

Request for Application (RFA)
for
Spectrum Bidding in 800 MHz Band

1 Introduction

Nepal Telecommunications Authority (NTA) intends to assign a portion of spectrum in 800 MHz band to Mobile and/or Basic Telephone Service providers for providing reliable and affordable telecommunications services including mobile broadband services in the Country pursuant to the provisions of the Telecommunications Act, 2053, Telecommunications Regulation, 2054, Radio Frequency (Allocation and Pricing) Policy for Telecommunication Services, 2080 (referred to hereafter as the Frequency Policy), and Auction Procedure for Assignment of Radio Frequency for Telecommunication Services, 2082.

It is stated in Schedule-1 (Related to Sub-section 7.1 of Section 7) of the Frequency Policy that among 2x15 MHz bandwidth in 800 MHz Band, minimum of 2x5 MHz and maximum of 2x15 MHz will be assigned to an operator in 800 MHz band. Currently 2x5 MHz Bandwidth of spectrum is vacant in 800 MHz Band. NTA believes that this assignment of spectrum to cellular mobile and/or basic telephone service providers will enhance the current Quality of Service and significantly contribute towards achieving the Government of Nepal's target of making mobile broadband services available throughout the country.

1.1 800 MHz Spectrum Bidding

The Frequency Policy has a provision for the allotment of rights to use minimum of 2x5 MHz and maximum of 2x15 MHz in 800 MHz band by means of Bidding. The auction will be carried out among the existing Cellular Mobile and Basic Telephone Service Licensees of the country. The auction will be carried out for a slot of 2x5 MHz spectrum. A Multi-Step Sealed Auction process will be followed to assign spectrum in 800 MHz band and is referred to in this document as the "Auction".

The Auction Procedure for Assignment of Radio Frequency for Telecommunication Services, 2082 (referred to hereafter as the Auction Procedure), as approved and published by NTA shall form an integral part of this Auction Document.

NTA reserves the right to disqualify any Bidder, at any stage of the Auction or after the Auction is completed on grounds of misrepresentation, non-compliance with the Auction Rules, non-compliance with any other pre-condition prescribed for participating in the Auction or for getting the spectrum, or any matter that may, in the opinion of the NTA, be contrary to general public interest and prevailing laws.

Interested parties may, for their reference, obtain a copy of this document and any subsequent amendments to it (together, the “Notice”) from the NTA office or its website. However, for the purpose of submitting the Application, the Bidder must purchase the Bidding Document. The cost of the Bidding Document is ten thousand rupees (Rs. 10,000).

1.2 Objectives of Assigning Spectrum through the Auction

1.2.1 Objectives

The following are the objectives of assigning spectrum through the Auction:

- To facilitate the implementation of Digital Nepal Framework, Broadband Policy and ICT Policy;
- To promote Mobile Broadband Penetration;
- To obtain a market determined price of Spectrum;
- To ensure efficient use of spectrum;

NTA reserves the right to cancel or postpone the Auctions, in part or in full, without giving any reason whatsoever, in order to safeguard the above objectives. NTA has sole discretion to determine the relative priority of the objectives and whether the objectives are adequately safeguarded by the Auction. It further reserves the right to cancel or postpone the Auction at any time prior to the award of spectrum as it may deem fit without giving any reason whatsoever.

1.3 The Auction

The award of Spectrum in 800 MHz band shall be conducted as a single process, to be completed in one day. It will be a single-band multi-step sealed bidding process.

1.4 Time Table

The table below sets out the timeline for bidding process. The NTA reserves the right to determine the overall timeline of the Auction or to amend it from time to time.

Auctions timetable

Issue of notice of Request for Applications (RFA)	Day 1
Last date for seeking clarifications on RFA by bidders	Day 20
Pre-bid Conference	Day 25
Minutes of the Pre-Bid Conference along with the Clarifications to RFA	Day 30
Last date for submission of Applications	Day 45
Pre-qualification and notification to the Bidders	Day 50
Auction	Day 55

Other timeline shall be as indicated in the Auction Procedure or relevant Clauses of this RFA.

