



**Australian Government**  
Clean Energy Regulator


**EMISSIONS  
REDUCTION  
FUND**

# **Guidelines for Emissions Reduction Fund Auction 12 to be held on 12–13 April 2021**

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## Introduction

This document establishes the guidelines for Emissions Reduction Fund (ERF) Auction 12 to be held on 12–13 April 2021.

Except as otherwise provided in this document, previous auction guidelines do not apply in relation to ERF Auction 12.

The Clean Energy Regulator (the agency), on behalf of the Commonwealth, purchases carbon abatement through a carbon abatement purchasing process. Carbon abatement purchases are in the form of Kyoto Australian carbon credit units (ACCUs), and 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.

ERF Auction 12 will comprise two separate carbon abatement purchasing processes – one purchasing process to establish Fixed Delivery contracts, and the other purchasing process to establish Optional Delivery contracts (these are the two contract types). These guidelines apply to both purchasing processes and contract types, and potential applicants should read the guidelines and linked information carefully to ensure they select the contract type that is best for their individual circumstances.

The carbon abatement purchasing processes for the two contract types will be run in parallel on the same schedule of dates provided in this document.

All references to auction in this document are taken as referring to both carbon abatement purchasing processes, unless otherwise specified.

You are advised to seek your own legal advice about the contract before participating in an Emissions Reduction Fund auction.

### **ERF auctions - the pay-as-bid reverse auction format:**

- 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.
- A *reverse* auction is an auction with a single Buyer (the agency) and multiple Sellers.

### **Note for soil carbon projects**

As announced on 2 October 2020, project proponents of soil carbon projects may be eligible for an advance payment for a certain number of ACCUs from a carbon abatement contract to support meeting the costs of soil sampling. To be eligible for an advance payment, the soil carbon project must either enter a new contract through the auction process and apply for an advance payment contract variation, or be added to an existing contract through agreement with the contract holder to an existing contract which has an advance payment variation already applied to it. Full details can be found on [the agency's website](#)<sup>i</sup>.

## Definitions

The following terms are defined for the purposes of these auction guidelines:

**Applicant:** A Proponent for a registered ERF project who offers to enter the registered ERF project into an auction and who wishes to become a Seller under an ERF contract.

**Authorised Bidder:** An individual nominated by an Applicant to provide the Delivery Terms for an offer for an ERF contract and to make and withdraw the auction bid for the offer.

**Authorised Representative:** An individual nominated by an Applicant to send and receive binding notices for an ERF contract secured by the Applicant.

**Bid Form:** The application form used to submit an auction bid through AusTender. The form also includes the Financial Terms and Participant Declaration.

**Buyer:** The Clean Energy Regulator, on behalf of the Commonwealth of Australia, who will purchase ACCUs delivered under the terms of an ERF contract.

**Person:** any of the following:

- a body corporate
- a trust
- a corporation sole
- a body politic
- a local governing body
- an individual.

**Proponent:** A Person who is responsible for and has the legal right to carry out an ERF project.

**Seller:** An Applicant who is successful during the auction and enters into a contract to sell ACCUs to the Buyer.

## Auction overview

### Submitting applications and bids

To participate in an auction, applications for [project registration](#)<sup>ii</sup>, [auction qualification](#)<sup>iii</sup> and [auction registration](#)<sup>iv</sup> must be submitted in the form approved by the agency and can be submitted at the same time or sequentially by the applicable deadline for that application (set out below), although they will only be approved by the agency sequentially. All forms will be available via the [Client Portal](#)<sup>v</sup>. The auction bid can only be submitted during the bidding window (specified below).

The agency will only contract with Applicants who are also Proponents of a registered ERF project and who successfully complete all steps to the auction (that is, auction qualification, auction registration and auction bid).

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 [Carbon Credits \(Carbon Farming Initiative\) Act 2011](#)<sup>vi</sup> (the CFI Act). The mere fact that an Applicant has a registered ERF project does not automatically entitle the Applicant to participate in the auction or have their application for auction qualification, auction registration or auction bid accepted.

The auction will include only one bidding round, so sequential bidding is not possible. Auction bidding is confidential and Applicants and Authorised Bidders will not see what others are bidding.

Auction bids must be submitted through [AusTender](#)<sup>vii</sup> as the agency approved online bidding platform.

A successful auction bid – that is, an auction bid that is accepted by the agency – will automatically secure a contract of the selected contract type (Fixed Delivery or Optional Delivery) with the Commonwealth; at the price bid in the auction; and for the agreed quantity of ACCUs to be delivered (or that may be delivered) under an Optional Delivery contract.

