

**RADIO SPECTRUM
MANAGEMENT**



FM Sound Broadcasting Licence Auction Catalogue

Radio Frequency Auction No. 27

4 October 2023



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

FM Sound Broadcasting Licence Auction Catalogue

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Call for bids

I give notice of the Ministry's intention to conduct an auction of two spectrum licences commencing at 10 am, 4 October 2023 in accordance with the Terms and Conditions.

Auction 27 is an online sequential auction that will be conducted by Skylarc Asset Realisation Limited, www.skylarc.co.nz. The spectrum licences are described in Schedule 1 to these Terms and Conditions but full details of each licence is contained in the Register of Radio Frequencies. There are two (2) licences available, being available from the date of transfer and expiring on 2 April 2031.

The licences to be sold by auction are subject to the provisions of the Radiocommunications Act 1989, together with the Radiocommunications Regulations 2001. Before the auction commences, prospective bidders should familiarise themselves thoroughly with that Act and the details of the licences in the Register of Radio Frequencies. The provisions of the Broadcasting Act 1989 and the Commerce Act 1986 also apply. Annual fees and levies are required to be paid pursuant to the Radiocommunications Act and the Broadcasting Act.

Radio Spectrum Management and the Ministry of Business, Innovation and Employment provide no guarantees regarding access to land, infrastructure, or services in relation to any licence. These are matters for which licensees are directly responsible.

Prospective bidders should familiarise themselves thoroughly with these Terms and Conditions (including the Contract forming part of these Terms and Conditions) and should obtain independent legal advice where required.

Dated this 1st day of September 2023.

Daniel O'Grady

Manager, Radio Spectrum Policy and Planning

Ministry of Business, Innovation and Employment

Terms and Conditions

The Terms and Conditions applicable to this auction are as follows:

1. Interpretation

1.1 Defined Terms

In these Terms and Conditions, the following terms have the following meanings.

“Act”	The Radiocommunications Act 1989, as amended from time to time;
“Auctioneer”	Skylarc Asset Realisation Limited or such other person appointed by the Chief Executive to conduct the auction on behalf of the Ministry (such other person to be notified by the Chief Executive on the Auction Information Page in advance of the auction);
“Auction Information Page”	The internet site at the following address: https://www.rsm.govt.nz/projects-and-auctions/auctions/current-and-upcoming-spectrum-auctions/
“Auction Manager”	The person designated by the Ministry as the Auction Manager from time to time and whose contact details are set out in Schedule 2;
“Bidder”	Those persons who have complied with the Auctioneer’s registration process in accordance with clause 6 and place a bid in the auction;
“Chief Executive”	The Chief Executive of the Ministry of Business, Innovation and Employment and his or her delegate;
“Clause”	A clause of these Terms and Conditions;
“Conditions of Sale”	The rules on which the auction will be conducted, which are unless otherwise stated on the Auctioneer’s website at www.skylarc.co.nz as available on Trade Me Limited’s web page at: http://www.trademe.co.nz/help/143/terms-and-conditions;
“Contract”	The contract attached as Schedule 3 to these Terms and Conditions, that all Provisionally Successful Bidders must enter into, as part of the settlement requirements (at clause 12), before any relevant licences are transferred to them;

“GST”	Goods and services tax within the meaning of the Goods and Services Act 1985;
“Lot”	A lot comprising a spectrum licence described in Schedule 1;
“Ministry”	The Ministry of Business, Innovation and Employment, and any other government department given responsibility for the auction from time to time;
“Programme”	Has the meaning given to that term by section 2 of the Broadcasting Act 1989;
“Provisionally Successful Bidder”	The Bidder with the highest valid bid accepted by the Auctioneer in accordance with clause 10;
“Register”	(a) when used as a noun, means the Register of Radio Frequencies established under section 5 of the Radiocommunications Act 1989; (b) when used as a verb, means to record on the Register.
“Schedule”	A Schedule to these terms and conditions;
“Terms and Conditions”	These Terms and Conditions, including the Schedules attached to it; and
“Working Day”	A day between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a day that is a public holiday within the meaning of section 44 of the Holidays Act 2003 or 27, 28, & 29 December 2023.

1.2 Construction

In these Terms and Conditions:

- a) a reference to “including” or similar phrases does not imply any limitation;
- b) a reference to a person includes an individual, or body corporate;
- c) the singular includes the plural, and vice versa;
- d) a reference to \$ or dollars is a reference to New Zealand currency;
- e) the headings and clause and sub-clause headings in these Terms and Conditions are for convenience only and have no legal effect; and
- f) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. Amendments to this Catalogue

This catalogue, including these Terms and Conditions, may be amended or revoked by the Chief Executive in whole or in part, and at any time, by notice on the Auction Information Page.