2 Spectrum

2.1 Spectrum to be auctioned:

Rights to use a spectrum of 2x5 MHz (847-852 MHz paired with 806-811 MHz) in 800 MHz band as per the provision in the Frequency Policy, acquired as a result of this Auction shall be for a period of validity of the Service License. The validity of the right to use the acquired spectrum is subject to the condition that the Service Provider's License remains valid. In case the service license is not renewed, the spectrum assigned to the licensee shall be revoked. The Successful Bidder shall be allowed to use this spectrum throughout the entire geographical region of the country.

2.2 Technology:

The operator can use any technology to provide services within the scope of the service license.

2.3 Scope of Service:

The Successful Bidder (SB) is permitted to provide voice as well as mobile

broadband services as per the terms and conditions of its service license.

3 Eligibility Conditions

The prospective Bidders must satisfy the following conditions to participate in the Auction.

3.1 Eligibility criteria to participate in the Bidding:

The applicant must meet all the following eligibility criteria to participate in this auction process:

- (i) An applicant must have obtained Basic Telephone Service License or Mobile Service License from NTA.
- (ii) An applicant must have cleared all dues including Royalty, RTDF and spectrum fees.
- (iii) An applicant should not be a defaulter to NTA.

4 Spectrum usage charges

The SB shall pay the spectrum auction price which will be the frequency fee for that fiscal year in which auction is completed and spectrum is assigned. For the subsequent fiscal years, the same auction price shall be paid (annually in every fiscal year) by the SB as per the time schedule stipulated in the Frequency Policy.

5 Breach, revocation and surrender

5.1 The spectrum assignment may be revoked, withdrawn, varied or surrendered if the NTA is convinced that contrary to its license conditions the Successful Bidder has engaged in providing any telecommunication services for which it is not permitted under the existing license applicable for it.

5.2 The spectrum assignment may also be revoked if the NTA determines the Successful Bidder in serious breach of any of the conditions of the assignment of the spectrum (including adherence to the Auction Rules) and the consequent obligations. In case of less serious breaches, the NTA may impose penalties at its discretion. Seriousness of the breach shall be determined by the NTA at its sole discretion.

5.3 The spectrum assigned shall also be revoked if the service license of the Successful

Bidder is not renewed.

6 Auction Details

6.1 General Conditions:

6.1.1 Confidentiality:

Confidential Information means any non-public information which, if known to other Bidders, would be likely to affect the price that the other Bidders would be prepared to bid in the Auction or the bidding strategy that other Bidders would adopt. Such Confidential Information shall include (but not necessarily be limited to) the Bidder's business case, auction strategy and the highest price it is willing to bid for the spectrum. Any party to whom Confidential Information in relation to a Bidder is disclosed is deemed to be an Insider in relation to that Bidder. Bidders and Insiders must not convey Confidential Information to any other person, including another Bidder or its Insiders. Bidders shall also not be permitted to disclose the status of their participation, including whether they continue to bid in the Auction, until the completion of the Auction.

6.1.2 Directors, employees and advisers:

No person, whether individual or corporate, can act for, or on behalf of, or advice more than one Bidder that is participating in the Auction.

6.1.3 Anti- competitive activity:

Bidders must not enter into any arrangements with suppliers of equipment or software that would restrict the supplier's ability to supply such equipment or software to other Bidders for the purposes of planning, building or operating a network utilizing the frequencies to be auctioned. Bidders are also not permitted to agree with suppliers of equipment or software any form of restriction as to the prices charged or other terms and conditions that such suppliers may agree with any other Bidder.

6.2 Application Requirements:

6.2.1 An applicant must satisfy with all the eligibility conditions as stated in Clause (3) above.

6.2.2 Application format and procedure for submission:

In order to participate in the Bidding Process, prospective Bidders must submit an Application on or before the last date for submission of such applications. Format for Application and various undertakings is provided in Annex - 1.

Applicants should inform NTA promptly in case of any change in the information submitted by them as part of their Application in stipulated time lines.