### Stages and timing

#### To participate in an auction and secure an ERF contract, you must:

1. Register an ERF project
2. Qualify to participate in the auction
3. Register for the auction, and
4. Submit an auction bid that is accepted by the agency.

Strict deadlines exist for the submission of applications and late applications will not be assessed for the current auction. Any ERF project registration or auction qualification applications submitted after the due date may be considered for a later auction, unless withdrawn.

#### Key deadlines:

Activity	Due date
ERF Project Registration application	Thursday, 18 February 2021 (midnight AEDT)
Auction Qualification application	Tuesday, 2 March 2021 (midnight AEDT )
Auction Registration application	Wednesday, 31 March 2021 (midnight AEDT)
Auction Bid window	Monday, 12 April 2021 (9am AEST*) to Tuesday, 13 April 2021 (5pm AEST*)

\*In NSW, VIC, TAS, SA and ACT daylight savings time ends on 4 April 2021.

## Components of an ERF contract

All ERF contracts comprise the following components:

- **Code of Common Terms** – [The Code of Common Terms](#)<sup>viii</sup> sets out the standard rights and obligations of all parties under the contract. These terms are:
  - » non-negotiable;
  - » common to all contracts of the same type that are secured at the same auction (Note: The Option to Deliver Code of Common Terms applies to Optional Delivery contracts and differs from the Code of Common Terms applicable to Fixed Delivery contracts); and
  - » agreed to by all Applicants when applying through an auction qualification application to qualify to participate in an auction.
- **Commercial Terms** – The Commercial Terms are established through auction qualification and set out details about the Applicant and the ERF project(s) covered by the contract. Fixed Delivery contracts can also specify conditions precedent as part of the Commercial Terms.
  - » Conditions precedent are conditions that must be met before the obligation to deliver under a Fixed Delivery contract comes into force.
  - » Conditions precedent are not available for Optional Delivery contracts.
- **Delivery Terms** – The Delivery Terms of the contract are established through auction registration and set out the delivery period; and when and how many ACCUs the Seller will deliver (for a Fixed Delivery contract) or may deliver (for an Optional Delivery contract), if the Applicant's bid is successful.
- **Financial Terms** – The Financial Terms are provided by the auction bid and set out the price per ACCU the Seller will be paid for ACCUs delivered under contract.

## Application assessment

The agency will assess each auction qualification and auction registration application in accordance with standardised assessment processes, which have 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, including any outstanding liabilities or unmet obligations;
- the Applicant's history of meeting or failing to meet obligations to deliver ACCUs (which may include an assessment by the agency of the Applicant's performance, if any, under other ERF projects and contracts); and
- the performance of the Applicant or any of their Authorised Representatives in relation to any contracts entered into by them, or any of their projects, which may include, but not be limited to, assessing whether they have:
  - » demonstrated reasonable endeavours to fulfil any applicable conditions precedent under Fixed Delivery contracts to which they are or were a party;
  - » breached, in any manner, any contract to which they are or were party, including failing to deliver ACCUs (whether in whole or in part, or in accordance with one or more agreed or varied delivery schedules);

- » provided any representation or warranty in relation to any contract or ERF project that the agency believes is, or was, untrue, inaccurate, incomplete or misleading;
- » preferenced sales of ACCUs to a third party to the detriment of delivery of ACCUs scheduled under a Fixed Delivery contract; or
- » exhibited behaviour in relation to contracts or ERF projects that has created unreasonable and excessive administrative effort for the agency.

### Minor and immaterial errors

By participating in an auction, the Applicant authorises the agency 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.

**The following is a non-exclusive process for determining whether a minor and immaterial error exists in an application for auction qualification, auction registration or an auction bid:**

- the error has been made during a clerical process involving the preparation or submission of the form; and
- the existence of the error is evident from a normal reading of the submitted form or communications with the Applicant or their representative; and
- the required correction of the error is obvious to the agency.



## Contract types and purchasing processes

The upcoming auction will offer both Fixed Delivery and Optional Delivery contract types. The auction qualification application requires Applicants to select which contract type they wish to enter into. In limited circumstances, a project may be eligible to seek both forms of contract in parallel auction processes.

Features and eligibility requirements differ for each contract type, and Applicants should consider the options carefully to determine which contract type is best for their individual circumstances.

### Compare your ERF contract types:

	Fixed Delivery carbon abatement contracts	Optional Delivery carbon abatement contracts
Fixed price	✓	✓
Obligated to deliver ACCUs	✓	-
Can deliver ACCUs derived from any ERF project	✓	-
Must deliver ACCUs from a single identified ERF project	-	✓
Only available for ERF projects that are new or have not been previously contracted	-	✓
Can have Conditions Precedent	✓	-
Multi-year contracts	✓	✓
Short term and immediate delivery	✓	✓

## Fixed Delivery Carbon Abatement Contract

When entering into a Fixed Delivery contract, the Applicant agrees to deliver a set number of ACCUs (the agreed quantity) at a set price over the term of the contract. The agreed quantity of ACCUs must be delivered according to the delivery schedule negotiated during auction registration.

