

## **ICP – AUTORIDADE NACIONAL DE COMUNICAÇÕES**

**Regulation no \_\_\_\_/2009, of \_\_\_\_, \_\_\_\_\_**

### **Auction Regulation for the Granting of Frequencies Rights of Use for Broadband Wireless Access (BWA)**

Broadband Wireless Access (BWA) is a designation for new broadband wireless technologies, including fixed, nomadic and mobile applications.

The growing need for high speed access to multimedia services in fixed locations has led the industry to develop new technologies capable of overcoming potential technical restrictions (such as line of sight), implementing more efficient modulation technologies, and adding characteristics of mobility.

The ICP – Autoridade Nacional de Comunicações (ICP–ANACOM) has been monitoring the debate on the introduction of these types of technology, derived from various international *fora* on technical aspects (e.g. technical solutions, spectrum and rules), and also on its regulatory framework, aiming to harmonize the solutions to be adopted, taking into consideration, among others, European Commission Decision 2008/411/EC, of 21 May.

In accordance with a growing interest shown by various market participants in introducing this type of technology internationally, ICP-ANACOM has held a public consultation on the introduction of BWA in Portugal.

Having carefully considered the contributions gathered in the course of its public consultation, ICP–ANACOM approved, by decision of 24 January 2008, a decision relating to the limitation of the number of rights of use that are to be allocated for BWA in the 3400-3800 MHz frequency band.

According to the aforementioned decision, it was also decided that the most appropriate procedure for granting rights of use would be an auction, in view of the flexibility of implementation that it is intended to provide – among other things, through accommodating bidders who might (i) operate in different modes (fixed, nomadic and mobile), (ii) use different technologies (having with regard to the principle of technological neutrality), and (iii) potentially serve different

regions using different modes – as well as in light of the increased reliance on this type of procedure and the need to ensure that the market price of the spectrum in question is in line with its true underlying value.

Following this decision, the procedure for granting the rights of use in question should be carried out by means of an auction.

Hence, under the provisions of sub-item a) of Article 9 of the Statutes of ICP-ANACOM, approved by Decree-Law 309/2001 of December 7, and under clause 5 of article 35 of Law 5/2004, of February 10, in taking forward the regulatory objectives, especially sub-item a) of clause 1 of Article 5 of the aforementioned Law, and clause 13 of article 19 of Decree-Law 151-A/2000, of June 20, rectified by Decree-Law 264/2009, of September 28, the Board of ICP-ANACOM approves the following regulation, following the regulatory procedure foreseen in article 11 of the aforementioned Statutes and the general procedure of consultation, foreseen in article 8 of the aforementioned Law 5/2004.

## **CHAPTER I**

### **General Matters**

#### **Article 1**

##### **Object**

1 - The object of this regulation is the granting of rights of use of frequencies for the provision of Broadband Wireless Access (BWA) in the 3400-3800 MHz frequency band which, taking into account the territorial division by regions according to the map in Annex 1, are to be allocated as follows:

- a) Two rights of use, in each region, each corresponding to 1 lot of two blocks of 28 MHz, in the frequency sub-band of 3400-3600 MHz.
- b) Two rights of use, in each region, each corresponding to 1 lot of two blocks of 28 MHz, in the frequency sub-band of 3600-3800 MHz.

- 2 - Granting of frequency rights of use referred to in the previous clause is intended for the provision of publicly available fixed, nomadic and mobile electronic communications services, for broadband access, not constrained by the use of a specific technology.

## **Article 2**

### **Definitions**

For the purposes of this regulation, the following definitions are adopted:

- a) **Combinatorial Auction:** Selection procedure through which each participant may bid for one or more combinations of lots in several regions, for which he aims to be granted rights of use, specifying the price that he is willing to pay for the granting of the rights as set out in the respective combination that he bids for.
- b) **Block:** Contiguous quantity of radio frequency spectrum of 28 MHz.
- c) **Lot:** Quantity of radio frequency spectrum corresponding to two blocks of 28 MHz.
- d) **Package:** Combination of the number of lots that a bidder wishes to be granted in each region as specified in the distribution bid form.
- e) **Qualification Stage:** Initial stage of the auction, which establishes the entities participating in it, having verified their compliance with eligibility criteria and with the requirements for admission to the auction.
- f) **Distribution Stage:** stage where the qualified entities state their preference and the price that they are willing to pay for each package, through one or more bids. This stage only takes place when there is more than one applicant.
- g) **Assignment Stage:** stage in which the entities that have been assigned lots in the distribution stage reveal their preferences for the 3400-3600 MHz and 3600-3800 MHz frequency sub-bands.

