



Emissions Reduction Fund—Guidelines for the second auction on 4 – 5 November 2015

Introduction

The Clean Energy Regulator will purchase emissions reductions through a carbon abatement purchasing process. Legally, this process can include a reverse auction, tender or other process.

This document establishes the guidelines for the second Emissions Reduction Fund auction on 4-5 November 2015. Except as provided otherwise, previous auction guidelines do not apply in relation to the second auction.

Emissions reduction purchases will be in the form of Australian carbon credit units (ACCUs). The Clean Energy Regulator 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 will not be 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 Clean Energy Regulator on behalf of the Commonwealth of Australia covering the project(s) related to the bid. A participant making a successful bid will be paid the price under the contract that they bid.

Bids must be submitted through an online bidding platform approved by the Clean Energy Regulator. For the second auction this will be the AusTender platform. Bids will succeed solely on the basis of price, as explained in section 3.

The Clean Energy Regulator will conduct the auction in accordance with these guidelines. These guidelines are divided into five sections:

1. Contract establishment - auction qualification, registration, and participation
 - » This section summarises the requirements a participant must meet to secure a contract.
2. Disqualification and obligations of participants and authorised bidders
 - » This section identifies reasons why the Clean Energy Regulator 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](#) (Carbon Credits Act).

3. Auction bidding

- » This section describes the guidelines that will apply to determine whether bids made in the auction are compliant and the criteria the Clean Energy Regulator will use to determine the successful bids.

4. Auction suspension and cancellation

- » This section identifies reasons why the Clean Energy Regulator may suspend or cancel the auction.

5. Auction information publication and timelines

- » This section identifies the auction and contract information that the Clean Energy Regulator may publish as well as the information that will not be published.

1. Contract establishment - auction qualification, registration and participation

A participant, who wishes to make a bid at the auction for securing a contract covering one or more projects related to the bid, must complete the following steps:

Step 1: Project registration—Project(s) related to the bid must be registered by the Clean Energy Regulator ([see Step 1 – Apply](#) on the Clean Energy Regulator’s website).

Step 2: Auction qualification - The participant must be qualified by the Clean Energy Regulator 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.

- » To participate in the auction, participants must agree to version 2.0 of the [code of common terms](#).

Step 3: Auction registration - The participant must be registered by the Clean Energy Regulator 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.

- » The Clean Energy Regulator 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. one project, one registration for one auction), or
 - (2) the minimum 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, in case the delivery period specified in the delivery terms provided through that registration relates to a [standard or short term duration contract](#). 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% of the cumulative forward abatement estimate of all the projects, or 15,000 ACCUs, whichever is lower, in case the delivery period specified in the delivery terms provided through that registration relates to an [immediate delivery contract](#).

Step 4: Auction participation - [The final step](#) 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 the approved online bidding platform. This step establishes the financial terms of the contract (principally, the unit price to be paid for each ACCU delivered).

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

Applications for [project registration, auction qualification and auction registration](#) can be submitted at the same time or sequentially, although they can only be approved by the Clean Energy Regulator sequentially.

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

Participants who wish to enter into a separate contract for another project or group of projects, will need to complete the steps outlined above for each contract.

[Authority to rectify minor and immaterial errors](#)

The Clean Energy Regulator is authorised to rectify any errors in any submitted auction registration application or auction bid that the Clean Energy Regulator considers, in its sole discretion and acting in good faith, to be minor and immaterial. This authorisation does not place an obligation on the Clean Energy Regulator 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 Clean Energy Regulator 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 Clean Energy Regulator.
- 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*
- 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*.

2. Disqualification and obligations of participants and authorised bidders

Disqualification from participating in carbon abatement purchasing processes

The Clean Energy Regulator may disqualify a participant or authorised bidder from participating in carbon abatement purchasing processes for a period of up to two years, if the Clean Energy Regulator 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 Clean Energy Regulator may take into account whether the:

- participant or authorised bidder has breached a provision of these guidelines or any previous guidelines
- participant or authorised bidder has breached a direction given by the Clean Energy Regulator relating to any auction
- participant has failed to deliver ACCUs under, or has in any other manner breached, any contract entered into by the participant
- participant or authorised bidder has breached 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 Act*
 - » the *Corporations Act 2001*
 - » the *Competition and Consumer Act 2010*
 - » the *Criminal Code*
 - » 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 Clean Energy Regulator 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.

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

- to the Clean Energy Regulator
- 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 that failure 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 Clean Energy Regulator, or
- take advantage of any other circumstance that may affect the integrity of a carbon abatement purchasing process.