To apply to enter a Fixed Delivery contract, an applicant must be the Proponent of an ERF project and be able to deliver the agreed quantity from ACCUs currently held or from future abatement from nominated, uncontracted projects.

Multiple ERF projects can be offered into a Fixed Delivery contract, with each project contributing to the total agreed quantity of ACCUs to be delivered.

Once a Fixed Delivery contract is in place, ACCUs may be delivered from the nominated project(s) or from other ERF projects or the broader market (this is sometimes referred to as “the make good provision”).

Following the successful completion of a contract, an ERF project may be recontracted with further Fixed Delivery contracts, so long as the total contracting period does not exceed the project’s crediting period, and the number of short term or immediate delivery contracts does not exceed the current limits. Please see [contract term](#)<sup>ix</sup> for more information.

The Fixed Delivery contract is also available to Applicants who wish to negotiate a conditions precedent in order to:

- provide time to establish third party agreements, obtain regulatory approvals or financial support, or meet other specified conditions that are required to establish the ERF project prior to the beginning of delivery obligations under the contract; and/or
- secure a conditional contract which is contingent on entering into a further contract with a third party to sell part of the ACCUs derived from the ERF project.

## Optional Delivery contract

### Background

Optional Delivery contracts provide the Seller the right, but not the obligation, to deliver up to a set number of ACCUs at a set price to the Commonwealth within a set timeframe. The Optional Delivery contract allows Sellers to better manage their price and supply risks with a view to encouraging more carbon abatement projects. The Optional Delivery contract encourages greater participation in the ERF by facilitating new project investment and allowing ACCUs to be purchased by either the Commonwealth or other purchasers.

### Requirements

An Optional Delivery contract can be secured for a new or existing ERF project, providing that the project has not previously been contracted and 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.

The indicated quantity of ACCUs for an Optional Delivery contract should be less than or equal to the abatement deliverable by the ERF project including any submitted project variation applications to expand the area of a soil or vegetation project.

### Features

The Optional Delivery contract has the following key features:

- It provides the Seller with the right, but not the obligation, to deliver up to a specified number of ACCUs to the Commonwealth at a set price within a set timeframe.
- Where ACCUs are not delivered in full against a scheduled milestone by the due date, the right to deliver the outstanding ACCUs scheduled for delivery against that milestone will lapse.
  - » In limited circumstances, where a delivery cannot be made due to reasons beyond the control of the Seller, the agency may agree to extend a scheduled milestone to the earliest reasonable date.
- All ACCUs delivered under the Optional Delivery contract must be derived from the single ERF project covered by the contract. That project is identified at auction qualification.
- An ERF project can only be the subject of an Optional Delivery contract once. Subsequent Fixed Delivery contracts may be available to the project upon successful completion of the Optional Delivery contract.
- Conditions precedent are not available for use with an Optional Delivery contract.
- Where the Seller has concurrent Optional Delivery and Fixed Delivery contracts for the identified project, deliveries must be preferenced to the Fixed Delivery contract.

### Preventing site preferencing from discouraging deliveries to contracts

Some ERF methods allow an incremental accumulation of sites and abatement activities to a specified ERF project over time. In some cases, the same activities can be added to projects under different methods. For example, a number of the energy efficiency and herd management methods cover the same eligible activities to reduce emissions. Methods that cover similar activities are known as “method families”.

If a Seller had multiple Optional Delivery contracts for ERF projects under the same ERF method or method family, new sites could be selectively preferenced or added to projects linked to the Seller’s highest priced Optional Delivery contracts, to the exclusion of deliveries against their lower priced Optional Delivery contracts. This behaviour could undermine the purchase of least cost abatement that is required of the agency and the carbon abatement purchasing process.

In general, the rule to prevent optional delivery projects being used in this way does not apply to scheme participants with soil and vegetation projects adding more areas of land to their projects over time.

The agency may not accept or approve an auction application for a project using a method other than a soil method or the vegetation method family, that, if successful, could create concurrent Optional Delivery contracts in the same method family for the Seller and their associated entities. In determining who is an associated entity the agency will refer to the definition in Section 50AAA of the *Corporations Act 2001 (Cth)*. The agency may accept an auction application where it is satisfied that site preferencing behaviour will not impact the delivery capacity of any such contract held by the Seller and their associated entities.

