

MINISTRY OF COMMERCE

RADIO FREQUENCY AUCTION

No. 2

AUCTION CATALOGUE

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MINISTRY OF COMMERCE

RADIO FREQUENCY AUCTION NUMBER 2

CALL FOR BIDS

I, Ian Rex Hutchings, Manager Radio Spectrum, Ministry of Commerce, acting on behalf of the Secretary of Commerce and with his authority, subject to the terms and conditions specified in the First Schedule to this notice, hereby call for bids:

- i for management rights to be transferred pursuant to section 42 of the Radiocommunications Act 1989 in lots as specified in the Second Schedule to this notice;
- ii for licences to be granted pursuant to section 48 of the Radiocommunications Act 1989 in lots as specified in the Third Schedule to this notice;
- iii for licences to be granted pursuant to section 48 of the Radiocommunications Act 1989 in lots as specified in the Fourth Schedule to this notice;
- iv for licences to be granted pursuant to section 48 of the Radiocommunications Act 1989 in lots as specified in the Fifth Schedule to this notice.

This call is made subject to the provisions of the Radiocommunications Act 1989, together with the Radiocommunications (Fees) Regulations 1993 and the Radiocommunications (Forms) Regulations 1990. Prospective bidders should familiarise themselves thoroughly with the Radiocommunications Act.

Dated at WELLINGTON this 8th day of December 1997.

I R Hutchings, Manager Radio Spectrum

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FIRST SCHEDULE

CALL FOR BIDS FOR FREQUENCIES

TERMS AND CONDITIONS

- 1 The terms and conditions applicable to this auction are as follows:

AMENDMENTS TO THIS CALL FOR BIDS

- 2 This call may be amended or revoked by the Secretary of Commerce, in whole or in part, and at any time, by notice in the *New Zealand Gazette* or by direct contact with registered bidders.

APPLICATION OF COMMERCE ACT 1986

- 3 Section 138 of the Radiocommunications Act 1989 provides for the application of the business acquisition provisions of the Commerce Act 1986 to the acquisition of management rights or licences under the Radiocommunications Act 1989.
- 4 The contract created by the acceptance of a bid will be subject to the condition that none of its provisions relating to the acquisition of the relevant licences will come into force unless -
 - a. The proposed acquisition has been given a clearance or an authorisation has been granted in accordance with Part V of the Commerce Act 1986; or
 - b. The Secretary has agreed with the relevant bidder that it is not necessary to seek clearance or authorisation for the proposed acquisition.
- 5 This paragraph shall apply where the Secretary and the bidder have not agreed under paragraph 4(b) of this Schedule that a clearance or authorisation need not be sought. In the event that -
 - a. A successful bidder fails to advise the Secretary within 10 working days of being notified of provisional acceptance under clause 4 of these terms and conditions of a bid that either Commerce Commission clearance or authorisation was sought; or
 - b. Commerce Commission clearance or authorisation was sought, but was declined,

the Secretary reserves the right to dispose of the lot as the Secretary sees fit, which may include re-auctioning the lot concerned, or offering it to the next highest bidder in accordance with clause 38 of these terms and conditions.

- 6 This call is also made subject to any other legal requirements that apply to the acquisition of management rights or licences.

WHO MAY BID

- 7 Any individual or organisation may bid, provided that they are a registered bidder.

REGISTRATION AS A BIDDER

- 8 Individuals or organisations wishing to register as a bidder in this auction must complete form RFA1, which may be downloaded from the following website (www.moc.govt.nz/rsm/auction/bidder.html), or obtained in hard copy from Maureen Wells (tel 04 - 474 2627).

NUMBER OF LOTS REQUIRED

- 9 At the time of registration bidders must advise the number of lots that they are seeking to acquire.

CREDIT LIMIT

- 10 Bidders must advise the maximum amount, in whole New Zealand dollars, they are prepared to pay for any combination of lots that they may be provisionally successful for in this auction. This amount will be declared the bidder's credit limit, and no bid that would cause this limit to be exceeded will be accepted.
- 11 At any time during the auction, a bidder may increase their credit limit by providing the Auction Manager with a further deposit, equal to 25% of the desired increase in their credit limit. However, the Ministry can give no guarantee that such an increase can be put in place before the auction is completed. Bidders should therefore endeavour to ensure that their original credit limit is adequate.

