



Broadband Wireless Access

Allocation of Spectrum at 3.5 GHz: second assignment round Package Bid Tender Rules

February 2008

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Package Bid Tender Rules

Definitions

1. In these tender rules,

(a) The following terms have the following meanings unless the context otherwise requires:

“Allocation Rules”	The Allocation Rules dated November 2007 for spectrum licences in the 3.5 GHz spectrum band as notified on the Allocation web page;
“Allocation Webpage”	means the web page at the address http://www.rsm.govt.nz/cms/policy-and-planning/spectrum-auctions/fixed-wireless-access
“Area Licence”	has the meaning given in the Allocation Rules;
“Call for Applications”	the Call for Applications of 12 November 2007 for spectrum licences in the 3.5 GHz spectrum band as notified on the Allocation web page;
“Call for Tenders”	the Call for Tenders from Competing Applicants of February 2008 as notified in the Allocation Webpage;
“Competing Applicant”	for the purposes of these Tender Rules means a person described as a Competing Applicant in the Schedule;
“Lot”	means a natural pair of Area Licences described in the Schedule under the lot number specified;
“Package Bid”	means a bid for a set of lots. Several Package Bids makes up a Tender;
“Reserve”	means the reserve price for a Lot specified in the Schedule;
“Schedule”	means the list of Lots specified in the Schedule at the end of this document;
“Tender”	means a response to the Call for Tenders provided by a Competing Applicant that is completed and submitted in accordance with these Tender Rules.
“Tender Rules”	means these Package Bid Tender Rules, as amended from time to time on the Allocation Webpage.

(b) Capitalised terms used in these Tender Rules or the Call for Tenders not defined above have the meaning given to that term in the Allocation Rules, unless the context otherwise requires.

(c) References to clauses and the Schedule are to clauses and the Schedule of these Tender Rules unless the context otherwise requires.

(d) The singular includes the plural, and vice versa.

- (e) A reference to “including” or similar words does not imply any limitation.
- (f) A reference to “\$” or “dollars” is a reference to New Zealand currency.

Call for Tenders

- 2. These Tender Rules are made by the Chief Executive of the Ministry of Economic Development pursuant to clause 19 of the Allocation Rules and relate to the Call for Tenders. These Tender Rules shall be read as part of, and in a manner consistent with, the Allocation Rules. In the event of inconsistency between these Tender Rules and the Allocation Rules, the Allocation Rules prevail.
- 3. These Tender Rules and the Call for Tenders may be waived, amended or revoked by the Chief Executive in whole or in part, at any time by notice in writing to Competing Applicants, or by notice on the Allocation Webpage.
- 4. By submitting a Tender, the Competing Applicant agrees to the terms of these Tender Rules and the Call for Tenders as they may be amended from time to time.
- 5. Without limiting the Allocation Rules, none of the Crown, the Ministry and any officer of the Ministry will be liable to any applicant for the exercise of any right or obligation set out in these Tender Rules or the Call for Tenders. None of the Crown, the Ministry and any officer of the Ministry is obliged to grant an Area Licence until the process set out in the Allocation Rules has been complied with and completed.
- 6. The Competing Applicant is responsible for meeting all of its costs associated with its Tender and the tender process.

Valid Tenders and Delivery

- 7. Competing Applicants may only respond to the Call for Tenders using the form the Ministry of Economic Development provides to the Competing Applicant for this purpose. This form will be forwarded by email to the address provided by the applicant pursuant to the Allocation Rules. In the event that the Competing Applicant does not receive its form within two Working Days of the date of this Call for Tenders, is unable to access the form for any reason, or identifies an error in the form, it shall be the Competing Applicant’s sole responsibility to contact the Project Manager and arrange for the form to be re-sent.
- 8. Competing Applicants may submit no more than one Tender under this Call for Tenders. The Tender must:
 - (a) include valid package bids in accordance with clause 10 of these Tender Rules;
 - (b) be in writing and signed for and on behalf of the Competing Applicant; and
 - (c) be delivered to the address, and before the time and date, specified in the Call for Tenders in accordance with clause 9 of these Tender Rules.
- 9. Tenders or notices provided by respondents under these Tender Rules must be hand delivered or sent by facsimile or registered post to the addresses or facsimile numbers set out in the Call for Tenders. Delivery of Tenders or notices will only be effective:
 - (a) if personally delivered, when delivered;
 - (b) if sent by registered posted, three Working Days after posting; or

- (c) if sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number set out in the Call for Tenders;

provided that any notice received after 5.00pm or on a day which is not a Working Day shall be deemed not to have been received until the next Working Day.

Valid Package Bids

- 10. In accordance with the process established for the first round of the allocation, each Tender must include at least one, and may include no more than five package bids: that is, five **different** combinations of lots and an offer price for each.

For a package bid to be valid it must:

- (a) be on the form provided;
 - (b) indicate the Lots that comprise the package bid;
 - (c) be only for a Lot or Lots for which the respondent is listed in the Schedule as a Competing Applicant;
 - (d) clearly stipulate a package bid price in whole New Zealand dollars (exclusive of GST) for the Lot or combination of Lots included in the package as a whole which is not less than the aggregate of the Reserves for all the Lots included in the package;
 - (e) comply in every respect with the Call for Tenders, these Tender Rules, the Call for Applications and the Allocation Rules.
- 11. The invalidity of any individual package bid will not affect validity of any other individual package bid included in a Tender which is otherwise valid in accordance with these Tender Rules.