### **Optional Delivery contracts and site preferencing**

Where a Seller or their associated entities have more than one ERF project under the same method family (other than from the soil method and vegetation method families), the agency will consider the application with regard to the following rules:

- » The Seller's auction application may not be accepted or approved where, if it were accepted, it could create concurrent Optional Delivery contracts in the same method family for the Seller and their associated entities.
- » The Optional Delivery contract must be for a minimum contract period of three years.
- » If a Seller secures an Optional Delivery contract at the auction, the Seller and their associated entities may not be accepted for another Optional Delivery contract under the same method family at any carbon abatement purchasing process that closes within 3 years from the date of the auction at which the contract was secured.

The agency will continue to monitor for instances of site preferencing behaviour and will continue to review auction settings.

### **Important reminders for Optional Delivery contracts**

- Optional Delivery contracts cannot be obtained for ERF projects that:
  - » are or were covered by an Optional Delivery contract or a Fixed Delivery contract obtained at a previous auction, or
  - » have been identified as forming part of a portfolio of projects used to meet contract obligations already committed to by the Applicant under an existing or previous Fixed Delivery contract.
- Sellers and their associated entities can only have one Optional Delivery contract at a time for projects covered by ERF methods in certain method families that allow for incremental site preferencing over time (see the previous section).

## Applying for both an Optional Delivery contract and a Fixed Delivery contract for the same ERF project

An Optional Delivery contract can be held concurrently with a Fixed Delivery contract for the same ERF project if the applicant successfully bids at the same auction for both forms of contract, noting that:

- the ERF project must comply with the eligibility requirements for both types of contract;
- separate applications for each contract type must be made, and these will be individually assessed against the criteria applying to the relevant contract type;
- the sum of the contracted abatement of the combined contracts must not exceed what could reasonably be generated by the ERF project; and
- the unit price bid for the Optional Delivery contract must be less than the unit price bid for the Fixed Delivery contract.

Sellers are reminded that:

- non-deliveries under Fixed Delivery contracts could trigger the Seller's liability to pay liquidated damages to the Buyer and adversely impact the Seller's future participation in schemes administered by the agency; and
- deliveries against Fixed Delivery contracts must be preferenced over deliveries against an Optional Delivery contract if both contracts are held against the same project.

Where an Applicant applies for both an Optional Delivery contract and a Fixed Delivery contract against the same ERF project during the same auction, but is only successful in receiving one contract, the Applicant accepts that they will meet the terms of that contract.

## Participating in the auction

ERF project Proponents who wish to participate in an auction and secure a contract will need to complete the steps outlined below for each contract. The agency will only accept bids from, and contract with, ERF project Proponents who complete all the steps.

The auction qualification, auction registration and auction bid steps must be completed separately for each ERF contract that the Applicant wishes to enter into.

### ERF project registration

To be entered into an auction the ERF project must be registered by the agency and must meet all eligibility criteria required by the CFI Act. For additional information, see [Step 1 – Apply](#)<sup>x</sup>.

### Auction qualification

The auction qualification establishes the offer by the Applicant to enter into a contract and provides the Commercial Terms. It identifies and includes:

- the Proponents who choose to become Applicants, and any Proponent who consents to the ERF project being entered into the auction but does not wish to become a Seller;
- the ERF project;
- the type of contract being sought; and
- agreement to the Code of Common Terms that corresponds to the selected contract type.

For additional information, see [Step 2 - Auction qualification](#)<sup>xi</sup>.

Applicants for auction qualification will be required to provide an indication of the agreed quantity of ACCUs they would deliver during the delivery period, along with evidence of their capacity to deliver ACCUs from current holdings and/or from the ERF project's expected abatement in that period.

- This indication is used by the agency to make a preliminary assessment of the abatement offer. The agency may seek to negotiate refinements to the proposed commercial terms and/or the indicated quantity or seek additional evidence to support the indicated quantity.
- Modelling information can be provided to support the likely abatement that an ERF project can deliver, or other evidence may be provided for methods or projects where modelling is not available.

Applications for a Fixed Delivery contract will have the opportunity to negotiate conditions precedent as part of the auction qualification. Optional Delivery contracts cannot be subject to conditions precedent.

The Applicant must nominate one or more Authorised Representatives and one or more Authorised Bidders:

- The Authorised Representative is an individual with the authority to send and receive binding contract notices to/from the agency on behalf of the Applicant.
- The Authorised Bidder is an individual with the authority to submit and withdraw, on the Applicant's behalf, an auction registration application and an auction bid.
- If an Applicant is an individual, they may nominate themselves as the Authorised Representative and/or the Authorised Bidder.
- The same individual can be both Authorised Representative and Authorised Bidder.