DEPOSITS

- 12 A deposit equal to 25% of the value of the credit limit is required to validate each bidder's credit limit. This deposit in whole New Zealand dollars, is to be made in the form of either a currently dated "Bank Cheque"¹ or a "Banker's Certificate of Undertaking"² provided by a bank registered in New Zealand, and

¹ A Bank Cheque is a cheque raised on the bank's own trading account by the bank. Personal or company cheques are not acceptable for deposits.

² A Banker's Certificate of Undertaking is an absolute guarantee given by the issuing bank to make payment up to the face value of the certificate on demand by the Ministry without further reference to the bidder.

must accompany each request for registration. No request for registration will be accepted by the Secretary of Commerce unless such a deposit is provided. Deposits received in the form of a Bank Cheque will be banked in a trust account by the Ministry of Commerce.

- 13 Deposits received by way of Bank Cheque paid by provisionally successful bidders will be held in the trust account until the bidder has complied with clause 4 of these terms and conditions. Upon receiving notification under clause 4 of these terms and conditions, and payment in full for the lot(s) has been made, the Secretary will issue instruments of registration or transfer as appropriate, and the deposit will be transferred to the Crown's own bank account, and any interest refunded to the bidder.
- 14 Deposits received in the form of a Banker's Certificate paid by provisionally successful bidders will be held secure until the bidder has complied with clause 4 of these terms and conditions. Upon receiving notification under clause 4 of these terms and conditions, and payment in full for the lot(s) has been made, the Secretary will issue instruments of registration or transfer as appropriate, at which time the Banker's Certificate will be returned to the bidder, together with a letter of release to the bank.
- 15 Deposits paid by Bank Cheque will accrue interest while held in trust accounts. Interest that is payable to unsuccessful bidders will be paid at the time that their deposits are repaid. Interest will be paid to provisionally successful bidders as soon as possible after the Secretary of Commerce is satisfied that the requirements of clause 4 of these terms and conditions have been complied with.
- 16 Deposits paid by unsuccessful bidders in the form of:
 - a Bank Cheque will be repaid, along with any interest that has accrued shortly after the names of provisional successful bidders have been published.
 - a Banker's Certificate will be returned to the unsuccessful bidder, together with a letter of release to the bank, shortly after the names of provisional successful bidders have been published.
- 17 In making an interest-bearing facility available to bidders, the Secretary makes no representations as to the rate at which interest will accrue.
- 18 The Ministry's bank will automatically deduct resident withholding tax (RWT) after calculating interest payable. Therefore a RWT exemption certificate must be supplied at the time of registration so that the bank can be advised at the time of deposit if the bidder is to be exempt from this tax. Otherwise, responsibility for arranging a refund of RWT will rest with the successful bidder.
- 19 Deposits paid by way of Bankers Certificate will not earn interest.

- 20 Form RFA1, together with the necessary deposit, must be received by the

Auction Manager
Radio Spectrum Management Group
Ministry of Commerce
P.O. Box 2847
33 Bowen Street
Wellington

no later than ~~5pm, Tuesday 20th January 1998. 12pm, Thursday 4 December 1997.~~ The Auction Manager will advise applicants of their registration, and will also issue a Registered Bidder's Pack, including a registered bidder's number, passwords, bidder's manual and other documentation required for participation in this auction. The bidder's registration number and passwords will be used to authenticate bids made in this auction. **It is the responsibility of each registered bidder to maintain the confidentiality of their bidder's registration number and passwords.**

BIDDING RULES

- 21 Bidders will be required to lodge their bids with the Ministry by means of the Internet, initially in accordance with the time schedule provided in the Registered Bidder's Pack, and later as advised by the Auction Manager through the auction E-mail system as the auction progresses.
- 22 With the exception of lot 304CJD all lots will have a reserve price of \$1,000.00 (excluding GST). The reserve price for lot 304CJD will be \$1,210.00 (excluding GST). These reserve prices will also be published in the Viewer's Gallery at the following auction web site:
- <http://www.moc.govt.nz/rsm/auction/viewer.html>
- 23 There is no activity rule in this auction, but bidders are expected to be reasonably active in each round. The Auction Manager may decide at any time to change between a multiple round mode and a "nominal real time"³ mode by advising bidders (via the auction E-mail system) prior to the time of such change.
- 24 After the close of each round of bidding, the Ministry will publish on the Internet (in the Viewer's Gallery at the Internet website indicated in clause 22 of these terms and conditions) details of the dollar value of the highest bid received for each lot, together with the registration number of the highest bidder. Where two or more bidders have bid the same amount for a particular lot, the registration numbers for each bidder will be disclosed. Bidders will