6.2.3 Documents to be submitted by the Applicants:

Prospective bidders are required to submit the followings:

- (i) A completed Application Form and all supporting information including the necessary undertakings;
- (ii) Documents verifying the eligibility conditions/criteria of the applicants;
- (iii) Earnest money, in the form of a Bank Guarantee (as per format provided in Annex-2) from a Commercial Bank, of an amount equal to 5% of the Reserve Price.
- (iv) Nomination of an authorized person, who is empowered to take all decisions connected with the Auction on the Bidder's behalf and correspond on behalf of the Bidder's with the NTA (the "Authorized Person"), along with a Power of Attorney empowering her/him for the same.
- (v) Bidders may authorize one more person, who could act as the alternate Authorized Person in case of unavailability of the primary Authorized Person. In case of any duplication of submissions made by the Bidder, the submission from the primary Authorized Person shall be considered as final and binding;
- (vi) An undertaking confirming that, if the Bidder is successful in winning spectrum,
 - 1) Licensee shall continue to abide by the conditions of the present License, and not engage in providing any telecommunication services through its network for which the licensee is not permitted under the present license conditions, and
 - 2) If and when in the greater interest of telecommunications industry of Nepal, the Government of Nepal amends the

terms of any existing Service, or Opens a new service facilitating the Successful Bidder also to migrate to such amended or newly opened service, it shall make every effort to migrate to such Service.

(vii) Technical, Service Roll Out and Business Plan focusing and incorporating at least the following:

- a. Any technology to be deployed for service roll out using spectrum block assigned to it, channel plans, spectrum reuse patterns and traffic handling, data rates to be provided etc.
- b. Service Roll out and coverage plan:
 - (i) Service Coverage,
 - (ii) Subscriber growth projection,
 - (iii) Roll out plan for Rural and Urban areas;
 - (iv) Projection of Rural and Urban Penetration,
 - (v) Service Launch timeline
- c. Investment Plan:
 - (i) Business and funding mechanism.
- d. Business Plan:
 - (i) Business model in competitive telecom market,
 - (ii) Tariff for the services to be provided,
 - (iii) Types of services to be provided,
 - (iv) Plan to provide other services based on broadband etc.

6.2.4 Earnest Money Deposit

The Earnest money, in the form of a Bank Guarantee from a Commercial Bank (as per format provided in Annex-2), for the requisite amount needs to be submitted along with the Application for prequalification.

The Bank Guarantee shall be from a Scheduled Commercial Bank, and be valid up to 120 days from the last day of submission, and extendable for a further period of three months at the request approval from NTA, in the prescribed format as given in Annex -2.

6.3 Pre-qualification of the Bidder:

In order to pre-qualify, the Applicant must satisfy all of the following conditions:

a) Application requirements:

The Applicant must comply with the requirements for provision of information, the required clarifications/certifications and payment of the Earnest Money Deposit etc. as stated elsewhere in this document. NTA may, anytime, after the date of submission ask the bidder to submit additional documents as deemed necessary by NTA.

Failure to provide Earnest Money deposit in the form of Bank Guarantee (as per Annex-2) shall result in the Applicants/Bidders not qualifying for the Auction.

b) Ownership restrictions:

Ownership restrictions shall be as prescribed in the existing License.

7 **Announcement of pre-qualified Bidders**

The NTA shall put up a list of pre-qualified Bidders on its website and at the same time, each pre-qualified Bidder shall be notified.

8 **Bid Validity**

For the Bids made in the Auction, the bid validity period shall be: 90 (Ninety) days from the last day of submission.

9 **Disqualification of Applicant**

NTA reserves the right to summarily disqualify any pre-qualified Bidder at any stage of the Auction or after the Auction is completed on grounds of non-compliance with eligibility conditions, misrepresentation, non-compliance with Auction Rules, non-compliance with any other pre-condition prescribed for participating in the Auction or being awarded the spectrum or any matter that may, in the opinion of the NTA, be contrary to general public interest. For such breaches, a Bidder's Earnest Money Deposit shall be forfeited and the NTA may undertake other penal action as well against such a Bidder. Seriousness of the breach shall be determined by NTA.

