

COMMENTS IN RELATION TO THE IDA 3G AUCTION RULES

A. AUCTION RULES

- 2.1.3 The Auction Rules do not set out any definition of what constitutes a "change of ownership or control structure". Does a "change of ownership or control structure" occur only where there is a change in control as the term "control" is defined in the Notes to paragraph 1.5 of the Application Form. The Notes to paragraph 1.5 specify the matters which have to be included in the Application in a diagrammatic form but do define "change of ownership or control structure" and do not impose any obligation to inform the IDA of any change in any of the matters set out. This issue needs to be clearly considered and defined.
- 2.2.1 Since the IDA may defer its decision, the Applicant should be informed by the end of the five-day period of how much longer the IDA would take to decide. Otherwise, is the Applicant to assume that it is not an Eligible Bidder.
- 2.2.2(a) It would be useful if IDA were to specify the specific items of information it needs to assess the financial and technical capability of an applicant to acquire a 3G Spectrum Right and operate a network in relation to that 3G Spectrum Right.
- 2.2.3 Refer comments to 2.2.1 above.
- 2.3.1 In relation to the IDA determination as to whether it considers an applicant to be an Associated Bidder, ideally this should not be later than the time when it determines and notifies an applicant that it is an Eligible Bidder. Further, in order for an Applicant to be given an opportunity to explain why it should not be considered as an Associated Bidder, the IDA must specify the grounds for regarding it as an Associated Bidder in relation to another Applicant.
- 2.3.4(iii)&(iv) Genuine bidders should not be penalized for the behaviour of bidders who become Associated Bidders. In the event of suspension of the auction, genuine bidders should be able to continue with the auction as soon as the Associated Bidders have been dealt with in ways deemed appropriate by IDA. We suggest that the Auction or any Round in the Auction be restarted within two (2) Business Days.
- 2.3.7 IDA should define "Associated Bidder" in measurable and quantifiable terms. The guidance provided in this sub-section in terms of what may not constitute an Associated Bidder is insufficient. Also, while collusion agreements are clearly not allowed, one could infer from the Rules that acquisition or merger discussions are allowed. We suggest that IDA clearly specify what type of

negotiations (unrelated to the auction per se) is allowed prior to or during the auction.

4.4 IDA does not allow any person other than the six Authorised Representatives of the Bidder entry into the Auction Location. Depending on the final arrangements that IDA will allow in relation to the manner and times at which the Authorised Representative may communicate with their respective Bidders and the procedures regarding how Authorised Representatives may enter and leave the Auction Location, the number of Authorised Representatives set at six may be insufficient particularly if the Auction is prolonged. We suggest that IDA allows a maximum of thirty (30) potential Authorised Representatives to be “pre-qualified” by attending the Information Session and Trial Auction and undertaking the written declaration to IDA. In the event that any of the six Authorised Representatives becomes incapacitated before or during the Auction, or the Bidder wishes to have any of its Authorised Representatives replaced for whatever reason, that Authorised Representative could be replaced by someone from this pool of “pre-qualified” Authorised Representatives.

6.2(c) We suggest that IDA pre-determines the times for each Round, the duration for each Round and the interval between Rounds and that these do not vary throughout the Auction.

6.6 Consistent with the principles of efficiency, objectivity and transparency for which the Auction method was chosen by IDA in the first place, information to be provided by IDA about the bidding in each Round should be complete and includes details on the identity of each bidder and the bid submitted by each bidder.

8.4.2 Consistent with the principles of efficiency, objectivity and transparency, we suggest that IDA fixes the percentage by which the Minimum Bid Increment is determined in the following manner:

Value of Bid <u>(\$million)</u>	Minimum Bid Increment <u>(as percentage of Current Highest Price)</u>
150 to X1	Y1%
X1 to X2	Y2%
X2 to X3	Y3%
Etc	

8.4.3 Given that the Minimum Bid Increment could be as much as 10% of the relevant Current Highest Price, the Maximum Bid for a 3G Spectrum Right could potentially be 90% above the relevant Current Highest Price. To prevent irrational bidding, we suggest that the Maximum Bid be the Minimum Bid plus an amount equal to four (4) times the Minimum Bid Increment for that Round.

