



PUBLIC NOTICE

Federal Communications Commission
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DA 04-3694
December 1, 2004

FM BROADCAST CONSTRUCTION PERMITS AUCTION CLOSES

Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established

Down Payments Due December 15, 2004
FCC Form 301 Due January 3, 2005

Report No. AUC-04-37-P (Auction No. 37)

On November 23, 2004, the Federal Communications Commission completed the auction of 288 FM broadcast construction permits ("Auction No. 37"). In this auction, 110 winning bidders won a total of 258 permits, with net winning bids that totaled \$147,876,075. This Public Notice provides detailed information concerning winning bidders, down payments, deposits and/or refunds, long-form application (FCC Form 301) filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** "Round Results, High Bids" lists winning bidders, and both the gross and the net amounts of the winning bids.
- Attachment B:** "Bidder Payment/Refund Report" lists any down payments and bid withdrawal payments owed by winning bidders, if any.
- Attachment C:** "Withdrawal Payment Report" lists bid withdrawal payments owed by bidders, if any.

A copy of this Public Notice will be sent via overnight mail to each winning bidder.

A. Down Payments

The Commission's rules require that within ten business days after the release of this Public Notice, in this case before **6:00 p.m. Eastern Time (ET) on December 15, 2004**, winning bidders in Auction No. 37 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down

payments on winning bids.¹ Each winning bidder's total deposits must be twenty (20) percent of its net winning bid(s) to meet this down payment requirement. If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit additional funds.² The amount now due from each winning bidder, if any, is set out in the last column of **Attachment B**. *Note that a payment and FCC Form 159 are necessary only if a winning bidder's upfront payment does not cover the required total of down payments (as reflected in Attachment B).*

B. Final Payments

Upon resolution, favorable to the winning bidders, of matters raised in petitions to deny and/or any other technical or legal issues raised by the Form 301 applications,³ the Commission will issue a public notice announcing that it is prepared to award the construction permits to the winning bidders.⁴ Within ten business days after the date of that public notice, the winning bidders will be required to make full payment of the balance of their winning bids.⁵ Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a).⁶

C. Method of Payment

All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159).⁷ If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct down payment. **Please note, however, that each winning bidder is responsible for insuring timely submission of the correct down payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from their financial institution that Mellon Bank has timely received their final payment and deposited it in the proper account.**

Questions concerning the calculation and submission of down and final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

Wire transfers for down payments must be received by Mellon Bank no later than 6:00 p.m. ET on

¹ See 47 C.F.R. § 1.2107(b).

² *Id.*

³ A winning bidder that is found unqualified to be a Commission licensee will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Sections 1.2104(g)(2) or 1.2104(g)(3) of the Commission's rules, whichever is applicable. See 47 C.F.R. §§ 1.2109(c), 1.2104(g).

⁴ See 47 C.F.R. § 73.5006.

⁵ 47 C.F.R. §§ 1.2109 and 73.5003.

⁶ 47 C.F.R. § 1.2109(a).

⁷ Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at 1-800-418-3676 (outside Washington, D.C.) or (202) 418-3676 (in the Washington, D.C. area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by calling the Commission's Fax-On-Demand at (202) 418-0177 from the handset of a facsimile machine.

December 15, 2004. Applicants should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be **initiated and completed prior to the deadline**. To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

500 Ross Street

Pittsburgh, PA 15262

BNF: FCC Account Number 911-6106

OBI Field: (Skip one space between each information item listed below)

APPLICANT'S FCC REGISTRATION NUMBER (FRN): (must be same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (must be same as FCC Form 159, block 24A: A37D)

FCC CODE 1: (must be same as FCC Form 159, Block 28A: "37")

PAYOR NAME: (must be same as FCC Form 159, Block 2)

LOCKBOX NO.: #358850

Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The applicant must fax, on the same business day that it pays the balance due to Mellon Bank, and at least one hour prior to placing the order for the wire transfer, a completed FCC Form 159 to Mellon Bank at (412) 209-6045. On the FCC Form 159, the applicant must use the same FRN used on its FCC Form 175.

D. Withdrawal, Default and Disqualification Payments

The Commission imposes payments on bidders that withdraw high bids during the course of an auction, those that default on payments due after an auction closes, or those that are disqualified.⁸

1. Bid Withdrawal Payments. A bidder (Bidder X) that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. If a high bid is withdrawn on a permit that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid.⁹ This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that permit receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that permit is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid

⁸ See 47 C.F.R. §§ 1.2104(g), 1.2109.

⁹ 47 C.F.R. § 1.2104(g)(1); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15301-02 (2000); see Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); see also Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, *Public Notice*, 14 FCC Rcd 605 (1999).

withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Attachment C identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 37. Any upfront payments or down payments that the withdrawing bidder has deposited with the Commission will first be applied to satisfy the withdrawal payment(s) amount before being applied toward a winning bidder's down payment.¹⁰

2. *Bid Default/Disqualification Payments.* If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the following payment obligations: the difference between the high bid and the amount of the winning bid the next time the construction permit is offered by the Commission; and an additional payment equal to three (3) percent of the subsequent winning bid or three (3) percent of the defaulted bid, whichever is less. Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to compute the first component.¹¹ Thus, if the difference between the gross bids is less than the difference between the net bids, the three percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the three percent payment will be computed on the lower of the net bids. However, if both the difference between the gross bids and the difference between the net bids are less than or equal to zero, the three percent payment will be computed on the lower of the net bids.

If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released this Public Notice, in this case by December 15, 2004, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Section 1.2104(g)(2).¹² In such event, the Commission, at its discretion, may either auction the construction permit(s) to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids.¹³

If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due.¹⁴ When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its construction permit(s) and subject to the applicable default payments.¹⁵

¹⁰ 47 C.F.R. § 1.2104(g)(1).

¹¹ See 47 C.F.R. § 1.2104(g)(2).

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ See 47 C.F.R. § 1.2109(b).

¹⁴ 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁵ 47 C.F.R. § 1.2109(a).

Construction permits will be awarded upon the full and timely payment of winning bids and any applicable late fees.¹⁶ If a winning bidder defaults or is disqualified for any reason after having made the required down payment, it will be deemed to have defaulted, its application will be dismissed and it will be liable for the payment set forth in Section 1.2104(g)(2).¹⁷ In such event, the Commission may either auction the construction permit to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.¹⁸

Additionally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.¹⁹

E. Refund of Excess Payments

Upfront monies are available for refund upon request. No refund will be made unless there are excess funds on deposit after any applicable down payment, withdrawal and/or default payment. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and FCC Registration Number ("FRN"). All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Such instructions must be faxed to Gail Glasser of the Office of the Managing Director at (202) 418-2843. Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

NOTE: Refund processing generally takes up to two weeks to complete.

F. FCC Form 301

Deadline For Filing: By **6:00 p.m. ET on January 3, 2005** winning bidders must submit a completed FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, covering each FM allotment for which they were the winning high bidder.²⁰

Where and How to File: Applicants must file complete FCC Form 301 applications *electronically* through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system.²¹ In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee, and information submitted on the new FCC Form 301 application by winning bidders must not constitute a major change from any information specified in the previously filed

¹⁶ 47 C.F.R. §§ 1.2109(a), 73.5003.

¹⁷ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹⁸ 47 C.F.R. § 1.2109(c).

¹⁹ See 47 C.F.R. § 1.2109(d).

²⁰ 47 C.F.R. § 73.5005(a).

²¹ For information regarding electronic application filing, refer to "Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315," *Public Notice*, 16 FCC Rcd 3989 (MMB 2001).

FCC Form 175.²² Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/mb/elecfile.html>

The Guide can be accessed by clicking on the CDBS link at the electronic filing web site, above. This action will take the user to the Media Bureau's CDBS Electronic Filing System site. The user should then click on the "Go to CDBS User's Guide" link. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. When filing FCC Form 301, applicants must select "Long Form Application for FM Auction No. 37" on the Pre-form for Form 301 (Question 2 – Application Purpose). For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. An applicant that fails to submit the required long form application, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and shall be subject to the payments set forth in Section 1.2104(g) of the Commission's rules.²³ Applicants are encouraged to pay the FCC Form 301 application filing fee promptly in order to avoid processing delays.²⁴

G. Additional Post-Auction Filing Requirements.

Section 73.5005(a) of the Commission's rules²⁵ requires that post-auction long form applications include the exhibits mandated by: Section 1.2107(d) (providing a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement the applicant had entered into relating to the competitive bidding process);²⁶ Section 1.2110(j) (requiring an applicant claiming designated entity status to describe how it satisfies the eligibility requirements for such designated entity status, and to list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, that establish that the designated entity will have both *de facto* and *de jure* control of the entity);²⁷ and Section 1.2112(a) (requiring that each long form application fully disclose the real party or parties in interest in the applicant or application).²⁸

²² See 47 C.F.R. §§ 73.3573(a)(1), 73.3573(f)(5)(iii), 73.3522(a)(3).

²³ 47 C.F.R. §§ 1.2104(g), 1.2107(c), 73.5005(c).

²⁴ Applicants are also reminded that the Commission's "red light rule" implementing the Debt Collection Improvement Act has recently become effective. 47 C.F.R. § 1.1910. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. *Id.*; see also 47 C.F.R. § 1.2109(c) (post-auction defaults).

²⁵ 47 C.F.R. § 73.5005(a).

²⁶ 47 C.F.R. § 1.2107(d).

²⁷ 47 C.F.R. § 1.2110(j).

²⁸ 47 C.F.R. § 1.2112(a).

H. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes by filing FCC Form 301. With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their FCC Form 175 and exhibits.

I. Application Processing and License Grant

Pursuant to 47 C.F.R. §§ 1.2108(b) and 73.5006, and the Balanced Budget Act of 1997,²⁹ interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing the FCC Form 301 has been accepted for filing.³⁰ The Media Bureau will use public notices generated by CDBS to start the ten-day period for filing petitions to deny these applications. The public notice entitled “Broadcast Applications” will list such applications as “Accepted for Filing.” An applicant may file an opposition to any petition to deny within **five (5) days** of the filing date for petitions to deny.³¹ Replies shall be filed within **five (5) days** of the filing date for oppositions.³² If the Commission determines an applicant is qualified and there is no substantial and material issue of fact concerning that determination, the Commission will issue a public notice announcing that it is prepared to grant the application conditioned upon the full and timely payment of the remaining balance of the applicant’s winning bid. Once the Commission has received full payment of the applicant’s winning bid, it will grant the construction permit.

Frivolous Pleadings. The Commission reminds parties to our proceedings and their attorneys that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.³³

J. Anti-Collusion Rules

To ensure the competitiveness of the auction process, the Commission’s rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements.³⁴ As explained more fully in the *Auction No. 37 Qualified Bidders Public Notice*,³⁵ this prohibition began at the short-form application filing deadline and ends at the down payment deadline, which is December 15, 2004.³⁶ The prohibition continues to apply to each applicant who had a short-form application (FCC Form 175) on file on the filing deadline date through the down payment due date

²⁹ Pub. L. 105-33, 111 Stat. 251 (1997).

³⁰ 47 C.F.R. § 73.5006(b).

³¹ 47 C.F.R. § 73.5006(c).

³² *Id.*

³³ See “Commission Taking Tough Measures Against Frivolous Pleadings,” *Public Notice*, 11 FCC Rcd 3030 (1996).

³⁴ 47 C.F.R. § 1.2105(c).

³⁵ See Auction of FM Broadcast Construction Permits; 456 Qualified Bidders to Participate in Auction No. 37, *Public Notice*, DA 04-3252 (WTB/MB rel. Oct. 18, 2004).

³⁶ *Id.*

regardless of whether a high bidder must supplement its upfront payment to cover its down payment. This prohibition applies to all applicants regardless of whether such applicants became qualified bidders or actually bid. Applicants certified their compliance with Section 1.2105(c) when their short-form applications (FCC Forms 175) were signed.

K. Return of SecurID Key Fobs

Bidders are encouraged to return their SecurID key fobs to the FCC by December 15, 2004, for recycling. The Commission will send bidders a copy of this Public Notice and a pre-addressed, stamped envelope. All bidders should use the envelope to return the fobs now that the auction is closed. Please note that each SecurID fob is tailored to a specific auction; therefore, the fobs issued for this auction will not work for future auctions.

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For further information, contact

News Media: Lauren Patrich at (202) 418-7944

Technical Support Hotline: Technical Support Personnel at
(202) 414-1250
or (202) 414-1255 (text telephone (TTY))

Office of the Managing Director
Auctions Accounting Group
(Payment, FCC Form 159 and refund
questions) Gail Glasser at (202) 418-0578

Media Bureau,
Audio Division
(FCC Form 301 questions) Lisa Scanlan, Assistant Chief, at (202) 418-2700
Thomas Nessinger, Attorney Advisor, at (202) 418-2700

Wireless Telecommunications Bureau,
Auctions and Spectrum Access Division
(Auction-related questions) Linda Sanderson, Project Manager, at (717) 338-2888
Lynne Milne, Attorney Advisor, at (202) 418-0660

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