

## § 1.2101

shall result in dismissal of the application pursuant to the relevant processing rules.

(b) A party to the application, as used in paragraph (a) of this section shall include:

(1) If the applicant is an individual, that individual;

(2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; and

(3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Radio Control Radio Service, to users in the Public Mobile Services and the Private Radio Services that are not individually licensed by the Commission, or to Federal, State or local governmental entities or subdivisions thereof.

(d) The provisions of paragraphs (a) and (b) of this section are applicable to spectrum lessees (*see* § 1.9003 of subpart X of this part) engaged in spectrum manager leasing arrangements and *de facto* transfer leasing arrangements pursuant to the rules set forth in subpart X of this part.

[57 FR 187, Jan. 3, 1992, as amended at 58 FR 8701, Feb. 17, 1993; 60 FR 39269, Aug. 2, 1995; 68 FR 66277, Nov. 25, 2003]

## Subpart Q—Competitive Bidding Proceedings

SOURCE: 59 FR 44293, Aug. 26, 1994, unless otherwise noted.

### GENERAL PROCEDURES

#### § 1.2101 Purpose.

The provisions of this subpart implement Section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) and the Balanced Budget Act of 1997 (Pub. L. 105-33), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually ex-

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clusive applications for certain initial licenses.

[63 FR 2340, Jan. 15, 1998]

#### § 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications are subject to competitive bidding.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Public safety radio services, including private internal radio services used by state and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that

(i) Are used to protect the safety of life, health, or property; and

(ii) Are not commercially available to the public;

(2) Initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(3) Noncommercial educational and public broadcast stations described under 47 U.S.C. 397(6).

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (*see* 47 CFR part 80, subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (*see* 47 CFR part 74, subparts D, E, F, G, H and L and part 78, subpart B);

(4) Instructional Television Fixed Service (*see* 47 CFR part 74, subpart I);

(5) Maritime Support Stations (*see* 47 CFR part 80, subpart N);

(6) Marine Operational Fixed Stations (*see* 47 CFR part 80, subpart L);

(7) Marine Radiodetermination Stations (*see* 47 CFR part 80, subpart M);

(8) Personal Radio Services (*see* 47 CFR part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (*see* 47 CFR part 95, subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business

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Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (see 47 CFR 90.173), and including, until further notice of the Commission, the Automated Vehicle Monitoring Service (see 47 CFR 90.239);

(10) Private Land Mobile Radio Services between 470–512 MHz (see 47 CFR part 90, subparts B–F), including those based on finder's preferences, (see 47 CFR 90.173);

(11) Private Land Mobile Radio Services below 470 MHz (see 47 CFR part 90, subparts B–F) except in the 220 MHz band (see 47 CFR part 90, subpart T), including those based on finder's preferences (see 47 CFR § 90.173); and

(12) Private Operational Fixed Services (see 47 CFR part 94).

NOTE TO § 1.2102: To determine the rules that apply to competitive bidding, specific service rules should also be consulted.

[59 FR 44293, Aug. 26, 1994, as amended at 60 FR 40718, Aug. 9, 1995; 62 FR 23163, Apr. 29, 1997; 63 FR 10780, Mar. 5, 1998]

### § 1.2103 Competitive bidding design options.

(a) The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Simultaneous multiple-round auctions (using remote or on-site electronic bidding);

(2) Sequential multiple round auctions (using either oral ascending or remote and/or on-site electronic bidding);

(3) Sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); and

(4) Combinatorial (package) bidding auctions.

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses or authorizations, in addition to bids on individual licenses or authorizations. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction. The Commission may also allow bidders to submit

contingent bids on individual and/or combinations of licenses.

(1) *Apportioned package bid.* The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding.

(2) *Substitute for bid amount.* The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license when the bid amount is needed to determine the size of a designated entity bidding credit (see § 1.2110(f)(1) and (f)(2)), a new entrant bidding credit (see § 73.5007), a bid withdrawal or default payment obligation (see § 1.2104(g)), a tribal land bidding credit limit (see § 1.2110(f)(3)(iv)), or a size-based bidding credit unjust enrichment payment obligation (see § 1.2111(d), (e)(2) and (e)(3)), or for any other determination required by the Commission's rules or procedures.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

(d) The Commission may use real time bidding in all electronic auction designs.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13542, Mar. 21, 1997; 63 FR 2341, Jan. 15, 1998; 68 FR 42995, July 21, 2003; 71 FR 6226, Feb. 7, 2006]

### § 1.2104 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.