Lot Contiguity

- 12. For second round tenders, lot contiguity is not a requirement.

Winning Package Bids

- 13. The winner of a Lot will be determined by the Ministry of Economic Development in its sole discretion by using a linear programming model that calculates the optimal combination of valid package bids that result in the maximum value offered for the radio spectrum. Further information about the process is at <http://www.rsm.govt.nz/cms/policy-and-planning/spectrum-auctions/fixed-wireless-access/archived-documents/bid-solver-how-winners-are-determined-in-the-3-5-ghz-fwa-crown-reserve-allocation/>
- 14. In the event that more than one combination of valid package bids results in the same total revenue, the tiebreak will be resolved by applying the following rules in the following order:
 - (a) If the tie is caused by the programming algorithm returning two or more different combinations of package bids at the same value, the winning combination will be that which results in the highest number of Competing Applicants being successful.
 - (b) If the tie is caused by two or more Competing Applicants submitting identical package bids, the winning bid will be that Tender which was delivered to the Ministry first according to the recorded time of delivery.

- (c) If the preceding rules do not resolve the tie, the winning bid will be determined by such process as the Ministry may advise on the Allocation Webpage.

Announcement of Results

- 15. When the Project Manager has examined the valid package bids received under the Call for Tenders and determined the winning bids in accordance with these Tender Rules, the Project Manager will announce the results on the Allocation Webpage and by email to each of the respondents to the Call for Tenders.
- 16. For the purposes of clause 22(b) of the Allocation Rules, the time that the tender is won for each Area Licence pursuant to these Tender Rules and the Allocation rules shall be the time that the Chief Executive announces the winners of the tender on the Allocation Webpage.
- 17. This is a closed tender. Information relating to the value of bids will be kept confidential and will not be disclosed by the Ministry to any person until after the results are announced. Following the announcement of the results, the Ministry may make all package bids publicly available in such format as the Ministry sees fit, including publishing the information on the Internet.

Invalid Tenders and Invalid Package Bids

- 18. Subject to clause 19, the Ministry will not accept an invalid Tender or invalid package bid (as the case may be). In these rules, an invalid Tender or invalid package bid is a Tender or package that does not comply with these Tender Rules.
- 19. If the Ministry receives an invalid Tender or invalid package bid and the Ministry considers that acceptance of that Tender or package bid, or correction of that invalidity, would not prejudice other Competing Applicants, the Ministry may, at its absolute discretion, accept, or allow the correction of, the invalid Tender or package bid.
- 20. None of the Crown, the Ministry of Economic Development and any officer of the Ministry shall be obliged to inform a respondent to this Call for Tenders that its Tender or any package bid is invalid prior to the announcement of the tender results.

Withdrawal

- 21. A Competing Applicant may withdraw a Tender without liability by giving written notice to the Chief Executive at any time prior to the announcement of results in accordance with these Tender Rules. For the avoidance of doubt, a Competing Applicant may only withdraw its Tender in its entirety and may not withdraw or replace individual package bids. Any replacement Tender must comply with these Tender Rules, including complying with the delivery time and date specified in the Call for Tenders.
- 22. For the purposes of the Allocation Rules, a Competing Applicant is deemed to have withdrawn its application for an Area Licence(s) for which it is a Competing Applicant where it:
 - (a) does not submit a Tender;
 - (b) withdraws a Tender and does not submit a replacement Tender in accordance with clause 21 of these Tender Rules; or
 - (c) subject to clause 19, submits an invalid Tender or invalid package bid. For the avoidance of doubt, in the case of an invalid package bid, the deemed withdrawal relates only to the Area Licence(s) that are the subject of the package bid.

Rights under Allocation Rules

23. Nothing in these Tender Rules or Call for Tenders shall limit any of the Chief Executive's rights under the Allocation Rules, including the right to withdraw Area Licences under clause 38 of the Allocation Rules.

No Warranty

24. The Chief Executive makes no warranty that the acquisition of any Area Licence Lot through this tender process will comply with section 47 of the Commerce Act 1986.

Schedule: Lots and Competing Applicants

Spectrum Licence Lots & Reserve Prices	Vecima Networks Inc	Vision Infrastructure Ltd	Interlace Technology Ltd	Airnet NZ Ltd	Smartlinx Ltd	Callplus Limited	Tuhoe Education Authority Charitable Trust	Netsmart Ltd
Whangarei D C 503-WHG-1 \$10,900								
Kaipara D C 503-KPR-1 \$2,800								
Rotorua D C 503-ROT-1 \$10,400								
Rotorua D C 503-ROT-2 \$10,400								
Whakatane D C 503-WHK-1 \$5,300								
Napier CC 503-NAP-1 \$8,600								
Hastings D C 503-HAS-1 \$10,800								
S Wairarapa D C 503-SWD-1 \$1,400								