- h) **Selection of Lots:** A step included in the Assignment Stage, in which winning bidders are allowed to choose the specific lots for which they wish to be granted rights of use in cases where such choice is available.
- i) **Reserve Price:** Minimum amount required for the granting of rights of use of one lot, which also represents the minimum value of the bid for this lot.
- j) **Bid in the Distribution Stage:** Statement of preference for one package of lots distributed across the whole nine regions, as well as the amount that the bidder is willing to pay for those lots.
- k) **Bid in the Assignment Stage:** Statement of preference for the assignment of the lots won in the Distribution Stage within the lower frequency sub-band (3400-3600 MHz) or within the upper frequency sub-band (3600-3800 MHz), as well as the amount that the bidder is willing to pay as a Top-Up Bid.
- l) **Bid Amount:** The amount included in a bid that determines the maximum value that a bidder is willing to pay, in the Distribution Stage, for the granting of rights of use for the package of lots corresponding to this bid.
- m) **Top-Up Bid Amount:** Amount that a winning bidder of the Distribution Stage includes in the Assignment Stage bid round for the grant of rights of use for a specific package of lots.
- n) **Base Price:** Price to be paid by the winning bidders after the Distribution Stage, which consists of the difference between the Bid Amount given in their winning bids and the respective Bid Discounts, based on the application of the Second Price Rule.
- o) **Bid Discount:** Amount which results from the application of the Second Price Rule that is used to calculate the Base Price, and which reduces the amount payable by a winning bidder to the minimum amount that would guarantee that their winning bids remain winning bids after the appropriate application of the respective Bid Discount.

- p) **Second Price Rule:** the principle of this Rule is used to establish the price to be paid by each winning bidder as being the lowest amount that would continue to guarantee the same outcome of the winner determination. These amounts are such that ensures that the combination of winning bids generates at least the same revenue as the best alternative combination of bids, including bids made by all winning and non-winning bidders.
- q) **Additional Price:** Difference between the top-up bid amount of a winning bid in the Assignment Stage and its bid discount.
- r) **Final Price:** Sum of the base price and the additional price, whenever the latter exists.
- s) **Winner Determination:** Selection of the combination of bids which generates the highest aggregate value, subject to the restrictions that (a) at most one bid at the Distribution Stage, and exactly one bid at the Assignment Stage, is selected from each bidder; and (b) the bids selected can be accommodated given the lots available.

### **Article 3**

#### **Lots available and reserve prices**

- 1 - The reserve prices have been set for each lot, identified as A, B, C or D, in each region, taking into account, among other criteria, indicators relating to population, population density, GDP *per capita* as well as broadband penetration, and are shown in the following table:

Regions	Lots Available	Reserve price per lot (thousands of Euros)
Region 1 (Lisbon, Leiria, Santarém and zones of Setúbal)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	300
Region 2 (Porto, Braga, Viana do Castelo)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	300
Region 3 (Coimbra, Aveiro)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	150
Region 4 (Vila Real, Bragança, Viseu, Guarda)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	100
Region 5 (Castelo Branco, Portalegre)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	100
Region 6 (Évora, Beja and zones of Setúbal)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	100
Region 7 (Faro)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	150
Region 8 (Azores)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	100
Region 9 (Madeira)	A: [3441 – 3469 MHz / 3541 – 3569 MHz] B: [3472 – 3500 MHz / 3572 – 3600 MHz] C: [3602 – 3630 MHz / 3702 – 3730 MHz] D: [3664 – 3692 MHz / 3764 – 3792 MHz]	150

2 - The frequencies that delimit the blocks may differ, from the above by a maximum of 3 MHz, for the purpose of minimizing interference and ensuring an efficient use of the spectrum.

3 - Without prejudice to the previous clause, a total of 28 MHz per block will always be granted.

#### **Article 4**

##### **Applicable legislation**

1 - The auction is governed by the provisions of Law 5/2004, of February 10, and by this Regulation.

- 2 - The rights of use for frequencies are governed by the provisions of Law 5/2004, of February 10, by this Regulation, and also by all the other legislation applicable to the electronic communications sector.
- 3 - The holders of rights of use for frequencies must comply with the legal orders that may be approved in the future, even if these define obligations not foreseen or specified at the date of granting of the rights of use, but which execution objectively result from requirement of public use of the service provided compliance to the regime specified in article 20 of Law 5/2004, of February 10.
- 4 - The holders of rights of use must also comply with orders or injunctions that, in accordance with law, are imposed upon them by the competent authorities.

## **CHAPTER II**

### **The Auction**

#### **Article 5**

#### **The Committee**

- 1 - The auction shall be carried out by a Committee (hereinafter referred to as “the Committee”), constituted by three members and appointed by decision of the Board of ICP-ANACOM, within 5 days of this regulation coming into force.
- 2 - The Committee has the following responsibilities:
  - a) To open the envelopes that contain the applications for the rights of use that are being auctioned;
  - b) To sign the application;
  - c) To grant the applicants a maximum period of 2 days to rectify any omissions or mistakes found in their application whenever they can be rectified;

- d) To prepare a reasoned proposal of a list of applicants admitted or rejected for submission to the Board of ICP–ANACOM;
- e) To decide on any complaints presented to it during the auction, suspending the act when necessary;
- f) To assess the validity of all the bids received and assess the winning bids in the terms of this regulation;
- g) To decide on the modification of dates and terms of the different stages of the auction in the event of special circumstances;
- h) To ask applicants or bidders for clarifications at any stage of the auction;
- i) To provide the clarifications requested by bidders during the Qualification, Distribution and the Assignment stages;
- j) To exclude a bidder, whether or not it has been named as winner, in the event of infringement of the rules of this auction or of practices of collusion;

3 - The requests for clarification submitted by bidders during the Distribution and Assignment Stages should be presented within the specified dates and terms defined by the Committee in the notifications foreseen in clause 1 of article 17 as well as in sub-item b) of clause 2 of article 22 in respect to the procedures to be followed in those stages.

4 - The clarifications provided by the Committee will be published in the website of ICP-ANACOM.

5 - An appeal which does not suspend the effects of the appealed decision may be addressed to the Board of ICP–ANACOM against any of the decisions referred to in sub-items e) and j) of clause 1.



**Article 6**  
**Clarifications to be provided**

- 1 - The applicants or bidders undertake to present, before the Committee, all explanations requested from them, within the time period and by the means determined by the Committee.
- 2 - Non-compliance with the provisions of the previous clause shall result in the exclusion of that applicant or bidder from the auction, except in cases that are duly justified and accepted by the Committee.

**Article 7**  
**Auction procedure**

- 1 - The auction is a combinatorial sealed bid auction with two stages, Distribution and Assignment, both of which consist of a single round and are based on the Second Price Rule.
- 2 - The auction consists of the following stages:
  - a) Qualification: determines the applicants which are qualified to submit bids for the assignment of rights of use for the lots in each region and determines whether a distribution stage is necessary.
  - b) Distribution: determines how many lots are granted in each region to each bidder and the base prices to be paid by the winning bidders of these lots; there is a single bid round in which bids may be placed on packages of lots, for the various regions, without regard to the intended frequency sub-band.
  - c) Assignment: determines, where applicable, how the various lots won by the bidders in each region are distributed between the upper and lower sub-bands, and the final price to be paid by those bidders, through a single bid round and/or lot selection procedure.

- d) Grant: final stage of the selection process, involving the issuance of the enabling titles and publication of the auction's results.

## **Section I**

### **Qualification Stage**

#### **Article 8**

#### **Requirements for the applicants**

- 1 - Legal entities, constituted or to be constituted, that comply with the requirements set forth by clause 4 of Article 19 of Law 5/2004, of February 10, may apply for the granting of the rights of use that are the subject of this regulation.
- 2 - Entities yet to be constituted may also apply provided that they have a valid certificate of admissibility of business. The respective enabling title is, in the event of granting the right of use for frequencies, only to be issued after presenting a certificate that proves that the necessary registrations have been made.
- 3 - No entity may present itself at the auction if:
  - a) it holds rights of use in the 3400-3800 MHz frequency band, in Portugal;
  - b) it has been designated as having significant market power in the wholesale supply of broadband access in Portugal – market 5 of Recommendation 2007/879/EC, of the European Commission, of December 17;
  - c) it holds rights of use for the provision of publicly available terrestrial mobile services in Portugal;
  - d) it is directly or indirectly controlled or significantly influenced by an entity referred to in the above mentioned sub-items a), b) and c);
  - e) it directly or indirectly controls or significantly influences an entity referred to in sub-items a), b) and c);

f) it is directly or indirectly controlled by another entity which in turn directly or indirectly controls or significantly influences an entity referred to in sub-items a), b), and c).

4 - The concept of “control” referred to in the previous clause shall be interpreted in accordance with article 21 of the “Código dos Valores Mobiliários”, also taking into account the relationships which, pursuant to articles 20 and 20-A of that Code, lead to the imputation of votes, whether or not the entity referred to is subordinated to it.

5 - For the purposes of these regulations and specifically clause 3 above, “significant influence” is considered as such when an entity holds at least 20% of the voting rights, in accordance with the criteria established in articles 20 and 20-A of the “Código dos Valores Mobiliários”.

6 - The prohibition specified in sub-item a), b) and c) of clause 3 remains in effect until the issuance of the enabling titles of the rights of use for frequencies.

## **Article 9**

### **Provisional deposit**

1 - To safeguard the commitment assumed with the submission of the applications and the obligations inherent to the auction, the applicants shall provide a deposit corresponding to at least:

a) 50% of the sum of the reserve prices of the lots included in the relevant bid during distribution stage; or

b) 50% of the sum of the reserve prices of the lots that will be chosen by the unique bidder when the distribution stage does not take place, in the terms of article 16.

2 - For the purpose of the provisions of sub-item a) of clause 1, relevant bid is the bid which sum of the reserve prices is the highest amongst other bids to be submitted by the applicant.

- 3 - The deposit can either take the form of a bank guarantee or a deposit insurance to the order of ICP–ANACOM, which in either case must be duly documented.
- 4 - The deposit may be withdrawn by the applicants in any of the following cases:
  - a) When the applicant did not qualify;
  - b) After receiving the notification of exclusion referred to in clause 3 of article 15;
  - c) In the case of application withdrawal according to the terms allowed in clause 4 of article 15.
- 5 - For the purposes of the provisions of the previous clause, ICP–ANACOM shall carry out the necessary procedures within the subsequent 10 days.

## **Article 10**

### **Requests for clarification**

- 1 - Interested parties may request, during the application submission period and up to 10 days before the period ends, clarifications of any queries regarding the interpretation of any document constituting the auction process.
- 2 - Requests for clarification should be presented at the public service desk at the headquarters of ICP–ANACOM, on business days between 9 am and 4 pm, in writing, with return receipt requested. Alternatively such requests may be sent by registered letter with return receipt or, preferably by electronic means, to the email address [leilaobwa@anacom.pt](mailto:leilaobwa@anacom.pt), , in all cases being addressed to the chairman of the Committee.
- 3 - Clarifications shall be given by the Committee by the same means used by the applicant and mailed up to five days after the date of receipt referred to in the previous clause.

- 4 - Requests for clarifications, and the subsequent replies, are to be made available on the Internet website of ICP–ANACOM.

## **Article 11**

### **Delays**

- 1 - In the situations specified in the previous article, the applicant or bidder bears sole responsibility for delays that occur, and may not lodge any complaints in the event that the clarification request is delivered after the end of the deadlines defined in this Regulation.
- 2 - If the replies to the clarification requests are delivered by the Committee after the end of the deadline defined in the clause 3 of the above article, the deadline for submission of applications or bids will be postponed by a period equivalent to the verified delay.

## **Article 12**

### **Applications submission deadline and method**

- 1 - Applications must be formalised by written request addressed to the Chairman of the Board of ICP–ANACOM, containing identification of the applicant, a reference to these regulations, the date, and the applicant's signature.
- 2 - The application request must be submitted in a closed envelope, bearing the applicant's name, separate from the other elements that accompany the application.
- 3 - The request shall be written in Portuguese, without erasures, amendments, insertions or words crossed out with the same font used throughout.
- 4 - The application request shall be delivered to the public service desk at the headquarters of ICP–ANACOM, with return receipt requested, on business days between 9 am and 4 pm.
- 5 - The deadline for delivery of the applications shall end at December 17<sup>th</sup> 2009, and delivery may not be accepted after this date.

**Article 13**  
**Items to be submitted with the application**

1 - Applicants must present the following documents and items together with the application referred to in the previous article:

- a) A declaration signed by the entity that has powers to bind the applicant, recognised as such in the legally admitted terms, explicitly containing the acceptance of the conditions of the auction and compliance with the obligations arising from the application and the respective bids in the event of granting of rights of use.
- b) Certification of the registry and enrolment, currently valid, issued by the relevant Trade Register, or reference to the code that enables access to the permanent certificate of the applicant in terms that allow the verification of the corresponding elements.
- c) A non-authenticated copy of the respective by-laws or articles of association.
- d) A document proving that the provisional deposit has been made in accordance with the terms of article 9.
- e) A document that refers to the composition of the capital stock, direct and indirect, up to the second level, to enable verification of the matters referred to in clause 3 of article 8 of these regulations.
- f) Documents proving that it is up to date with social security contributions and taxes, or consent, in the terms provided by law, for ICP–ANACOM to consult the applicant's tax and contribution situation.
- g) A declaration signed by a person with powers to bind the applicant, recognized as such, appointing a maximum of two people to submit bids in his name and on his behalf, as well as the respective electronic contacts.

- 2 - For the purposes of sub-item e) of clause 1, applicants should specifically indicate the identities of the holders - private individuals or legal entities - of the applicant's capital stock, as well as the amounts they hold; if one or any of the partners is a legal entity, the same information should be provided.
- 3 - The entities referred to in clause 2 of article 8 are exempt from submission of the documents specified in sub-items a), b) and c) of clause 1, and must present:
  - a) A protocol binding the constituent parties to each other, with the respective signatures recognized in the terms admitted by law, in which there is an explicit statement of acceptance of the conditions of the auction and compliance with the obligations arising from the act of application and from the respective bids, in the event of allocation of rights of use;
  - b) Draft by-laws/articles of association, to which the constituents are bound;
  - c) Valid certificate of admissibility of business.
- 4 - The entities referred to in clause 2 of article 8 must explicitly indicate the postal and e-mail address to which they wish all correspondence in relation to the auction to be sent.
- 5 - Companies whose acts of constitution have taken place 90 days before the date of submission of the application are exempt from the requirement referred to in sub-item f) of clause 1.
- 6 - Documents presented by an applicant whose headquarters are outside the territory of Portugal shall be issued and authenticated by the competent authorities of the origin country or, if there is no document identical to the one required, it may be substituted by a statement made under oath by the applicant before a court or administrative authority, notary or other competent authority of the origin country.

- 7 - All the documents that accompany the application shall be written in Portuguese or, if they are not, shall be accompanied by a duly certified translation in relation to which the applicant declares that he accepts its primacy, for all purposes, over the respective originals.
- 8 - All documents presented by the applicants that accompany the application will not be returned, remaining in the possession of ICP–ANACOM.

#### **Article 14**

##### **Assessment of the applications**

The Committee shall verify, within 5 days from the deadline for the submission of the applications, compliance with the requirements set by articles 8, 12 and 13.

#### **Article 15**

##### **Admission and exclusion of applications**

- 1 - It is the responsibility of the Board of ICP–ANACOM to decide, upon a reasoned proposal from the Committee, on admission or exclusion of the applications, within a maximum time period of 10 days.
- 2 - Applications may be rejected if they do not comply with the provisions of clause 3 of article 8, and articles 12 and 13 of this Regulation.
- 3 - ICP–ANACOM shall notify all applicants of the respective admission or exclusion from the auction by registered letter with return receipt required, and shall publish on its Internet website the list of applicants admitted and excluded from the auction.
- 4 - Applicants admitted to the auction may, within a maximum period of 3 days after the date of receipt of the notification referred to in the previous clause, withdraw the submitted application by communication addressed to the Chairman of the Board of ICP–ANACOM, where explicitly expressed its wish to withdraw from the auction. The request should be presented at the public service desk at the headquarters of ICP–ANACOM, on business days between 9 am and 4 pm, in written form, with return receipt requested.



Alternatively such requests may be sent by registered letter with return receipt or, preferably by electronic means, to the email address [leilaobwa@anacom.pt](mailto:leilaobwa@anacom.pt).

## **Section II**

### **Distribution Stage**

#### **Article 16**

##### **Exemption of the Distribution Stage**

- 1 - This stage shall not take place when only one applicant is admitted for the granting of rights of use , moving directly to the lot selection procedure.
- 2 - In the situation specified in the previous clause, the sole applicant admitted may choose the lots that he wishes to acquire at the respective reserve prices, in light of the provisional deposit amount in accordance to article 9.
- 3 - Without prejudice of the stated in the previous clause, the rules and procedures defined in section IV of this Regulation shall be applied.

#### **Article 17**

##### **Bid submission**

- 1 - The Committee shall send to the representatives designated in the terms of sub-item g) of clause 1 of article 13, by electronic means, the distribution bid form, whose template is presented in annex 2 to these Regulations, with the procedures to be followed for returning the completed form.
- 2 - The bid form referred to in the previous clause shall be submitted to ICP-ANACOM via electronic means and the respective confirmation of receipt shall be issued by the same means.
- 3 - The date and time of the start and the end of the single bid round are communicated to bidders by electronic means, with the respective confirmation of receipt, and is to be published in a notice to be provided by ICP–ANACOM to the press and on its website.

## **Article 18**

### **Bidding Rules**

The bidding round shall take place in compliance with the following rules:

- a) Each bidder may submit bids for different packages of lots.
- b) For each bid submitted, the number of lots (between zero and four) in each of the nine regions included in the package, and also the respective price expressed in thousands of Euros, must be specified.
- c) The bid amount referred to in the previous sub-item may not be less than the sum of the reserve prices of the lots that make up the package.
- d) Bids may be made only for packages that contain lots with an aggregate reserve price that satisfies the requirement defined in sub-item a) of clause 1 and clause 2), both of article 9.
- e) The maximum number of bids that each bidder may submit is limited to 100, due to the scale of the computational calculation.
- f) There is no maximum bid amount, and the bidder is responsible for checking the amounts of his bids and ensuring that no error has been made.

## **Article 19**

### **Rejection of bids**

1 - The Committee shall reject bids which:

- a) Are not submitted by the end of the period and time of day published by ICP–ANACOM in accordance with clause 3 of article 17.
- b) Are presented by people other than those designated by the applicant in the qualification stage.
- c) Are included in forms that are incorrectly filled out.

- d) Are submitted for a package of lots for which the bidder cannot submit bids in light of the provisional deposit amount.
  - e) Are submitted for a package of lots which amount is lower than the sum of the respective reserve prices.
- 2 - In the event of more than one bid form being submitted, the most recently submitted form is accepted.
- 3 - In the event of more than one bid being submitted for the same package of lots, the bid with the highest amount is accepted.
- 4 - In the event of rejection of all the bids or the submitted bid form, the bidder shall be excluded from the auction, and it will be refunded 70% of the deposit amount provided under article 9.

## **Article 20**

### **Winning bidder determination**

- 1 - The winning bids are obtained by establishing the combination of bids that have the highest aggregate bid amount from all the valid bids presented by all the bidders, subject to the following conditions:
- a) A maximum of four lots shall be assigned in each region.
  - b) A maximum of one bid for each bidder is to be accepted.
- 2 - Ties are resolved by selecting the combinations of bids which result, primary and successively, in the following:
- a) The greatest number of regions to be allocated;
  - b) The greatest number of winning bidders;
  - c) The largest number of lots to be allocated;

- 3 - In the event of a tie remaining after the application of the criteria referred to in the previous clause, the winning combination of bids is determined through a random draw, to be held at a place and date to be decided by the Committee, among the tied groups of bids.
- 4 - In the event of a bidder withdrawing after submitting the respective bid form and before publication of the results of the procedure for winner determination, his bids shall remain valid for the purposes of winner determination.
- 5 - In the situation referred to in the previous clause, and in case the bidder is deemed winner, he is obliged to pay ICP-ANACOM the final price.
- 6 - In the situation referred to in the clause 4 and if the bidder is not deemed winner, it will be refunded 70% of the deposit amount provided under article 9.
- 5 - With submission of the bid form in the distribution stage, the winning bidder agrees to pay the amount corresponding to the base price determined for the winning bid.

## **Article 21**

### **Base price determination**

1. Base prices, one for each winning bidder, are determined simultaneously based on the Second Price Rule, which calculates the bid discount with the greatest aggregate value that are to be applied to the winning bids of each bidder respectively, subject to the following conditions:
  - a) That the procedure of winner determination produces the same result after the application of the respective bid discount to all bids made by the winning bidder, subject to bid amounts not becoming negative, and to all possible subsets of winning bidders;
  - b) That the amount of the bid discount for each winning bidder is not greater than the difference between the value of the winning bid and

the sum of the reserve prices associated with the lots contained in the winning bid.

2. When multiple combinations of bid discounts satisfy the conditions established in the previous clause, the one that minimizes the sum of the squares of the differences between the discounts applied to each of the individual bids and the maximum discounts that could be applied to each individual winning bidder, which in turn is determined by calculating the fall in the value of winning bids if all bids of the bidder in question were omitted, is to be selected.
3. The base price shall be rounded up to whole thousands of euro.

## **Article 22**

### **Results publication of the Distribution Stage**

- 1 - The Committee shall notify all bidders of the result of the Distribution Stage within a maximum of 15 days from the end of the single bid round, stating the following:
  - a) Identification of the winning bidders;
  - b) The number of lots corresponding to the rights of use of frequencies granted to each winning bidder in the respective regions;
  - c) Bidders excluded under article 19.
- 2 - The Committee shall notify each winning bidder, within the period referred to in the previous clause, of the following:
  - a) The base price applicable to its winning bid;
  - b) The start time and the duration of the bid round in the Assignment Stage, should it take place, and the procedures to be followed.
- 3 - ICP–ANACOM shall release the provisional deposits provided by non-winning bidders, as well that provided by the excluded bidders under article 19 of this Regulation, within 10 days.

**Section III**  
**Assignment Stage**

**Article 23**  
**Bidding round**

- 1 - The bidding round takes place whenever there are at least three winning bidders or two winning bidders with one having won two or more lots, in any given region.
- 2 - In this round the bidders may:
  - a) State their preference in relation to the 3400-3600 MHz or 3600-3800 MHz frequency sub-bands.
  - b) Indicate the Top-Up Bid amount expressed in thousands of Euros for each one of the preferences stated.
- 3 - When stating his preference in the terms of sub-item a) of the previous clause, the bidder, depending on the scenario, has the following options:
  - a) If he wins a single lot in a given region, he may state a preference for one of lots A or B relative to one of lots C or D.
  - b) If he wins two lots in the same region, he may state a preference for lots A and B lots relative to lots C and D.
  - c) If he wins three lots in a given region, he may state a preference for lots A, B and C lots relative to lots B, C and D.
- 4 - Bidders may submit multiple Top-Up Bids for different combinations of their preferences in the relevant regions.

**Article 24**  
**Bid submission and respective rules**

- 1 - Bidders may submit their bids for each possible option through the customized Assignment Bid form supplied by the Committee via electronic means, a template of which can be found in the annex 3 to this regulation.
- 2 – The form referred to in the previous clause shall be submitted to the Committee via electronic means and the return receipt shall be issued by the same means.
- 3 - The number and type of bid options available for each bidder depend on the number of regions in which the bidder has won lots, and the number of lots assigned to other winning bidders in those regions.
- 4 - In the absence of bids for a given option, the Top-Up Bid amount for this option is considered to be zero.
- 5 - Each submitted bid is accepted or rejected in its entirety by the Committee.
- 6 - The top-up bid amounts are considered as zero if the bid form is not submitted or, for each and every package, whenever the bid form is submitted:
  - a) After the deadline set by the Committee under sub-Item b) of clause 2 of article 22;
  - b) By a person who does not belong to the group of representatives appointed by the candidate.
- 7 - In the event of more than one bid form being submitted, the most recently submitted form is accepted.
- 8 - In the event of more than one top-up bid being submitted for the same package of lots, the bid with the highest amount is accepted.

**Article 25**  
**Winning bidder Determination**

- 1 - The winning bids result from the combination of bids that generate the greatest total value among all the valid bids submitted by all the bidders, subject to clause 4 of article 20 and the following conditions:
  - a) A maximum of two lots shall be attributed in each sub-band in each region;
  - b) Exactly one bid from each bidder is to be accepted.
- 2 - In the event of a tie, the group of winning bids shall be determined through a random draw, to be held at a location and date to be set by the Committee, among the tied groups of bids.

**Article 26**  
**Additional and final price determination**

- 1 - The additional prices, one for each bidder who takes part in the Assignment Stage bid round, shall be calculated based on the Second Price Rule in the same terms as those set out for the Distribution Stage.
- 2 - The additional price shall be rounded up to whole thousands of euro.
- 3 - The final price to be paid by each bidder for all of the lots that are assigned to him is the sum of his base price and the additional price.
- 4 - The Committee will notify each winning bidder, within 10 days from the end of the bid round, if this one takes places, of the respective result, including, namely, the respective final price and of the corresponding base and additional prices.



## **Article 27**

### **Lot Selection**

- 1 - The lot selection in each region takes place only in the following cases:
  - a) A single bidder winning up to three lots after the bid round in the Distribution Stage;
  - b) Two bidders winning individual lots after the bid round in the Distribution Stage;
  - c) A single bidder winning a single lot in one of the frequency sub-bands, there being one or two winning bidders in the other frequency sub-band, after the bid round in the Assignment Stage;
  - d) Two bidders winning one lot each in the same frequency sub-band after the bid round in the Assignment Stage.
- 2 - In the situations referred to in the previous clause, the Committee shall produce a list of winning bidders, ranked by the largest number of adjacent regions where each bidder won lots.
- 3 - Should two or more bidders have won lots in the same number of geographically adjacent regions, a random draw shall determine their position on the ranking. The draw will take place at a location and date to be set by the Committee.
- 4 - For the purposes of the provisions made by the above clause 2, geographically adjacent regions, up to a maximum of seven, are those that share at least one border with another region where the same bidder won other lots.
- 5 - The Committee shall notify the winning bidders of the procedure to be followed, and also the time period for choosing the lots to be assigned in accordance with the list described in clause 2 of the current article.

- 6 - Ranked in the order established on the list produced by the Committee, bidders shall choose the lots of their preference in each region, whenever the lot selection has not been previously determined.
- 7 - In the event of the bidder being the sole winner in a given region, the options are the following:
- a) If he wins three lots, he may choose either lots A, B and C or lots B, C and D;
  - b) If he wins two lots, he may choose either lots A and B or lots C and D;
  - c) If he wins a single lot, he may choose between lots A, B, C or D.
- 8 - If there is more than one winner in a given region, the options available for each bidder depend on the result of the Assignment Stage bid round.
- 9- The Committee notify all winning bidders of the number of lots and the respective bands granted in each region as well as the result of the lot selection procedure, if the latter one takes place.

## **Article 28**

### **Spectrum swap**

- 1 - Bidders may swap the assigned blocks or lots, within 5 days from the notification date of the results, in the terms of clause 4 of article 26 or of clause 9 of article 27 of this Regulation, if applicable.
- 2 - Any swap referred to in the previous clause is subject to the following conditions:
- a) None of the winning bidders may obtain a quantity of spectrum different from that which was assigned to him in each one of the given regions;
  - b) Blocks or lots pertaining to different regions may not be swapped;

- 3 - Bidders who intend to carry out a swap are required to present the respective request, signed by the involved parties, within the time period established in clause 1, to the Committee which has to submit the respective proposal to the Board of ICP-ANACOM within 5 days from the receipt of the request.
- 4 - The Board of ICP-ANACOM must authorize any given swap for it to become effective. This authorization is to be given within 10 days after the receipt of the Committee proposal.

## **Section IV Grant Stage**

### **Article 29 Hearing of interested parties**

The Committee shall hold a prior hearing of the bidders, in the terms of articles 100 and following articles of the “Código do Procedimento Administrativo”.

### **Article 30 Final decision**

- 1 - The Committee shall produce a final auction report, and submit a proposal to the Board of ICP–ANACOM for the granting of the rights of use to the winning bidders, within 20 days from the end of the previous stages, or from the end of a given period aiming to address any potential deficiencies,.
- 2 -The period set in the previous clause may exceptionally be extended, by decision of the Board of ICP–ANACOM, under a justified proposal of the Committee.
- 3 - The Board of ICP–ANACOM shall approve the proposal for granting of rights of use within 5 days from the date of its reception.
- 4 - ICP–ANACOM shall notify the decision on the grant of rights of use to all the bidders, via a registered letter with return receipt requested, and the results of the auction shall be published on its Internet website.

- 5 - The notification referred to in the previous clause shall specify:
- a) The identification of the winning bidders;
  - b) The number of lots assigned to each winning bidder in each region;
  - c) The specific frequency bands assigned to each winning bidder in each region;
  - d) The final price to be paid by each winning bidder, which is not subject to VAT.
- 6 - For the entities to which rights of use have been allocated, the notification referred to in the previous clause must contain an explicit reference to the obligation specified in article 31 of this Regulation.
- 7 - Any act allocating rights of use shall be revoked whenever the entities to which said rights were allocated do not comply with the provisions of clause 1 of article 31 of this Regulation, without justified grounds.
- 8 - In the situation referred to in the previous clause, the provisional deposit given under article 9 is forfeited in favour of ICP–ANACOM.

### **Article 31**

#### **Deposit**

- 1 - Entities to which rights of use are granted are required, within 10 days upon receipt of the notice referred to in clause 6 of the previous article, to deposit the amount corresponding to the final price in a bank account to be indicated by ICP-ANACOM, and of which is the unique titular.
- 2 - Once the deposit, referred in the previous clause, has been made, ICP-ANACOM shall carry out the necessary procedures for the release of the deposit made under article 9 within the following 10 days.

**Article 32**  
**Issuance of the titles**

- 1 - The titles for the granting of rights of use shall be issued by ICP–ANACOM within 30 days following compliance with the provisions of clause 1 of the previous article.
- 2 - The titles shall list, in addition to the conditions associated with the respective exercise of activity and use of frequencies in the terms of articles 27 and 32 of Law 5/2004, of February 10, specifically the following:
  - a) Compliance with the conditions contained in European Commission Decision 2008/411/EC of May 21, in relation to the harmonisation of the 3400-3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community;
  - b) Guarantee that the BWA stations produce a Power Flux Density value, in the border of the region in which they are operating, lower than  $-122 \text{ [dBW/(MHz.m}^2\text{)]}$  for the 3400-3800 MHz frequency band, without prejudice to any agreements which may be established between the holders of the rights of use;
  - c) Payment of the fees relating to the granting of rights of use, to the exercise of the activity of electronic communications network provider and electronic communication service provider, and to the use of the radio frequency spectrum, defined in article 105 of Law 5/2004, of February 10.
- 3 - For the purposes of the provisions of the previous clauses, ICP–ANACOM shall hold a prior hearing of the owners of the rights of use in accordance with articles 100 and the subsequent articles of the “Código do Procedimento Administrativo”.

### **Article 33**

#### **Enforcement of the holder of the right of use of frequencies**

- 1 - The granting of the rights of use of frequencies does not confer upon its holder any rights other than those that result from the exact terms contained in the title to be issued, and no other facts arising from the allocation, in any way, of other rights of use or supervening modification of circumstances may be invoked.
- 2 - The holders of the rights of use should begin commercial operation of the services within a maximum period of two years from the date of issue of the respective enabling titles, through the effective use of the frequencies that are assigned to them.
- 3 - For the purposes of sub-clauses d), e) and f) of clause 3 of article 8 of this Regulation, the entities to which the rights of use are allocated may only alter the composition and ownership of their capital stock upon prior authorization by ICP–ANACOM.
- 4 - The obligation provided for in the previous clause is in force for two years from the date of issue of the respective enabling titles.
- 5 - The rights of use granted may be transmitted by their respective holders, noting the term of article 37 of Law 5/2004, of February 10, and only after a holding period of two years from the date of start of the commercial operation of the services through the effective use of the frequencies which are assigned to it, except where duly reasoned grounds are provided and these are recognized as such by ICP–ANACOM.
- 6 - Without prejudice to the previous clauses, signing of roaming agreements between the holders of rights of use is permitted.

**CHAPTER III**  
**Final provisions**

**Article 34**  
**Second auction**

- 1 - Any spectrum not assigned at the end of the present selection procedure is to be fully or partially subject to a second auction.
- 2 - Any entities who so desire may participate in the second auction, provided they comply with the requirements mentioned in clauses 1 and 2 of article 8.

**Article 35**  
**Counting of periods**

The rules of article 72 of the “Código do Procedimento Administrativo” apply to the counting of the periods specified in this regulation.

**Article 36**  
**Effective Start Date**

This regulation shall come into effect on the day following its publication.

Lisbon, \_\_\_\_\_ 2009.

## Annex 1

### Map of the regions



Zone	Areas included
1	Districts of Leiria, Lisbon, Santarém and Setúbal (counties of Alcochete, Almada, Barreiro, Moita, Montijo, Palmela, Seixal, Sesimbra and Setúbal).
2	Districts of Braga, Porto and Viana do Castelo
3	Districts of Aveiro and Coimbra.
4	Districts of Bragança, Guarda, Vila Real and Viseu.
5	Districts of Castelo Branco and Portalegre.
6	Districts of Beja, Évora and Setúbal (counties of Alcácer do Sal, Grândola, Santiago do Cacém and Sines).
7	Districts of Faro.
8	Autonomous region of the Azores.
9	Autonomous region of Madeira.

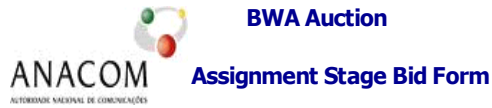


**Annex 2**  
**Distribution Stage Bid Form Template**

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## Annex 3

### Assignment Stage Bid Form Template



Company name:	
Authorised bidder:	
Password:	
Unique form ID:	

	Number of lots won by region									Top-up bid amount
Region	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9	
Number of lots won	0	0	0	0	0	0	0	0	0	
Number of lots won by other bidders	0	0	0	0	0	0	0	0	0	
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										