

# CASH BID EXPLORATION PERMIT GUIDELINE

A guideline in relation to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Prepared by the Commonwealth Department of Industry, Innovation and Science

*Effective 2 April 2014*

This document has been developed as a general guide only. It does not replace or amend the requirements of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and associated Regulations, which should be read in conjunction with the guideline.

It is made available on the understanding that the Commonwealth is not thereby engaged in rendering legal or other professional advice. Before relying on this material in any important matter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purposes, and obtain appropriate legal or other professional advice relevant to their particular circumstances.

It is anticipated the guideline will be amended from time to time. The most up-to-date version of the guideline is available at [www.nopta.gov.au](http://www.nopta.gov.au).

**PLEASE NOTE:** The National Offshore Petroleum Titles Administrator (NOPTA), on behalf of the respective Offshore Petroleum Joint Authority, is the first point of contact on all titles administration matters relating to offshore petroleum and greenhouse gas storage.

## PURPOSE

This guideline aims to assist potential applicants to lodge applications for cash bid exploration permits under section 110 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act). The guideline also provides information about the process for inviting and making cash bids under section 111 of the OPGGS Act, and for the subsequent offer and grant of a cash bid exploration permit.

## 1. OVERVIEW

- 1.1. The Joint Authority will publish in the Australian Government Gazette a notice outlining the areas available for grant of an exploration permit by way of cash bidding, including key dates and decision-making criteria.
- 1.2. Exploration permits will be awarded for either one term of six years, or for an initial term of six years with an option to renew for a further five year term. The Australian Government Gazette notice will state whether the permit can be renewed.
- 1.3. The cash bid process has two stages:
  - 1.3.1. permit application (prequalification)
  - 1.3.2. invitation to make a cash bid.
- 1.4. An “applicant” for the purposes of cash bidding may be any individual or entity that can be granted an exploration permit under the OPGGS Act (this includes, but is not limited to, individuals, companies, bid groups, and joint ventures).
- 1.5. An applicant must first prequalify to be eligible to make a cash bid for an exploration permit. In order to prequalify, the Joint Authority must be satisfied that the applicant has the technical and financial capabilities to explore for petroleum in offshore areas.

- 1.6. All applications for prequalification will be treated as commercial-in-confidence by the Joint Authority and NOPTA.
- 1.7. If the Joint Authority decides that an applicant is eligible, as a result of assessment during the prequalification stage, the eligible applicant will then be invited to submit a cash bid to NOPTA within the period stated in the invitation.
- 1.8. All eligible applicants for a particular area will be notified with details regarding the process for submitting the cash bid during the auction period.
- 1.9. The Joint Authority will offer an exploration permit at the conclusion of the auction period on the basis of the highest validly submitted bid or bids.
- 1.10. Once the exploration permit has been granted, the name of the successful applicant, the amount of the winning cash bid and the number of bids received will be publically announced.
- 1.11. Permits awarded under the cash bidding system will not be subject to annual exploration work program commitments. However application fees, annual title administration levies, data management requirements and other ordinary statutory approval requirements apply to cash bid exploration permits.
- 1.12. Cash bid areas that are not taken up will not be offered as part of a re-release round.
- 1.13. The general timeframe for the cash bid process is outlined at Attachment 1.
- 1.14. Foreign government investors intending to participate in the Cash Bidding Acreage Release Program must receive foreign investment approval prior to acquiring an interest in an exploration permit issued under the Program. For further information on foreign investment approvals, see the [Foreign Investment Review Board website](#) or [contact the Foreign Investment Review Board Secretariat](#)

## **2. PERMIT APPLICATION (prequalification)**

### *General information*

- 2.1. An applicant must prequalify in order to be invited to submit a cash bid.
- 2.2. One prequalification application form will be required per applicant. NOPTA will provide written confirmation of an application having been received.
- 2.3. Applications can be submitted at any time during the prequalification period, prior to the closing date and time. Assessment will commence upon receipt of the application and the applicant will be advised in due course.
- 2.4. Applications cannot be amended after they have been submitted. However NOPTA may request further information in relation to the application.