³ Nominal real time is defined by these terms and conditions as a period of continuous running of the auction, similar to conventional oral open outcry ascending bid auctions, but subject to the normal delays which may be experienced on the Internet.

then be able to increase the value of their bids if they so wish in the next round of the auction, and must do so via the Internet, again within a specified time frame as advised by the Auction Manager. This may be at a later time on the same day, or on a following business day⁴ as determined by the Auction Manager.

- 25 The bidding process will be continued through further rounds, until no further bids are received for any lots. Bidders should note that as the auction progresses, the Auction Manager may reduce the duration of bidding rounds and/or the time interval between such rounds.
- 26 At any stage of the auction, bids for any lot may be subject, at the discretion of the Auction Manager, to a minimum incremental increase over the highest bid(s) received for that lot in the previous round. The Auction Manager reserves the right to vary the size of such minimum increments. Either or both of these actions will be taken as deemed necessary by the Auction Manager to maintain the efficient progress of the auction. Notification of any such changes will be given to registered bidders as soon as possible before the next round of bidding in which any such changes come into effect.
- 27 The Secretary and the Auction Manager reserve the right not to accept any bid for whatever reason.

HOW TO BID

- 28 All bids **must** be made at the following ~~via the~~ Internet address: <http://moc.govt.nz/rsm/auction>. Full instructions on how to place bids are provided in the Registered Bidder's Pack. The timing of round 1 will be supplied to bidders in the Registered Bidder's pack. The timing of further rounds will be posted in the viewers gallery.
- 29 All bids must be in whole New Zealand dollars (exclusive of GST).

VALID BIDS

- 30 A bid will be valid where:
 - a The bid is made in accordance with clause 28 of these terms and conditions; and
 - b the bid is received into the auction database⁵ before the close of the round; and
 - c the dollar value is at or above the stated minimum bid price; and

⁴ A business day means any day not being a Saturday or Sunday or Public Holiday within the meaning of section 7A (2) of the Holidays Act 1981.

⁵ Auction database; Bidders are advised at the time of placing bids that a bid has been received into the auction database, with the words "Your bid has been received" on the auction bidding screen.

d the bid does not take the bidder beyond their credit limit.

- 31 Any bid made by or on behalf of an employee of the Ministry of Commerce will be invalid unless the prior express consent of the Secretary is obtained to that employee participating in the auction.

WITHDRAWAL OF BIDS

- 32 A bidder may withdraw a bid at any point prior to the conclusion of the auction when the declaration of provisionally successful bidders has been made. Notification of withdrawal must be received by the Auction Manager in writing or by fax before the conclusion of the auction.

CONCLUSION OF THE AUCTION

- 33 The auction will conclude by the Auction Manager, upon completion of a multiple round in which no further valid bids are received for all or any of the lots in the round, announcing that the auction is concluded and announcing the provisionally successful bidders
- 34 The provisionally successful bidder for each lot is the bidder who has bid the highest amount for that lot. This clause is subject to the right of the Secretary of the Auction Manager to refuse to accept any bid for whatever reason.
- 35 A contractual obligation to buy (on the part of the bidders) and to sell (on the part of the Crown) will exist from the conclusion of the auction.
- 36 As soon as possible after the conclusion of the auction, the results of the auction will be confirmed to all parties who have lodged bids with the Ministry ~~will be advised of all results~~. This advice will be made initially by means of the Internet, and will be confirmed by formal letters notifying bidders of their provisional success or otherwise, as appropriate.