3. Acquisition subject to the Act

These Terms and Conditions, and any licence acquired under these Terms and Conditions, are subject to all legal requirements that apply to the acquisition and holding of licences created under the Act, including section 138 of the Act which provides that section 47 of the Commerce Act 1986 (relating to acquisitions of assets of a business) applies to the acquisition of licences in relation to the spectrum. Overdue licence annual administration fees under the Act pertaining to any other licences held by the Purchaser must be paid in full before the Chief Executive will accept settlement has been completed and transfer any spectrum licence from the Lot's in Schedule 1 to the Purchaser.

4. Licence subject to service requirement

4.1 Service Requirement

Any licence acquired under these Terms and Conditions is subject to the service requirement set out in the Contract. The service requirement requires that (no later than 2 calendar years after the date on which the transfer of the relevant spectrum licence(s) to the Provisionally Successful Bidder is Registered) the Provisionally Successful Bidder must have implemented a continuous and on-going sound broadcasting service that utilises each of the licence(s) to which their Contract relates, and that:

- (a) operates each licence by transmitting a Programme 24 hours per day, 7 days per week (excluding reasonable outages including those for maintenance and construction); and
- (b) has operated continuously for the entire 3 month period before the date on which the purchaser submits a statutory declaration in accordance with the Contract.

4.2 Consequences of not meeting Service Requirement

If the service requirement set out in the Contract is not met in respect of all relevant licences, in accordance with the Contract:

- (a) the Chief Executive may use the power of attorney granted to them to transfer any licence(s) in respect of which the service requirement has not been met to the Crown under section 56 of the Act; and
- (b) the Provisionally Successful Bidder who is party to the Contract will not be entitled to any refund (partial or otherwise) of the settlement amount paid for the relevant licence(s).

5. Commerce Act 1986

5.1 Provisionally Successful Bidder's responsibility regarding Commerce Act

Every Provisionally Successful Bidder warrants that the acquisition of the relevant Lot by the Provisionally Successful Bidder will not breach section 47 of the Commerce Act 1986.

5.2 Effect of Commerce Act breach

The Provisionally Successful Bidder indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) brought or threatened against, or incurred by the Ministry, in the event that the purchase of the Lot by the Provisionally Successful Bidder breaches, or is alleged to breach, the Commerce Act 1986.

6. Registration as a Bidder

6.1 Who may bid

Persons may bid only if they comply with the registration process of the Auctioneer.

6.2 Registration process of the Auctioneer

Persons wishing to place a bid in this auction must:

if they wish to bid, register an online account with Trade Me Limited via the website www.trademe.co.nz;

before placing a bid on their desired Lot(s).

By placing a bid, the Bidder agrees to be bound by these Terms and Conditions.

7. The Licences

7.1 Schedule 1 contains details of the Lots

Lots are described in Schedule 1. Full details of each licence that corresponds to each Lot on offer can be found in the Register. The Register can be accessed via:

<https://rrf.rsm.govt.nz/ui>

7.2 Changes prior to Auction

For technical reasons the Lots and technical details of Lots may change prior to the auction. Any changes will be notified on the Auction Information Page.

7.3 No representation regarding suitability

It is the responsibility of Bidders to ensure that any Lots for which they are bidding are suitable for their purpose. The Chief Executive, the Ministry (on behalf of the Crown) and the Auction Manager make no representations in this respect, including any representation regarding transmit location facilities or accessibility.

7.4 Caveat

As set out in the Contract, where the transfer of any licence to the Provisionally Successful Bidder is to be Registered, each licence will contain a caveat that will have the effect of prohibiting the registrar from making any entry on the Register charging, modifying, or transferring the licence(s), other than with the consent of the Crown.

8. The Auction

8.1 Online bidding auction

The auction will be conducted as an online auction via Trade Me Limited's website (www.trademe.co.nz) in accordance with the Conditions of Sale.

The Conditions of Sale are available on Trade Me Limited's web page at <http://www.trademe.co.nz/help/143/terms-and-conditions>. In the event of any conflict between the Conditions of Sale and these Terms and Conditions, these Terms and Conditions will prevail.

8.2 GST

All bids are deemed to be inclusive of GST.

8.3 Bids by Ministry employees invalid

Any bid made by or on behalf of an employee of the Ministry will be invalid unless the prior written consent of the Chief Executive is obtained to that employee participating in

the auction. If the Chief Executive has consented to an employee participating in the auction this will be advertised on the Auction Information Page before the commencement of the auction.

9. Withdrawal of Lots

9.1 Chief Executive may withdraw Lots

All or any of the Lots may be withdrawn from the auction at the discretion of the Chief Executive at any time prior to the close of the auction, notwithstanding that valid bids may have been made in excess of the reserve prices of any of the Lots.