### *How to apply for prequalification*

- 2.5. The application, together with the prescribed fee, must be submitted to NOPTA in the approved manner, and by the deadline specified in the Australian Government Gazette notice. The approved application form can be found on [www.nopta.gov.au](http://www.nopta.gov.au).
- 2.6. The application must include the following information:
  - 2.6.1. details of the applicant

- 2.6.2. details of the technical qualifications of the applicant and its key employees, and details of the technical advice available to the applicant (by way of consultants or other providers) that would enable it to explore for petroleum in offshore areas
- 2.6.3. where a third party provider will be used to undertake exploration activities, evidence of conditional agreements, or similar initial consultations, should be provided
- 2.6.4. evidence of the financial resources available to the applicant demonstrating that the applicant has the ability to continue as a going concern (refer Attachment 2 for a non-exhaustive list of examples). Applicants should also provide the latest audited financial reports for the applicant, including but not limited to:
  - Statement of Profit and Loss and Other Comprehensive Income
  - Statement of Financial Position
  - Statement of Cash Flows.

#### *Assessment*

- 2.7. The Joint Authority must be satisfied that the applicant has the requisite technical and financial capability to explore for petroleum in offshore areas. In deciding whether to invite the applicant to make a cash bid, the Joint Authority will take the following matters into account:
  - 2.7.1. the applicant has financial resources available and the ability to continue as a going concern
  - 2.7.2. the applicant has access to a range of technical skills to satisfy the Joint Authority of its technical competence to explore for petroleum in offshore areas. The Joint Authority will consider the technical capacity and experience of key personnel and/or sub-contractors.

### **3. CASH BID**

#### *General information*

- 3.1. Once an applicant is prequalified, the Joint Authority, by written notice, will invite the eligible applicant to submit a cash bid. If the Joint Authority determines that an applicant is not eligible, the Joint Authority will, by written notice, reject the application by the applicant.
- 3.2. A written invitation to submit a cash bid will specify a period during which the applicant may make its cash bid. The period will have an opening date and closing date and time. The invitation will specify the manner in which the cash bid must be made.
- 3.3. A cash bid can only be made once in relation to a specified area by the same applicant who has successfully prequalified.
- 3.4. A cash bid without evidence of corresponding deposit payments will not be accepted.
- 3.5. NOPTA will provide written confirmation of an application having been received following the end of the bidding period.

## *How to Bid*

- 3.6. A cash bid must be submitted to NOPTA in the approved manner. A cash bid form can be found on [www.nopta.gov.au](http://www.nopta.gov.au). A cash bid submission must include:
  - 3.6.1. details of the eligible applicant making the cash bid
  - 3.6.2. details of the area on offer for which the eligible applicant is making the cash bid
  - 3.6.3. the amount in Australian Dollars the eligible applicant is prepared to pay for the award of the permit
  - 3.6.4. evidence of the payment of a 10 per cent electronic funds transfer deposit in Australian Dollars (net of transaction fees, for example bank or foreign exchange fees) based on the bid amount. The evidence must clearly demonstrate payment has been made, and include the date and time of payment
    - The deposit amount must be exactly 10 per cent of the amount stated in the cash bid.
  - 3.6.5. the eligible applicant's bank account details to facilitate payment in the event that the return of the deposit is required
  - 3.6.6. a cash bid with all corresponding evidence must be submitted in the approved manner before a bid can be taken to be submitted, for the purposes of item 5 and 6—'earliest bid'.

## **4. OFFER OF PERMIT: WHERE HIGHEST BID IS AT OR OVER THE RESERVE**

- 4.1. As soon as practicable after the end of the period specified for submission of cash bids, the Joint Authority will, by way of written notice (offer document), offer the cash bid exploration permit to the highest bidder whose bid is at or over the reserve. See item 5 for information about the tie-breaker process that will apply in the event that there are two or more equal highest bids at or over the reserve.
- 4.2. The successful highest bidder has 14 days from the date of the offer to accept (request grant of the permit) and pay, by way of electronic funds transfer, the balance of the amount specified in the application offer document. If either the applicant does not request grant of the permit, or does not pay the balance of the amount specified in the offer document, within 14 days, the application will lapse.
- 4.3. The exploration permit will not be granted until the balance, paid in Australian Dollars (net of any transfer or foreign exchange fees), of the successful bid has been receipted, evidencing payment within 14 days from the date of the offer.
- 4.4. In the event that the highest bidder does not accept the offer of the cash bid exploration permit, or the application period lapses, or payment of the balance is not made within 14 days, the deposit will be forfeited to the Commonwealth and the Joint Authority will offer the permit to the next highest bidder.