PAYMENTS IN SETTLEMENT

Provisionally successful bidders

- 37 The amount required in settlement in respect of each lot will be the amount bid for the lot(s), plus Goods and Services Tax (GST), less the deposit paid plus any interest earned on the deposit.
- 38 Where a provisionally successful bidder fails to complete the transaction, liquidated damages as follows will be payable: a sum of money equal to the difference between the amount bid for the lot in question and the amount eventually paid ~~by another bidder~~ for that lot, if that amount is lower than the value of the provisionally successful bid. An administrative charge, will also be payable. If the lot for which the provisionally successful bidder fails to complete the transaction is subsequently sold for more than the value of the uncompleted bid, no damages will be payable.
- 39 In the event of the failure of the provisionally successful bidder to provide payment in settlement in relation to a lot as required above, the Secretary may re-allocate the lot as seen fit, which may include re-auctioning the lot concerned, or offering the lot to the next highest bidder for the same amount bid by the highest bidder plus GST.
- 40 Each successful bidder will be invoiced for any amount payable in settlement as soon as possible after the requirements of clause 4 of these terms and conditions have been complied with. Full payment in settlement must be received by:

Manager - Finance
Radio Spectrum Management Group
Ministry of Commerce
P.O. Box 2847
33 Bowen Street
Wellington

Or any Radio Spectrum Management Field Office,

within 10 (**ten**) working days of the date of the invoice. Payment **must** be made in New Zealand dollars. Cheques are to be made payable to the **Ministry of Commerce**.

SUITABILITY FOR PURPOSE

- 41 It is the responsibility of bidders to ensure that any lots for which they are bidding are suitable for their purpose. No representations in this respect are made by the Secretary of Commerce or the Auction Manager.

GOODS AND SERVICES TAX ("GST")

- 42 The Department of Inland Revenue has advised the Ministry of Commerce that GST is payable in respect of successful bids. For the purposes of determining the results of this auction, all bids will be considered to exclude GST. GST will be recovered from successful bidders at the time that they are invoiced for payments in settlement. GST will be additional to the amount otherwise payable by the successful bidder.

ANNOUNCEMENT OF RESULTS

43 Provisional Results

A list of provisionally successful bidders and bidding information, including the register of bidders and their bidder numbers will be published on the Internet after the close of the auction. In addition, all bidders will be notified in writing of their provisional success or otherwise in the auction.

44 Final Results

Final results will be published when all transactions have been completed as prescribed under these terms and conditions. This information will be published on the web site indicated in clause 22 of these terms and conditions, and in the *New Zealand Gazette*.

UPLIFTING OF MANAGEMENT RIGHTS

- 45 Notices of transfer of management rights, in registrable form, will be available to the successful bidder within 10 working days of the successful bidder complying with clause 4 of these terms and conditions and the Ministry receiving any required payments in settlement. It is the responsibility of the bidders concerned to ensure that these notices of transfer are registered in accordance with the provisions of the Radiocommunications Act 1989.

REGISTRATION OF LICENCES

- 46 Licences for the purpose of registration will be available to the successful bidder within 10 working days of the successful bidder complying with clause 4 of these terms and conditions and the Ministry receiving any required payments in settlement. It is the responsibility of the bidders concerned to ensure that these licences are registered in accordance with the provisions of the Radiocommunications Act 1989.
- 47 Successful bidders will be granted licences on the condition that the licences will be registered by the successful bidder, or by his or her agent, in accordance with the provisions of the Radiocommunications Act 1989 within 20 working days of the date of issue of the instrument.

- 48 If the Registrar of Radio Frequencies has not received a licence for registration within 20 working days of the date of issue of the instrument, the Secretary may require the bidder to return the instrument.
- 49 Notwithstanding anything in clause 48 of these terms and conditions, if the Secretary makes this requirement, the bidder has the option of registering the instrument with the Registrar of Radio Frequencies within 10 working days or returning the instrument to the Secretary, who will destroy the document. Note that any monies paid in settlement of the instrument will be returned, less any administrative costs incurred by the Secretary.
- 50 Bidders should be aware that **licence instruments do not confer any rights to transmit until they are registered.** Any delay in registering instruments during the 20 working day period provided for registration can result in loss of rights under a licence as a result of:
- a. Loss of priority of the licence in relation to other registered licences for the purposes of the provisions of the Radiocommunications Act 1989 relating to interference caused by lawful exercise of rights (Part XII); or,
 - b. Account not being taken of the unregistered licence in the engineering of future licences.
- 51 The Secretary of Commerce accepts no responsibility for any loss that results from delay by a successful bidder in registering instruments.

PUBLICATION OF INFORMATION OF GENERAL INTEREST ON THE INTERNET

- 52 The results for each round and other information of general interest related to this auction will be published in a “Viewer’s Gallery” on the Internet as it becomes available. This information may be found at the following Internet web site: www.moc.govt.nz/rsm/auction/viewer.html