## Authorised bidder

The nomination of the Authorised Bidder is submitted to the agency through the auction qualification form. After this, Authorised Bidders may be removed, new or additional Authorised Bidders nominated, or details of existing Authorised Bidders modified by submitting a request to the agency using an approved form, provided this is done prior to the start of the auction bid window.

The following individuals cannot be an Authorised Bidder:

- 1 an 'official of the Regulator', as this phrase is defined in section 4 of the *Clean Energy Regulator Act 2011*, or
- 2 an individual who has an account in the Australian National Registry of Emissions Units (ANREU) that is suspended under section 28D of the *Australian National Registry of Emissions Units Act 2011*.

Applicants with an auction qualification approved in the 15 months before Auction 12 (i.e. since 12 October 2019) do not need to re-apply for auction qualification unless:

- » the auction qualification is withdrawn
- » the ERF project to which it relates is revoked
- » a project nominated in the offer was successful in securing an Optional or Fixed Delivery contract since it was approved
- » the version of the contract Code of Common Terms specified in the application is no longer offered, or
- » auction qualification criteria have changed so that the auction qualification must be updated to be complete and valid.

If undertaking an ERF project on land subject to a native title determination or claim, Applicants are encouraged to familiarise themselves with the agency's [detailed guidance on native title, legal right and eligible interest-holder consents](#)<sup>xii</sup>. For more information, please see [Native Title](#)<sup>xiii</sup>.

The agency may request Applicants to advise whether they have commenced engagement and how far negotiations have advanced with native title holders on obtaining eligible interest-holder consents.

## Switching contract types during the auction assessment process

An Applicant may switch the contract type for which they have applied to another contract type at any time before the close of the auction qualification deadline by withdrawing the original application and submitting a new application by the auction qualification application deadline.

In circumstances where it can be demonstrated that the original application has been submitted for an incorrect or possibly ineligible contract type, a switch may be able to occur after the auction qualification application deadline so that the application may be considered for the current auction. Such a change after the auction qualification deadline can only be made on with the express written permission of the agency, which it may grant or refuse in its sole discretion and which it has no obligation to provide, and must:

- be in relation to a complete and valid auction qualification application that was submitted prior to the auction qualification deadline
- be for the same ERF project and Applicant, and

- be completed within 10 business days following the auction qualification deadline. This will require:
  - » providing advice to the agency (such as via email from an Applicant to [contracts@cer.gov.au](mailto:contracts@cer.gov.au)) that the Applicant wishes to switch contract type, and
  - » receiving written permission from the agency to switch the application between contract types, and
  - » withdrawal of the current auction qualification application, and
  - » submission of a new, complete and valid auction qualification application for the new contract type and any supplementary information required.

## Auction registration

The auction registration further supplements the offer to enter into a contract and provides the Delivery Terms, including the delivery period, the agreed quantity of ACCUs and the delivery schedule. See [Step 2 - Auction registration](#)<sup>xiv</sup>.

The auction registration is only valid for the single auction that is specified in the application.

## Delivery period and contract term

The delivery period is the period, during which the deliveries under the contract may be completed. This is also referred to as the contract term, and there are three options available:

- » Standard contract - the maximum contract term can be either 7 or 10 years, depending on the crediting period of the ERF project being brought forward into the auction,
- » Short term contracts - any contract term with multiple deliveries over a period less than the standard contract length of 7 or 10 years, and
- » Immediate delivery contract - for ERF project Proponents seeking to deliver ACCUs within agreed period shortly after the contract is formed.

Please see [contract term](#)<sup>xv</sup> for more information.

The auction registration application will only be accepted if the agency, acting in its sole discretion, is satisfied that the proposed delivery schedule is based on the capacity of the Proponent to deliver the contracted abatement.



### Flexible contracting terms

Flexible contract options include:

- Long term contracts of both contract types are available for a maximum of 7 or 10 years depending on the crediting period of the ERF project being brought forward into the auction
- Short term and immediate delivery contracts
  - » ACCUs for immediate delivery contracts must be present in the Seller's ANREU account at the time of auction registration and must be delivered within 30 calendar days of the auction.
- Partial contracting available in both contract types, which provides the Seller the opportunity to bring forward for contracting only part of the expected abatement generated from the project.

#### **Important notes:**

- » *Optional Delivery contracts are limited to a single contract for the identified ERF project – i.e. each ERF project can only ever have one Optional Delivery contract associated with it.*
  - » Multiple short term and immediate delivery contracts need to be Fixed Delivery contracts. An ERF project may have a maximum of three short term contracts, or a maximum of 10 immediate delivery contracts over the project's crediting period.
- See [contract term](#)<sup>xvi</sup> for more information.