9.2 Withdrawals to be announced

If the Chief Executive exercises his or her discretion to withdraw all or any of the Lots from the auction, the Auction Manager will announce this on the Auction Information Page, or if the withdrawal is within 2 Working Days prior to the Auction, by advising the Auctioneer.

9.3 No claims if Lot withdrawn

No Bidder or prospective bidder will have any claim against the Chief Executive or the Ministry for any expenses or other compensation as a direct or indirect consequence of such withdrawal.

10. Completion of Auction

10.1 Bidding closes when Auctioneer declares completion

Bidding for a Lot will close when the Auctioneer declares the auction for that Lot is completed.

10.2 Provisionally Successful Bidder is highest bidder

The Provisionally Successful Bidder for a Lot is the Bidder with the highest valid bid for that Lot as determined by the Auctioneer.

10.3 Provisionally Successful Bidders

When the Auctioneer is satisfied that the auction is complete:

- a) the Provisionally Successful Bidder will be under a contractual obligation to pay the Auctioneer the full amount of the successful bid; and
- b) the Provisionally Successful Bidder will be under a contractual obligation to purchase that Lot.

11. Post Auction Processes

11.1 Publication

Within five Working Days following the completion of the Auction the Auction Manager will publish the details of the Auction results (including successful bids and Provisionally Successful Bidders) on the Auction Information Page.

12. Settlement Requirements

12.1 Payment of successful bid and delivery of Contract

Each Provisionally Successful Bidder must, within 10 Working Days of completion of the auction:

- a) pay the full amount of its successful bid to the Auctioneer under the Conditions of Sale; and
- b) provide a copy of the Contract and power of attorney in the form set out in Appendix 2 of the Contract signed for and on behalf of the that Provisionally Successful Bidder addressed to the Chief Executive via the contact details set out in Schedule 2, and
- c) pay all overdue annual administration fees on any other radio or spectrum licence held by the Purchaser.

12.2 Transfer of Licences to Provisionally Successful Bidders

Subject to any law and to prior receipt of the signed Contract and power of attorney in the form set out in Appendix 2 of the Contract in accordance with clause 12.1, the Chief Executive will, within 10 Working Days of the Auction Manager receiving confirmation from the Auctioneer that the Provisionally Successful Bidder has paid in full the amount of its successful bid, transfer the registration of the relevant licences comprising a Lot in the name of the Provisionally Successful Bidder.

To enable the Chief Executive to make the transfer, Provisionally Successful Bidders must register as a client of the registry (if they are not already a client of the registry) by completing an online “new RSM client request”, which is accessible via the Auction Information Page.

13. Cancellation and Liability

13.1 Cancellation events

A cancellation event occurs if:

- a) a Provisionally Successful Bidder fails to settle in terms of clause 12.1; or
- b) the Auctioneer receives no bid on a Lot above the reserve price.

13.2 Effect of cancellation event

Without limiting the Ministry's other legal rights and remedies and despite anything to the contrary in these Terms and Conditions:

- a) if clause 13.1(a) applies, the contract for the purchase of the relevant Lot by the Provisionally Successful Bidder is deemed to be cancelled; and
- b) if clause 13.1(a) or (b) applies, the Ministry will be free to dispose of the relevant Lot at its discretion, including by offering the relevant Lot to the Bidder who placed the second highest bid or by cancelling the relevant licence.

14. Announcement of Final Results and Publishing Other Information

14.1 Results published

Final results will be published by the Auction Manager on the Auction Information Page once settlement of all Lots is complete.

14.2 Information of interest may be published on Internet

Bidders agree that the results of the auction (including the names and details of Provisionally Successful Bidders, and the licence details) and any other information related to this auction that the Chief Executive believes to be of general interest, may be publicised in any way, including published on the Auction Information Page or anywhere else.

15. Crown Not Liable

The Crown will not be liable in any way to a Bidder (including a Provisionally Successful Bidder) for the exercise of any right or obligation set out in these Terms and Conditions, including (to avoid doubt) for any claim for direct or indirect losses, costs or expenses as a result of, or in connection with, that exercise of the right or obligation.

Schedule 1 - Schedule of Lots

This auction, Radio Frequency Auction No. 24, comprises three (3) spectrum licences, full details of which are set out in the Register. Each Lot is generally described as follows:

Auction ID	Transmit Location	Frequency (MHz)	Spectrum Licence Number	Reserve Price (NZD Incl. GST)
1	Two Peaks (Central Hawkes Bay District)	96.4	<u>402243</u>	\$3,920
2	Otahoua (Masterton District)	103.9	<u>402516</u>	\$16,379

Schedule 2 - Contact Details

David Reynolds
Auction 27 Manager
Radio Spectrum Policy and Planning
Ministry of Business Innovation and Employment
PO Box 2847
25 The Terrace
WELLINGTON

DDI: 04 9011 400

email: CrownSpectrum@mbie.govt.nz

Schedule 3 – Contract

See pages attached.