- 8.6.4 If a Bidder exercises a Waiver before the end of that Round, the Bidder (including the Current Highest Price Bidder) would be deemed not to have submitted a bid in that Round. We suggest that a Bidder whose Valid Bid is the Current Highest Bid should not be allowed to exercise a waiver for so long as the Bidder remains the Current Highest Price Bidder.
- 12.1 This assumes that in the final Round, there would be a Current Highest Bid in relation to each of the 3G Spectrum Rights. The final Round (being presumably the last Round immediately before the Auction closes) may involve only one of the 3G Spectrum Rights. The highest Valid Bid in respect of any other of the 3G Spectrum Rights may have been submitted in a Round preceding the final Round. Furthermore, the use of the term "Current Highest Bid" is inappropriate here because the term is defined "as the highest legally binding Valid Bid submitted for that 3G Spectrum Right in the last previous Round" in relation to any Round. Therefore, the "final Round" in relation to any particular 3G Spectrum Rights would be the Round in which the highest Valid Bid for that 3G Spectrum Right was submitted.
- 12.2(b) For the reason set out above, the expression "Current Highest Bid" should be revised to highest Valid Bid".
- 13.1 Even if a Bidder is a Current Highest Price Bidder (with respect to any Round and any particular 3G Spectrum Right), it does not follow that it would be awarded the 3G Spectrum Right. A Bidder's Bank Guarantee should be returned in the event that it is not awarded any 3G Spectrum Right within the ten Business Days after the close of the Auction.
- 13.3 The Bidder who is required to pay the 3G Spectrum Right Payment is the Bidder to which any 3G Spectrum Right is awarded. This Section should refer to such Bidder instead of the Current Highest Price Bidder (which is defined in relation to a Round). No mention is made as to the grant of the FBO licence and Station (Spectrum) and Network (Spectrum) Licence in conjunction with the grant of the 3G Spectrum Licence.
- 13.5 This Section should refer to such Bidder instead of the Current Highest Price Bidder.
- 20.3 In the absence of any criteria rendering a Bidder as an Associated Bidder, it would be difficult for a Bidder to comply with this Section.

Part VII - Definitions

1. "Confidential Information" – This should be confined to information relating to the IDA. As defined, it could even include information which related to or belonged to or had been lawfully acquired by the Bidder or any member of its group which elects to make the disclosure.

B. APPLICATION FORM

Note 1.4(c) and (d)

It may be difficult for an Applicant to provide the details of beneficial ownership of shares. Furthermore, where the Applicant is a listed public company, it may be impossible to comply with these requirements. Even the provision of a list of the names in which the shares in the Applicant are registered could constitute an undue burden on an Applicant which is a listed public company.

Note 1.5(c), (d), (e), (f), (g) and (h)

The existence of any of those persons may not be known to the Applicant as the Applicant may not necessarily have all the relevant information to comply fully and accurately with these provisions. Further, sub-paragraphs (g) and (h) extends the obligations to many levels. It may be appropriate to narrow the scope of these paragraphs to address principal legitimate concerns of IDA.

Note 1.5(j)

The definition "group" makes reference to "parent company" in the Companies Act. The Companies Act uses the term "holding company" instead of "parent company". We suggest "holding company" be used.

C. SYSTEMS AND SECURITY

1. Each bidder should be given a private key for the encryption of bid information and for the authentication of both the message and the bidder's identity.
2. Notification back to the bidder confirming submission should be provided.
3. The auction server should be multitasking and able to accept simultaneous concurrent bids from multiple bidders.
4. The auction server should have dedicated LAN interfaces for each bidder to avoid congestion and provide added security.
5. The LAN security should be guaranteed by a neutral outside party.
6. The bidding rooms be swept to ensure that there are no bugs or listening devices.
7. Telephone lines should be safe and encrypted.

8. Bidders should be allowed to install their own encryption equipment.
9. The HelpDesk should support PC/Technical problems. Response times and escalation procedure should be established.
10. Where the IDA determines that the Electronic Bidding Procedure is no longer effective, all bidders be allowed to revert to the alternative methods to ensure fair play.
12. IDA should permit the bidder to "audit" the electronic bidding mechanism to ensure that it is secure and reliable during the Auction Trial.
13. IDA proposes to set only 3 working days between the Trial Auction and the Actual Auction day. We propose that this period be extended to 10 working days to provide sufficient time for a bidder to evaluate, audit and familiarise themselves with the systems.
14. A secure printing facility or a log file should be provided for the bidder to track the bidding activities and the bid submission acknowledgement.
15. Bidders should be allowed to perform security checks on the bidding location, including eavesdropping device, packet-sniffing device etc.

D. LOCATION AND COMMUNICATION

1. A bidder should be able to replace an Authorized Representative up to the commencement of the Auction or during the Auction (upon written or other notification to IDA).

E. EQUIPMENT

1. The rooms should be equipped with a sufficient number PCs and printers.
2. There should be a flip chart and white board in the bidding rooms.
3. The rooms should be locked after the sessions and the keys kept with an IDA authorized and nominated person.
4. There should be separate rooms for each bidding team.