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DA 22-464

SMALL ENTITY COMPLIANCE GUIDE

Auction of Construction Permits for Full Power Television Stations (Auction 112 Procedures)

**DA 22-125
AU Docket No. 21-449**

Released: February 10, 2022

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking docket. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

**1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232**

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I. OBJECTIVES OF THE PROCEEDING

This Small Entity Compliance Guide (SECG) is designed to help individuals and small businesses understand the filing requirements and other procedures for the Commission's auction of construction permits for full power television (TV) stations, which were established in the Commission's *Auction 112 Procedures Public Notice*.¹ This guide is not a substitute for reading and reviewing orders, rules, and public notices applicable to the auction, nor is it a substitute for legal advice on how the competitive bidding rules apply to your circumstances.

The *Auction 112 Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines,² governing participation in Auction 112, and an overview of the post-auction application and payment processes. Additional materials to assist small entities in complying with the rules and procedures for Auction 112 can be found on the Auction 112 website at <https://www.fcc.gov/auction/112>.

II. COMPLIANCE REQUIREMENTS

A. Auction Specifics

Bidding in this auction for 27 construction permits for TV stations is scheduled to begin on June 7, 2022. A list of the available construction permits is provided in "Attachment A" of the *Auction 112 Procedures Public Notice*, available at <https://www.fcc.gov/auction/112>.

To qualify to bid in Auction 112, applicants must comply with the following requirements:

- Submission of a short-form application (FCC Form 175) by the filing deadline of 6:00 p.m. Eastern Time (ET) on March 30, 2022, that is found to be substantially complete.³
- Submission of a sufficient upfront payment for at least one of the construction permits listed for that applicant in Auction 112 by 6:00 p.m. ET on May 6, 2022.
- The timely submitted upfront payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), following the procedures and instructions set forth in the *Auction 112 Procedures Public Notice*.⁴
- An applicant whose application contains deficiencies will be provided a limited opportunity to bring its application into compliance with the Commission's auction application rules during a resubmission window.⁵
- All qualified bidders will be automatically registered for the auction and mailed the necessary registration materials.

¹ *Auction of Construction Permits for Full Power Television Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112; Bidding Scheduled to Begin June 7, 2022*, AU Docket No. 21-449, DA 22-125 (OEA/MB Feb. 10, 2022) (*Auction 112 Procedures Public Notice*).

² This SECG references subsequent public notices establishing relevant dates for Auction 112, where applicable.

³ See *Auction 112 Procedures Public Notice* at 5-8, paras. 11-18.

⁴ *Id.* at 32, paras. 107-19.

⁵ *Id.* at 30-31, paras. 103-05.

- Parties that timely submit short-form applications are all considered “applicants” and are therefore subject to certain of the Commission’s Part 1 auction rules regarding application requirements and certifications (e.g., joint bidding agreements relating to the construction permits subject to auction), and the rules prohibiting certain communications.

For example, the prohibition on certain communications for applicants in Auction 112 begins at the short-form application filing deadline on March 30, 2022, and will end at the down payment deadline for Auction 112, which will be announced in a future public notice.

B. Application Procedures

Auction 112 will be conducted in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission’s Rules,⁶ and with the television broadcast service and competitive bidding requirements in Part 73 of the Commission’s Rules.⁷

- The Auction 112 application procedures are substantially similar to the procedures that the Commission has applied to other services in the past several auctions.
- Applicants are required to file short-form and long-form applications to ensure that applicants are qualified to participate in auctions and hold licenses. Certain information required on the short-form application (FCC Form 175) is also necessary to ensure that the available new entrant bidding credit is applied only to qualifying applicants, and only for the specific construction permit(s) for which they are entitled to the credit.
- There is a new entrant bidding credit available to qualifying Auction 112 applicants. The *Auction 112 Procedures Public Notice* provides detailed information regarding the qualification requirements and obligations for applicants who seek this bidding credit.⁸

C. Bidding Procedures

The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), adopted a simultaneous multiple-round auction design for Auction 112.⁹ In the auction, bidders will indicate their demands for a number of construction permits for TV stations. Additional procedures adopted for Auction 112 include:

- a requirement that any applicant seeking to participate in Auction 112 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 112 and that it has familiarized itself with those procedures and the requirements for obtaining a construction permit for a TV station;
- establishment of an additional default payment of 20% under section 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;
- use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances);
- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) the construction permits that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an

⁶ 47 CFR §§ 1.2101-1.2114.