## **5. TIE-BREAKER**

- 5.1. In the event that two or more equal bids are received that are equal to or exceed the reserve price, and those bids are either the only such bids or are higher than all other bids, the Joint Authority will invite, by written notice within seven (7) days, the equal highest bidders to lodge an increased bid (no further deposit will be required).
- 5.2. The equal highest bidders will have a further 7 days to lodge an increased cash bid, in writing, and in the approved manner. The Joint Authority will offer the permit to the highest bidder, based on the subsequent increased bid.
- 5.3. In the event that two or more of the equal highest bidders lodge increased cash bids that are equal to each other, and that are the only increased cash bids or are higher than all other increased cash bids, the Joint Authority will give an offer document to the bidder whose tie-breaking cash bid was received earliest.
- 5.4. If none of the equal highest bidders makes a tie-breaking cash bid within the period stated in the tie breaking invitation, the Joint Authority will give an offer document to the bidder whose original cash bid (under section 111) was received earliest.
- 5.5. Items 4.2 to 4.4 will apply following the making of the offer.

## **6. OFFER OF PERMIT: WHERE HIGHEST BID IS BELOW RESERVE**

- 6.1. Where there is an undisclosed reserve, and the highest or only cash bid for the permit is less than the reserve, the Joint Authority may issue a non-negotiable offer to the highest bidder to match the reserve, which will be revealed in the offer. The bidder will not forfeit their deposit if they do not choose to accept the offer.
  - 6.1.1. this is also applicable where an offer of a permit for a bid that equalled or exceeded the reserve has lapsed, and there are no other bids at or above the reserve. However, in this case, an offer may only be made to the applicant that made the highest bid, or the only bid, that is below the reserve; any other bids that are below the reserve will be automatically rejected
  - 6.1.2. in the event that two or more highest bids under the reserve are equal, an offer as described above may be made to the applicant whose cash bid was received earliest.
- 6.2. The successful bidder will be subject to the same terms of acceptance and payment as detailed in items 4.2 and 4.3 above.

## **7. DEPOSIT**

- 7.1. All unsuccessful bidders will be notified by written notice. The deposit paid by unsuccessful bidder will not attract interest and will be returned within 14 days of the grant of the title to the successful bidder.
- 7.2. In the event that a highest bidder is offered the grant of an exploration permit, and the bidder either does not accept the offer or does not pay the balance of the amount specified in the offer within 14 days of the date of the offer, the deposit will be forfeited (unless an offer is made in accordance with item 6.1 above).

