

Guidelines for the eighth Emissions Reduction Fund auction on 10-11 December 2018

Introduction

The Clean Energy Regulator (Agency) purchases emissions reductions through a carbon abatement purchasing process. This process can include a reverse auction, tender or other process.

This document establishes the guidelines for the eighth Emissions Reduction Fund auction on 10 – 11 December 2018. Except as provided otherwise in this document, previous auction guidelines do not apply in relation to the eighth auction.

Emissions reduction purchases 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 auction will include only one round, so sequential bidding is not an option. Project participants (participants) making bids will not see what others are bidding.

Each bid made at the auction will relate to one or more projects registered for the Emissions Reduction Fund. 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.

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

The Agency will only accept bids from, and contract with, participants of projects who complete the following four steps.

Participants who wish to enter into a separate contract for another (or, in a case where the exception under step 3 below applies, for the same) project or group of projects, will need to complete the steps 1–4 outlined below for each contract.

Step 1: Project registration

Project(s) related to the bid must be registered by the Agency and must meet all eligibility criteria for registration required by the CFI Act, including the project(s) being based on approved methods. See [Step 1 – Apply on the Agency’s website](#)ⁱⁱ.

Step 2: Auction qualification

The participant must be qualified by the Agency to participate in auctions in relation to the project(s). 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. See [Step 2 - Auction qualification on the Agency’s website](#)ⁱⁱⁱ.

- » 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.
- » 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, as part of the auction qualification process.
 - » Participants are encouraged to familiarise themselves with the detailed [guidance](#)^{iv} on Native title, legal right and eligible interest-holder consent that the Agency has prepared if undertaking a project on which there is a native title determination or claim.
- » To participate in the auction, participants must agree to version 3.0 of the [Code of Common Terms](#)^v.

Step 3: Auction registration

The participant must be registered by the Agency to make a bid at the auction in relation to the project(s). 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 on the Agency's website](#)^{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) if the project(s) is already subject to an outstanding contract (except in the circumstances of the exceptions outlined below), or
- (3) the minimum total quantity offered for sale by the participant through that registration:
 - (a) will be less than 2000 ACCUs per year on average over the term of the delivery period, in the case 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, in the case 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 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 Carbon Credits (Carbon Farming Initiative) Rule 2015 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 Kyoto ACCUs that may be generated by the project(s) as a result of changing to the 2018 savanna sequestration method.

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 (principally, the unit price to be paid for each ACCU delivered).

About applications and their assessment

Participants or, for auction registration and auction participation, their authorised bidders must complete and submit applications in the form approved by the Agency for each of these steps.

Applications for project registrationⁱⁱ, auction qualificationⁱⁱⁱ and auction registration^{vi} can be submitted at the same time or sequentially, although they can only be approved by the Agency sequentially.

The Agency will assess each **auction qualification and auction 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 under any contract entered into by them. This will include, but not be limited to, assessing whether:
 - » the participant or authorised bidder 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 party
 - » the participant or authorised bidder has provided any representation or warranty in relation to any contract to which it is party or any of its projects that the Agency believes is or was untrue, inaccurate, incomplete or misleading.

The Agency is not obliged to accept/approve an auction qualification or auction 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 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.

Authorised bidder

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

- 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.
- If a participant is an individual, the participant may nominate themselves as their authorised bidder.

The following persons are excluded from being 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 for a period of up to two years, if it believes on reasonable grounds that the participant or authorised bidder has engaged in misconduct in relation to any carbon abatement purchasing process. 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
- 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 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 a carbon abatement purchasing process, 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 any carbon abatement purchasing process.

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
- 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
- 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
- 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, or on behalf of a participant, who is not 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 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.

Benchmark price

The Agency will set a benchmark (or ceiling) price for the auction, which will not be disclosed. In setting the benchmark price for the auction, the Agency will have regard to the principles set out in sub-section 20G(3) of the CFI Act.

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. In addition, the Agency will apply a bid analysis tool to the bid stack to assess bid prices and volumes based on value for money parameters determined before the auction.

The Agency will determine successful bids from the bid stack as follows:

- The Agency will only consider bids that are less than the benchmark price set for the auction. Any bid that is higher than the benchmark price will be removed from the bid stack and excluded from consideration.
- Starting with the first ranked bid(s), the Agency will identify the bid(s) that straddle(s) 25 per cent of the volume offered for sale through bids in the bid stack. All bids ranked earlier than the straddling bid(s) will be selected.
- The straddling bid(s), and bids in the bid stack ranking after the straddling bid(s), will be selected at the sole discretion of the Agency, up to the point that allows the Agency 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. That point becomes the variable volume threshold for this auction.

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, or
- it is likely that the auction will not be able to continue, or be conducted, in a fair and orderly manner.

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 or the auction benchmark price.

Key deadlines for the eighth Emissions Reduction Fund auction

| Activity | Timeframe | Date |
|---|--|---|
| Project registration application deadline | 30 business days before the auction | 26 October 2018 (midnight AEDT) |
| Auction qualification application deadline | 20 business days before the auction | 9 November 2018 (midnight AEDT) |
| Auction registration application deadline | Five business days before the auction | 30 November 2018 (midnight AEDT) |
| Closing time for declaration of eligible projects | Five business days before the auction | 30 November 2018 (midnight AEDT) |
| Auction window | | 10 December 2018 (9am AEDT) to 11 December 2018 (5pm AEDT) |
| Results released, authorised bidder notified and average price per tonne of abatement published | By the end of four business days after auction close | 17 December 2018 |

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/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/understanding-contracts/types-of-contracts/sample-contract>

^{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/understanding-contracts/types-of-contracts>

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

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