery period specified in the delivery terms provided through that registration relates to an [immediate delivery contract](#)^{viii}.

Exceptions:

Despite point 2 outlined above, the agency may register a participant for the auction in relation to a project or group of projects that is already subject to an outstanding contract if each of the conditions (a) and (b) below is met:

- (a) the applicable methodology determination for the project(s) is the Carbon Credits (Carbon Farming Initiative–Savanna Fire Management–Sequestration and Emissions Avoidance) Methodology Determination 2018 (the “2018 savanna sequestration method”), and
- (b) the 2018 savanna sequestration method became the applicable methodology determination for the project(s) pursuant to section 30A of the Carbon Credits (Carbon Farming Initiative) Rule 2015 (CFI Rule) or section 130 of the CFI Act.

Further, despite point 2 outlined above, the agency may register a participant for the auction in relation to a project or group of projects that is already subject to an outstanding contract if each of the conditions (c) and (d) below is met:

- (c) the applicable methodology determination for the project(s) is a savanna emissions avoidance determination, within the meaning of that term in the 2018 savanna sequestration method, and
- (d) the participant offers to contract subject to a condition precedent that the 2018 savanna sequestration method will become the applicable methodology determination for the project(s) pursuant to section 30A of the CFI Rule or section 130 of the CFI Act.

For each of the above exceptions, the agency will only register the participant for auction if all other requirements are satisfied and the proposed agreed quantity, as determined by the agency acting in its sole discretion, does not exceed the additional ACCUs that may be generated by the project(s) as a result of changing to the 2018 savanna sequestration method.

Delivery Schedules

The agency encourages participants 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](#) and [reporting](#) 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 may be possible under a carbon abatement contract.

Mind your dates

- Delivery milestones later in a financial year may generally provide more flexibility as you may deliver early in the same financial year without prior approval.
- Avoid setting delivery milestones on dates which fall between Christmas Day and New Year’s Day or very close to 30 June as they may take longer to process.

Step 4: Auction participation

The final step^{ix} in the formation of the contract involves the authorised bidder of the participant making a successful bid for the project(s) at this auction, through AusTender. This step establishes the financial terms of the contract, including the unit price to be paid for each ACCU delivered.

Authorised bidder

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

- If a participant is an individual, the participant may nominate themselves as their 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 participants and authorised bidders

Disqualification from participating in carbon abatement purchasing processes

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

- breached a provision of these guidelines or any previous guidelines, or
- breached a direction given by the agency relating to any auction, or
- is suspected of breaching any of the following that affects any carbon abatement purchasing process or the conduct of participants or authorised bidders:
 - » 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 participants or authorised bidders
- 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 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 participant or authorised bidder.

Obligation not to disclose bidding strategy

A participant 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.

A participant 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 participant
- to an authorised bidder who is nominated, in writing, by the participant 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

A participant 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 auction 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 a participant for the project(s) covered by the bid and that person is not excluded from being an authorised bidder
- is submitted on behalf of a participant that has registered for that auction in relation to the project(s) relating to the bid
- is submitted by an authorised bidder where neither the authorised bidder nor, if the authorised bidder is different from the participant, the participant is currently disqualified from participating in carbon abatement purchasing processes
- includes the GST-exclusive unit price per ACCU and is an amount rounded to the nearest cent, and
- is the first eligible bid made on behalf of a participant in that auction in relation to the project(s) relating to the bid.
 - » Any subsequent bid made on behalf of the participant relating to the same project(s) at that auction 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 a participant 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 participant's registration to participate in the auction for the project(s) to which the bid pertained.

Following withdrawal, all bids submitted for such project(s) at the auction will become ineligible bids and will not be considered by the agency. The participant may register to participate and bid for the project(s) relating to the bid at subsequent auctions for which the participant is auction qualified.

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

- if requested during the bidding window for the auction by an authorised bidder of the participant, 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 a participant's eligible bid made at the auction will also result in cancellation of the participant's registration to participate in the auction for the project(s) 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 offering the same price will be ranked equally and treated equally.

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. The agency will have regard to the number of bids received in order to determine successful bids.

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.

No benchmark price will be set for the auction. All eligible bids will be considered and will be assessed in ranked order, starting with the first ranked bid(s). Participants 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 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 selecting any 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 will 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 will 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 a participant or an authorised bidder to comply with these guidelines
- a failure or suspected failure by a participant 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 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 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 participant 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 a participant 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 participant's bid has resulted in a contract having been entered into with the agency on behalf of the Commonwealth, the participant may revoke their bid. A participant 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 contractor and their project
- duration of the contract and the number of ACCUs to be delivered under it, and
- number of ACCUs the contractor has delivered to the agency.

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
Project registration application deadline	30 business days before the auction	10 February 2020 (midnight AEDT)
Auction qualification application deadline	25 business days before the auction	17 February 2020 (midnight AEDT)
Auction registration application 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

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

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

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

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

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

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

^{vii} <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/contract-duration>

^{viii} <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/contract-duration>

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