## **8. RENEWAL OF CASH BID EXPLORATION PERMITS**

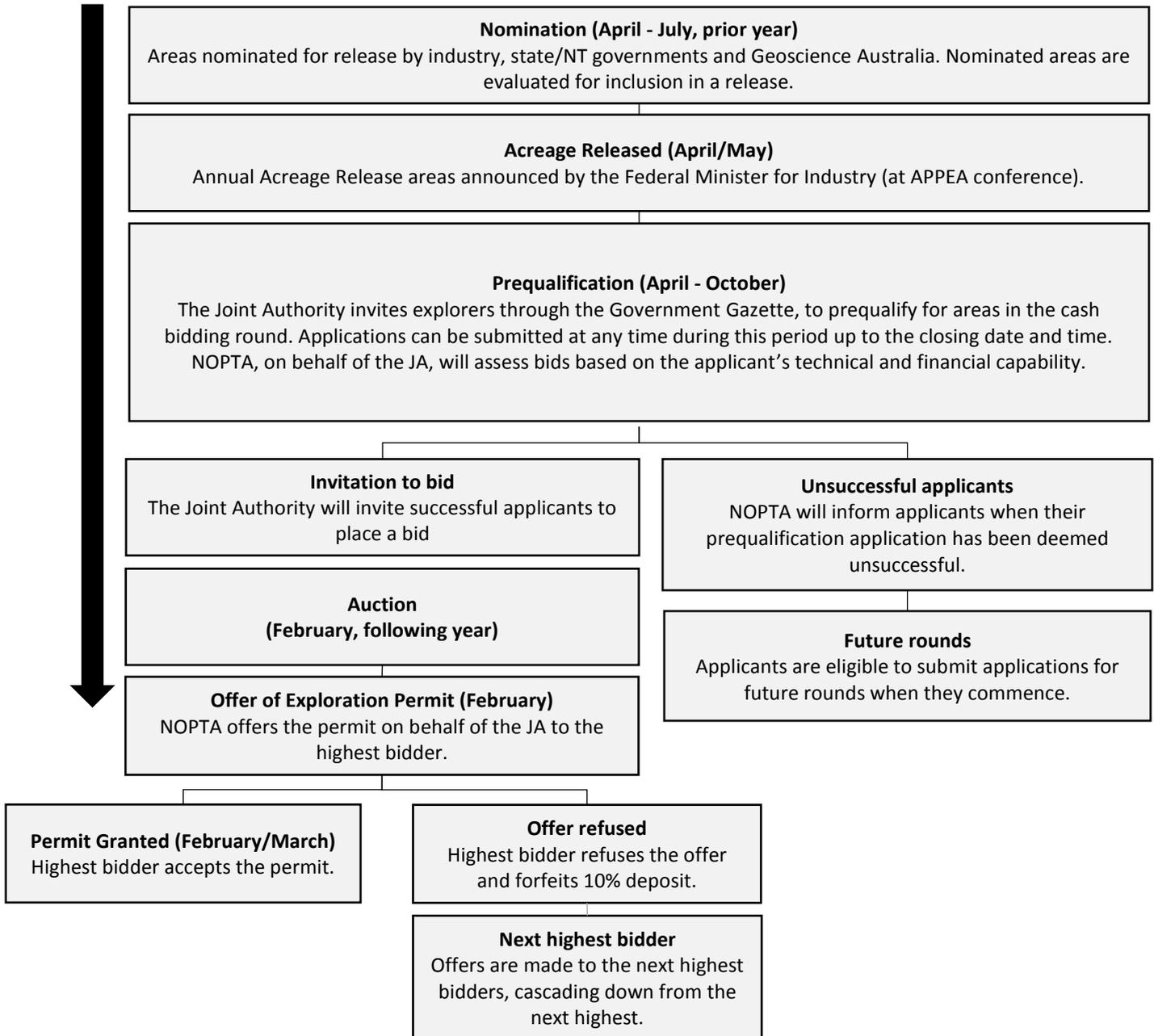
- 8.1. A permit holder cannot apply to renew a cash bid exploration permit if the original gazette notice stated that it was not able to be renewed, or if the Joint Authority has previously granted a renewal of the permit.
- 8.2. In accordance with subsection 123(6) of the OPGGS Act a permit in relation to a single block cannot be renewed.
- 8.3. Standard halving rules apply to renewable cash bid permits (see section 123 of the OPGGS Act).
- 8.4. Renewal applications must be lodged in accordance with section 119 of the OPGGS Act.
- 8.5. A renewal application must be submitted to NOPTA no earlier than six (6) months and no later than three (3) months prior to the expiry of the permit term.
- 8.6. A renewal application, with the prescribed fee, must be submitted to NOPTA in the approved manner. An application form can be found on [www.nopta.gov.au](http://www.nopta.gov.au). This must include details of compliance with conditions of title (if any) and relevant provisions of the OPGGS Act and regulations.
- 8.7. No work program conditions will apply to the renewal of a cash-bid exploration permit.

### **TABLE OF REVISIONS**

<b>Date</b>	<b>Version</b>	<b>Purpose</b>	<b>Jurisdiction</b>
April 2014	1	To establish a guideline for award of cash bid exploration permits	Commonwealth
June 2014	2	To insert a new item in the overview section dealing with FIRB requirements.	Commonwealth

**Overview of the cash bidding process**

(Note: exact dates will be provided in the Australian Government Gazette notice and bid invitation).



## Attachment 2

### **Examples of evidence of financial resources available and ability to continue as a going concern may include:**

- Annual Report including Director's declaration of ability of the entity to continue as a going concern
- independent auditors report or accountants certified statement in support of the entity's financial statements and ability to continue as a going concern
- parent company guarantee: e.g. a deed of cross guarantee or a guarantee provided by the parent company on corporate stationery is also sufficient
- other guarantee: e.g. a bank guarantee, or guarantee from an accountant's of a certified statement of an individual's capacity to fund (high net worth individuals).