### Developing a delivery schedule

The agency encourages Applicants to have regard to the following points when developing their delivery schedule:

- Ensure that sufficient time is allocated before the first scheduled contract delivery for the ERF project to start and begin generating ACCUs.
- Ensure that sufficient time is allowed before any scheduled delivery for the ERF project to be audited (if required) and the crediting application to be assessed.
  - » Note that up to three months is allowed for the agency to assess a complete crediting application and issue ACCUs.
- The number of ACCUs that the project is likely to generate and how many scheduled contract deliveries (milestones) may be possible during the contract term.

### Delivery dates

- Delivery milestones later in a financial year may provide more flexibility. This is because early deliveries in the same financial year are permitted without prior approval from the agency.
- To prevent delays in payment, avoid setting delivery milestones on dates which fall between Christmas Day and New Year's Day, or in late June.
- Applicants should avoid having delivery milestones within the final three months of Fixed Delivery contracts, or within the final 4 weeks of Optional Delivery contracts.

#### **Please note:**

*The undelivered quantity of ACCUs associated with the Scheduled Delivery Date of an Optional Delivery contract will lapse upon the passing of that date.*

The applicant should carefully consider the timing and scale of ACCU deliveries that would be likely under their proposed contract. The delivery schedule should be within the capacity of the abatement generation profile of the identified ERF project(s) and should not be unduly weighted towards the end of the contract period (known as backloading). Backloading can create delivery risk to the Commonwealth.

*For example, where more than two thirds of the contracted volume is scheduled for delivery in the second half of the delivery period (and the delivery schedule is clearly not aligned with the expected issuances of ACCUs from the project), the agency would consider the delivery schedule to be backloaded. Negotiations may be conducted to confirm an acceptable schedule.*

### Auction registration restrictions

The agency will not accept an auction registration application in relation to an ERF project if:

- 1) the project is subject to a contract which has not been completed (except in the circumstances of the project transferring to the 2018 savanna sequestration method as outlined below), or
- 2) the total quantity offered for sale in that auction registration:
  - a) will be less than 2,000 ACCUs per year on average over the term of the delivery period; or
  - b) will be less than 2,000 ACCUs in total, where the delivery period relates to an immediate delivery contract.

Multiple auction registrations for the same ERF project in the same auction will only be permitted when applying for a concurrent Fixed Delivery and Optional Delivery contract.

### ERF project transferring to the 2018 savanna sequestration method

Although concurrent Fixed Delivery contracts are not permitted for a single ERF project, an exception exists for projects that have or will transfer to the *Carbon Credits (Carbon Farming Initiative–Savanna Fire Management–Sequestration and Emissions Avoidance) Methodology Determination 2018* (the “2018 savanna sequestration method”).

When a contracted ERF project registered under the savanna emissions avoidance method transfers to the 2018 savanna sequestration method, there may be an increase in the number of ACCUs that are generated by that project. This additional abatement may be contracted by a concurrent Fixed Delivery contract,

subject to standard auction qualification criteria. A Seller may apply for a concurrent Fixed Delivery contract if:

- a) the contracted ERF project has transferred to the 2018 savanna sequestration method; or
- b) the Applicant notifies their intention to transfer the ERF project to the 2018 savanna sequestration method and negotiates a condition precedent to the contract to that effect.

#### **Transferring to the 2018 savanna sequestration method**

The transfer of project methodology is performed pursuant to section 30A of *the Carbon Credits (Carbon Farming Initiative) Rule 2015* or section 130 of the CFI Act. Separate project requirements and eligibility criteria exist for the transfer, and applicants should familiarise themselves with these to determine if a transfer is suitable for their circumstances. Please refer to [project registration](#)<sup>xvii</sup> for further information.

All other auction requirements must also be satisfied and the proposed agreed quantity, as determined by the agency acting in its sole discretion, must not exceed the additional ACCUs that may be generated by the ERF project as a result of transferring to the 2018 savanna sequestration method.

## Auction bidding

The auction bid further supplements the offer to enter into a contract and establishes the Financial Terms of the contract, including the unit price to be paid by the Buyer to the Seller for each ACCU delivered under the terms of a contract.

If the auction bid is accepted by the agency, then an ERF contract (based on the Code of Common Terms applicable to the contract type being sought, and the terms offered in the auction qualification, auction registration and auction bid) will automatically come into force.

### Eligible auction bids

An eligible auction bid:

- is submitted in the form approved by the agency by the Authorised Bidder through [AusTender](#)<sup>xviii</sup> (or, as noted below, where a bid is unable to be made through AusTender and the agency agrees, a bid may be made in accordance with the agency's explicit instructions);
  - » the submitted auction bid form should be submitted in the original Microsoft Word format, it should **not** be converted to PDF or any other format;
  - » In exceptional circumstances, and if all other bid eligibility requirements are fulfilled, the agency may accept as eligible an auction bid that is unable to be made through AusTender. The agency's advance written permission is mandatory for any submission of an auction bid outside of AusTender, and so the Authorised Bidder should contact the agency immediately if they are encountering technical or other difficulties with the AusTender process. For avoidance of any doubt, the agency will not accept as eligible any auction bid submitted outside of AusTender that has been made without the specific advance written permission of the agency or that has not been made exactly in the way that the agency has instructed.
- contains no errors other than errors that the agency considers, in its sole discretion and acting in good faith, to be minor and immaterial;
- is submitted strictly within the auction bidding window, as published by the agency within these guidelines;
- is submitted on behalf of an Applicant that has registered for that auction in relation to the ERF project and the selected contract type;
- is submitted by an individual who is an Authorised Bidder of the Applicant, and where neither the Authorised Bidder nor the Applicant has been excluded or 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;
- is not for a contract that has had a bid withdrawn;
- is the first eligible bid made on behalf of an Applicant in the auction in relation to the ERF project and the contract type to which the bid pertained.
  - » Any subsequent bid made on behalf of the Applicant relating to the same ERF project and contract type at the auction will be disregarded; and
- if the bid is for an Optional Delivery contract for an ERF project, is lower than another eligible bid at the auction for a Fixed Delivery contract for the same project.

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 sole discretion and acting in good faith, to be

minor and immaterial and if the agency rectifies those errors pursuant to its authority to do so given under these guidelines.

### Withdrawal of an eligible auction bid

An Authorised Bidder of an Applicant may withdraw an eligible auction bid during the auction bidding window, via the form (available via [AusTender<sup>xix</sup>](#)) and means approved by the agency. Withdrawal of an eligible auction bid will result in cancellation of the Applicant's registration to participate in the auction for the ERF project and contract type to which the bid pertained.

Following withdrawal of the auction bid, all bids submitted for that ERF project and contract type at the auction will become ineligible bids and will not be considered by the agency. The Applicant may apply to register and bid for the ERF project and contract type relating to the bid at subsequent auctions for which the Applicant is auction qualified.

The agency may withdraw an eligible auction bid on behalf of an Applicant:

- if requested during the auction bidding window by the Applicant or an Authorised Bidder of the Applicant; and
- if the agency is satisfied that the Applicant or 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.

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

### Ranking eligible auction bids

Auction processes held at the same time for the different contract types will have separate bid stacks and will be assessed separately. All eligible auction bids for a contract type will be placed in a bid stack comprising only the eligible bids for the same contract type and ranked by price offered, with the lowest price bid being ranked first and the highest price bid being ranked last. However, each purchasing decision may be informed by the bid stack of the other process to help determine value for money and to ensure the purchasing principles set out in sub-section 20G(3) of the CFI Act are met.

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

Concurrent bids for the same project for different contract types will be cross checked to ensure that the Optional Delivery contract price bid is less than the price bid for the Fixed Delivery contract.

### Determining successful auction bids

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

For each bid stack, all eligible bids will be considered and will be assessed in ranked order, starting with the first (lowest price) ranked bid. Applicants are reminded of the need to bid competitively as auction bids will be assessed on the basis of their ability to contribute to least-cost abatement.

The agency will apply a bid analysis tool to each ranked auction bid stack to assess bid prices and volumes based on value for money parameters determined before the auction. For each bid stack, successful auction bids will be selected up to the point that, in the sole discretion of the agency, the combination of bid price and volume offers the best balance between the purchasing principles set out in sub-section 20G(3) of the CFI Act, including purchasing at the lowest cost and securing the highest volume.

The agency will assess and select bids in the ranked order from either bid stack and will not be obliged to process any one bid stack fully before assessing and selecting bids from the other bid stack. Accordingly, bids may be selected in the ranked order from either bid stack at the discretion of the agency having regard to the principles set out in sub-section 20G(3) of the CFI Act.

The above process for determining successful auction bids from a bid stack is subject to sufficient funds being available to the agency as part of the ERF. For each bid stack:

- If the selection of auction bids 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 until the available funds are exhausted.
- If selecting all the auction 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 auction bid would cause the available funds to be exceeded, then no bids will be selected.

All auction bids selected as a result of the above process will be successful in securing contracts.

### **Notifying auction results**

The agency will notify each Applicant and Authorised Bidder of the result of their auction bid made at the auction, as soon as possible after the closing of the auction.

## 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
- term of the contract and the number of ACCUs that may be delivered under it,
- contract type (Optional Delivery or Fixed Delivery contract), and
- the number of ACCUs the Seller has delivered to the agency.

The agency will not publish confidential commercial information, such as the unit price, for any contract.

## **Applicant and Authorised Bidder auction compliance**

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

An Applicant or Authorised Bidder must not disclose:

- an auction bid;
- a proposed auction bid; or
- any 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 when auction bids are determined as successful or otherwise.

An Applicant or Authorised Bidder is not prevented from disclosing an auction bid, proposed auction bid or bid-related information:

- to the agency;
- in the case of an Authorised Bidder, to their Applicant;
- to an Authorised Bidder who is nominated, in writing, by the Applicant to submit a bid on behalf of the Applicant;
- 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;
- 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.

### **Disqualification of an Applicant or Authorised Bidder 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 or Authorised Bidder has:



- breached a provision of these guidelines or any previous guidelines;
- breached a direction given by the agency relating to any auction;
- 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;
- 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; or
- is suspected of breaching any of the following that affects any carbon abatement purchasing process or the conduct of Applicants 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 Applicants or Authorised Bidders.

The agency may publish on its website the name of any Applicant 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 or Authorised Bidder.

## 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; or
- a breach or suspected breach of any of the following that affects the auction or the conduct of Applicants or Authorised Bidders:
  - » the *Carbon Credits (Carbon Farming Initiative) 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 an auction, or the conduct of Applicants 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.

## Key deadlines for ERF Auction 12

Activity	Timeframe	Date
<a href="#">Project registration application</a> <sup>xx</sup> deadline	33 business days before the auction	Thursday, 18 February 2021 (midnight AEDT)
<a href="#">Auction qualification application</a> <sup>xxi</sup> deadline	25 business days before the auction	Tuesday, 2 March 2021 (midnight AEDT)
<a href="#">Auction registration application</a> <sup>xxii</sup> deadline	Five business days before the auction	Wednesday, 31 March 2021 (midnight AEDT)
Closing time for declaration of eligible projects	Five business days before the auction	Wednesday, 31 March 2021 (midnight AEDT)
Auction window	Two days	Monday, 12 April 2021 (9am AEST*) to Tuesday, 13 April 2021 (5pm AEST*)
Results released, Authorised Bidder notified and average price per tonne of abatement published		As soon as possible after the auction close

\*In NSW, VIC, TAS, SA and ACT daylight savings time ends on 4 April 2021.

### Business day:

For the purpose of this document, **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.

<sup>i</sup> <http://www.cleanenergyregulator.gov.au/ERF/Pages/Want%20to%20participate%20in%20the%20Emissions%20Reduction%20Fund/Step%202-Contracts%20and%20auctions/Advance-to-support-soil-method-baseline-sampling.aspx>

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

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

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

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

<sup>vi</sup> <https://www.legislation.gov.au/Details/C2020C00281>

<sup>vii</sup> <https://www.tenders.gov.au/>

<sup>viii</sup> <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/understanding-carbon-abatement-contracts>

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

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

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

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

<sup>xiii</sup> <http://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Planning-a-project/native-title>

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

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

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

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

<sup>xviii</sup> <https://www.tenders.gov.au/>

<sup>xix</sup> <https://www.tenders.gov.au/>

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<sup>xx</sup> [http://www.cleanenergyregulator.gov.au/ERF/Pages/Want to participate in the Emissions Reduction Fund/Step 1-Apply/Step-1-Apply.aspx](http://www.cleanenergyregulator.gov.au/ERF/Pages/Want%20to%20participate%20in%20the%20Emissions%20Reduction%20Fund/Step%201-Apply/Step-1-Apply.aspx)

<sup>xxi</sup> [http://www.cleanenergyregulator.gov.au/ERF/Pages/Want to participate in the Emissions Reduction Fund/Step 2-Contracts and auctions/Auction-qualification.aspx](http://www.cleanenergyregulator.gov.au/ERF/Pages/Want%20to%20participate%20in%20the%20Emissions%20Reduction%20Fund/Step%202-Contracts%20and%20auctions/Auction-qualification.aspx)

<sup>xxii</sup> [http://www.cleanenergyregulator.gov.au/ERF/Pages/Want to participate in the Emissions Reduction Fund/Step 2-Contracts and auctions/Auction-registration.aspx](http://www.cleanenergyregulator.gov.au/ERF/Pages/Want%20to%20participate%20in%20the%20Emissions%20Reduction%20Fund/Step%202-Contracts%20and%20auctions/Auction-registration.aspx)