10 800 MHz Band Spectrum Auction Rules

10.1 Overview of the Auction Stages:

This Auction will assign of 2x5 MHz of spectrum bandwidth from 800 MHz band to the Successful Bidder. The bidding shall be solely for the higher price of the spectrum.

This Auction for 800 MHz band is to be held among the Cellular Mobile Service Providers and Basic Telephone Service Providers. For the smooth conduct of the Auction process, NTA shall make the following arrangements:

- (i) NTA shall appoint Auction Administrator(s) to conduct the auction. The Auction Administrator(s) shall conduct the auction in accordance with this document and shall have the sole authority to conduct the auction and take on-site decisions on all matters related to the ongoing auction.
- (ii) Actions taken by the Auction Administrator(s) with good intension, including all decisions regarding the auction process shall not be questioned at any point of time.
- (iii) At the Auction venue, one separate cubicle space/room with a working table and chairs will be provided to each of the bidders, to be used by them for preparing for their First, Second and Third Sealed Bids, as detailed in below.
- (iv) If additional facilities are needed at the cubicle space/room, the Bidders shall request the NTA for the same.

Regarding the number of Bidders, the following shall apply:

- If the number of Bidders is less than two, NTA may extend the date of submission up to 15 days.
- Even after the extension if the bidders are still less than two, then NTA may assign the spectrum to the bidder via negotiation as specified in the Auction Procedure.

10.2 Auction Process:

10.2.1 Single Package:

2x5 MHz of spectrum in 800 MHz band will be auctioned as a single package.

10.2.2 Reserve Price or Base price (RP):

The Reserve Price or Base Price for a slot of 2x5 MHz spectrum in 800 MHz band as a single package is fixed at Rupees 135 million.

10.2.3 Minimum Bid Increment (MBI)

The Minimum Bid Increment (MBI) for each round shall be five percentage (5%) of the Reserve Price (RP).

10.2.4 Auction Procedure:

- i. This auction process is three (3) steps sealed bidding and shall start at 11:00 hours Nepal Time at the date, and venue fixed by NTA, which will be informed to the bidders.
- ii. The first step of the bidding is the Submission of the First Sealed Bid which shall not be less than the Reserve Price (RP) with MBI. The First Sealed Bid shall be submitted in a separate sealed envelope, which shall be clearly marked “First Sealed Bid for the Auction of spectrum in the 800 MHz band”;
- iii. At the place fixed by the NTA for the Auction at 11:00 hours the bidders shall submit to the Auction Administrator(s) their first sealed bid. The Bidders are obliged to bid with MBI. All the sealed envelopes marked as First Sealed Bids from the Bidders shall be opened at 11:30 hours Nepal Time in the presence of the bidders present for bidding and make a record of this.
- iv. After this Opening of the First Sealed Bids, all the Bidders shall move to their respective cubicles/rooms for preparation of their “Second Sealed Bid. The highest price of first sealed bid serves as the RP for the second bid. All the Bidders will be given Thirty (30) minutes for preparing their Second Sealed Bid, which they shall hand over to the Auction Administrator(s) designated by NTA.
- v. Auction Administrator(s) shall open the Second Sealed Bids in presence of all the Bidders and make a record of this.
- vi. After the opening of the Second Sealed Bids, the Bidders shall again move to their respective cubicles/rooms for preparation of their Third Sealed Bid, which shall be the last and final bid. For this round also, the Bidders will be given Thirty (30) minutes, at the end of which all the Bidders shall hand over their Third Sealed Bids to the Auction Administrator(s).

- vii. Even if, as a result of the opening of the First or Second Sealed Bids, if the number of Bidders has come down to one, the Auction shall continue up to third Sealed Bid.
- viii. At the venue of the Auction, all Time keeping shall be carried out by the Auction Administrator(s), whose decision shall be Final. Once in possession of the Third Sealed Bids, the Auction Administrator(s) shall open Third Sealed Bids in the presence of the Bidders and make a record of this.
- ix. The Bid which turns out to be highest among the last Sealed Bids shall be the Final Bid and the Bidder of such highest Bid shall be declared the Successful Bidder.
- x. If there is a Tie at the last Sealed Bid, an additional round of auction will be carried out as per the Auction Procedure.
- xi. At the conclusion of the auction process, the Auction Administrator(s) shall declare and award the bidder a certificate of Successful Bidder. This shall be endorsed by NTA.
- xii. If a bidder withdraws a bid at any point of time during auction, the earnest money deposited shall be forfeited.