3. Auction bidding

Eligible bids

An eligible bid for the auction is a bid which:

- is submitted in the form and through the means which have been approved by the Clean Energy Regulator for that auction
- contains no errors other than errors that the Clean Energy Regulator 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 Clean Energy Regulator
- is submitted by a person who is an authorised bidder of a participant having the authority to make that bid on behalf of the participant, 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 not submitted by an authorised bidder, or on behalf of a participant, who is currently disqualified from participating in carbon abatement purchasing processes
- proposes the financial terms of the contract that will be secured if the bid is successful

- 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 Clean Energy Regulator considers, in its discretion and acting in good faith, to be minor and immaterial and if the Clean Energy Regulator 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 only, via the form and means approved by the Clean Energy Regulator.

The Clean Energy Regulator 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 Clean Energy Regulator is satisfied that the authorised bidder is unable to withdraw the bid 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 bidding window for the auction has closed, an eligible bid submitted during the bidding window cannot be withdrawn.

For the purposes of these guidelines, a 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.

Benchmark price

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

Variable volume threshold

The Clean Energy Regulator will set a variable volume threshold for the auction. The variable volume threshold will be a percentage number that is no less than 50 per cent, and may be up to 100 per cent.

In setting the variable volume threshold for the auction, the Clean Energy Regulator will have regard to the principles set out in sub-section 20G(3) of the Carbon Credits Act.

The Clean Energy Regulator will use a systematic tool which assesses bid prices and volumes based on value for money parameters determined before the auction.

Determining successful bids

The Clean Energy Regulator will apply the following criteria when determining successful bids at the auction:

- Criterion A (application of the benchmark price): the Clean Energy Regulator will only consider eligible bids that are less than the benchmark price set for the auction.
- Criterion B (application of the variable volume threshold): the Clean Energy Regulator will process bids meeting criterion A in the following sequence:
 - » All bids will be ranked by price offered, with the lowest price bid being ranked first and the highest price bid being ranked last.
 - » Bids offering the same price will be ranked equally.
 - » Starting with the first ranked bid(s), the ACCUs offered for sale through it/them will be added to a notional pool of ACCUs, and the bid(s) will be selected.
 - › If the total number of ACCUs in the pool exceeds the variable volume threshold of the overall volume (defined below), no further ranked bids will be selected.
 - » The next ranked bid(s) will be selected if adding the ACCUs offered for sale through it/them to the pool does not cause the total number of ACCUs in the pool to exceed the variable volume threshold of the overall volume.
 - › The process in the point above will be applied to each of the ranked bid(s) in sequential order until adding ACCUs offered for sale through it/them to the pool causes the number of ACCUs in the pool to exceed the variable volume threshold of the overall volume. When this occurs neither that/those ranked bid(s) nor any further ranked bids will be selected.
 - » **“Overall volume”** means the cumulative total volume of ACCUs offered for sale through all bids meeting criterion A.

All bids selected under criterion B will be successful for the auction.

4. Suspension or cancellation of the auction

The Clean Energy Regulator may suspend or cancel the auction if the Clean Energy Regulator 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 Clean Energy Regulator 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 auction processing system, or another system operated by the Clean Energy Regulator
- 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 Clean Energy Regulator 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 *Carbon Credits Act*
 - » the *Corporations Act 2001*
 - » the *Competition and Consumer Act 2010*
 - » the *Criminal Code*
 - » 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 the Clean Energy Regulator 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 suspended, the Clean Energy Regulator will restart or cancel the auction, within a reasonable timeframe. If an auction is cancelled, it will be rescheduled and the date(s) and bidding window of the rescheduled auction published on the Clean Energy Regulator website.

5. Auction information publication and timelines

Notifying authorised bidders

The Clean Energy Regulator 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 Clean Energy Regulator 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 (the Register) by the Clean Energy Regulator during that time which indicates that the participant's bid has resulted in a contract having been entered into with the Clean Energy Regulator on behalf of the Commonwealth, the participant may revoke their bid. A participant cannot revoke their bid in any other circumstances.

Information publication

The Clean Energy Regulator:

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

The Register will also set out information about each contract that the Clean Energy Regulator has entered into, on behalf of the Commonwealth, including the:

- name of the carbon abatement 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 Clean Energy Regulator.

The Clean Energy Regulator will not publish confidential commercial information such as the unit price to be paid under any contract or the auction benchmark price.

Timeline and information to be published on the Clean Energy Regulator website

Information to be published	Timeline second auction	Second auction dates
Auction date(s) and bidding window published	By no later than six weeks before the auction. Three months notice was provided for the second auction	05 August 2015
Auction format and minimum bid size published	By approximately ten weeks before the auction	21 August 2015
Project registration closes	30 business days before the auction	18 September 2015 (midnight AEST)
Auction qualification closes	20 business days before the auction	6 October 2015 (midnight AEST)
Auction registration closes	Five business days before the auction	27 October 2015 (midnight AEST)
Each participant and authorised bidder notified of their results	By the end of five business days after auction close	12 November 2015
Average price per tonne of abatement (APTA) published	By the end of five business days after auction close	12 November 2015