⁷ 47 CFR §§ 73.601-699, 73.1001-73.4280, and 73.5000-73.5009.

⁸ See *Auction 112 Procedures Public Notice* at 20-23, paras. 66-76.

⁹ *Id.* at 38, para. 132.

applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;

- retention by OEA, in conjunction with MB, of its discretion to delay, suspend, or cancel bidding in Auction 112 for any reason that affects the fair and efficient conduct of the competitive bidding process;
- retention by OEA of its discretion to adjust the bidding schedule in order to manage the pace of Auction 112;
- a specific minimum opening bid amount for each construction permit available in Auction 112;
- a specific number of bidding units for each construction permit;
- a specific upfront payment amount for each construction permit;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;
- use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;
- a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction;
- provision of three activity waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction;
- use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate;
- bid removal procedures; and
- a prohibition on bid withdrawals.

Bidding in Auction 112 is scheduled to begin on June 7, 2022. Bidding on all construction permits will be conducted in each round of the auction until bidding stops on every construction permit.¹⁰

D. Post-Auction Procedures

Shortly after bidding ends in Auction 112, the Commission will issue a public notice declaring that the auction has closed and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 2100 – Schedule A) for the auction. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 112.

Additional compliance requirements apply to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following:

- Within 10 business days of release of the auction closing public notice for Auction 112, submit as a down payment sufficient funds (in addition to its upfront payment) to bring its

¹⁰ See *id.* at 40-41, paras. 147-49.

total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (gross bid(s) less any applicable new entrant bidding credit);

- Within 10 business days after the down payment deadline, submit the balance of the net amount for each of its winning bids; and
- Within 10 days after the release of the auction closing public notice, electronically submit a properly completed long-form application (FCC Form 2100 – Schedule A) and required exhibits for each construction permit won in Auction 112.
- A winning bidder claiming new entrant status must include with its FCC Form 2100, Schedule A, an exhibit demonstrating its eligibility for the bidding credit.¹¹

III. RECORDKEEPING AND REPORTING REQUIREMENTS

Pursuant to Section 1.65 of the Commission’s rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 112. An applicant for Auction 112 must furnish additional or corrected information to the Commission within five business days after a significant occurrence or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. The *Auction 112 Procedures Public Notice* provides instructions for each Auction 112 applicant to maintain the accuracy of its respective short-form application electronically using the FCC Auction Application System and/or by direct communication with the Auctions Division.¹²

IV. IMPLEMENTATION DATE

The procedures set forth in the *Auction 112 Procedures Public Notice* became effective upon publication of a summary of the public notice at 87 FR 9250 on February 18, 2022.

Implementation dates and deadlines associated with the execution of Auction 112 can be found in the *Auction 112 Procedures Public Notice*, and further information will be provided in the closing public notice for the auction.

V. INTERNET LINKS

A copy of the *Auction 112 Procedures Public Notice* is available at:

<https://www.fcc.gov/document/auction-112-tv-construction-permits-procedures-and-deadlines>.

A copy of the Federal Register Summary of the *Auction 112 Procedures Public Notice* is available at: <https://www.federalregister.gov/documents/2022/02/18/2022-03348/auction-of-construction-permits-for-full-power-television-stations-notice-and-filing-requirements>.

¹¹ 47 CFR § 73.5005.

¹² See *Auction 112 Procedures Public Notice* at 27-28, paras. 85-92.