11 Payment Terms

- 11.1 Successful Bidder shall, within 15 calendar days from the closing of the spectrum auction, pay the Final Bid amount, failing which the Bidder shall forfeit the Earnest Money deposited as Bank Guarantee and the Bidder with Second Highest bid amount shall be declared as the Successful Bidder. Upon submission of the Final Bid Amount, the Bank Guarantee of the Earnest Money shall be released.
- 11.2 The Earnest Money of unsuccessful bidders shall be released within 30 days from the date of close of auction.
- 11.3 NTA reserves the right to disqualify any bidder violating those rules.

12 Assignment of Spectrum:

Upon receipt of the Successful Bid Amount, NTA shall assign 2x5 MHz of spectrum in 800 MHz band to the Successful Bidder as per the provisions in the Frequency Policy. NTA shall make such assignment at the earliest possible date but not exceeding seven working days.

13 Right to Accept or Reject Auction Process and Final Decision:

The NTA reserves the right to accept or reject any bid and the auction process at any time prior to the declaration of successful bidder or assignment of the spectrum to the successful bidder. Also, on any dispute in the auction process or assignment of the spectrum, the decision of NTA will be final and binding to the applicants.

Annex-1

Date:

The Chairman,
Nepal Telecommunications Authority,
Jamal, Kathmandu.

Subject: Participation in the 800 MHz Spectrum Auction.

Dear Sir/Madam,

We, the undersigned, are participating in the 800 MHz Spectrum Auction in accordance with Request for Application for Spectrum Bidding in 800 MHz band. We are hereby submitting our proposal, which includes the Technical Plan and Business Plan.

We hereby declare that all information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

We are enclosing Earnest money, in the form of a Bank Guarantee of NRs. 67,50,000.00 (Nepalese Rupees Sixty-Seven Lakhs Fifty Thousands only) issued by a reputed Commercial Bank in the format prescribed in Annex-2.

We understand you are not bound to accept any Proposal received.

Yours' sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of the Licensee:

License No:

Address:

Annex-2
Bank Guarantee Form

Ref No:

Date:

To,
The Chairman,
Nepal Telecommunications Authority
GPO Box No. 9754
Jamal, Kathmandu, Nepal

Whereas [*Name of the Licensee*] hereinafter called "The APPLICANT" has submitted its application dated [*Date*] to participate in the BWA Spectrum Bidding in 800 MHz Band hereinafter called "The AUCTION"

KNOW ALL PEOPLE by these presents that we [Name of Bank] of [Name of country] having our registered office at [Address of Bank] hereinafter called "The BANK" are bound unto Nepal Telecommunications Authority, hereinafter called "The AUTHORITY" by the amount of NRs. 67,50,000.00 (Nepalese Rupees Sixty-Seven Lakhs Fifty Thousands only) willingly and truly to be paid out to the said AUTHORITY upon entering any of the conditions specified below. The BANK binds itself, its successors and assigns by these presents sealed with the common seal of the said Bank this day of

The conditions of this obligation are: -

- (i) If the APPLICANT withdraws its bid at any point of time during AUCTION.
- (ii) If the APPLICANT/Bidder fails or refuses to pay the Final Bid Amount.

We undertake to pay to the AUTHORITY up to the above amount upon receipt of its first written demand without the AUTHORITY having to substantiate its demand, provided that in its demand the AUTHORITY will note that the amount claimed by it is due to the occurrence of one or more of the aforementioned conditions, specifying the occurred condition or conditions.

This guarantee will remain valid till and any demand in respect thereof should reach the Bank not later than the above date.

Signature and Seal of Bank

Date:

Address: