



Australian Government

Commonwealth Environmental Water Office

Sale of Water Allocation

Guidelines

Last updated 27 August 2018

IMPORTANT INFORMATION ABOUT THE GUIDELINES AND OTHER KEY DOCUMENTS

These Guidelines will assist you in making a Bid to purchase Water Allocations owned by the Commonwealth (as represented by and acting through the Commonwealth Environmental Water Holder in the Department of the Environment and Energy).

They provide key information on how to submit a Bid, how Bids are assessed, and what happens after a Bid has been assessed.

Prior to submitting a Bid, Bidders should have read this version of the Guidelines and the most recent version of the Terms of Offer (last updated 27 August 2018). These documents, plus any late amendments, are available on the Commonwealth Environmental Water Office website (via <http://www.environment.gov.au/water/cewo/trade>).

Bidders and Account Holders should seek their own professional advice as appropriate and must not construe these Guidelines or other materials released in relation to the Sale Process as providing investment, legal, business or tax advice.

If you have any further questions regarding this process please contact us on 1800 803 772 or via ewatertrade@environment.gov.au.

1. Important conditions that must be complied with

1.1 Conditions for Participation

The Commonwealth may exclude a Bid from a Bidder or an Account Holder:

- (a) that has been named by the Workplace Gender Equality Agency in a report to the Minister responsible for the *Workplace Gender Equality Act 2012* (Cth), as an employer currently not complying with the requirements of that Act; or
- (b) that is subject to a judicial decision against it relating to employee entitlements, not including decisions under appeal, and have not paid the claim.

1.2 Other conditions

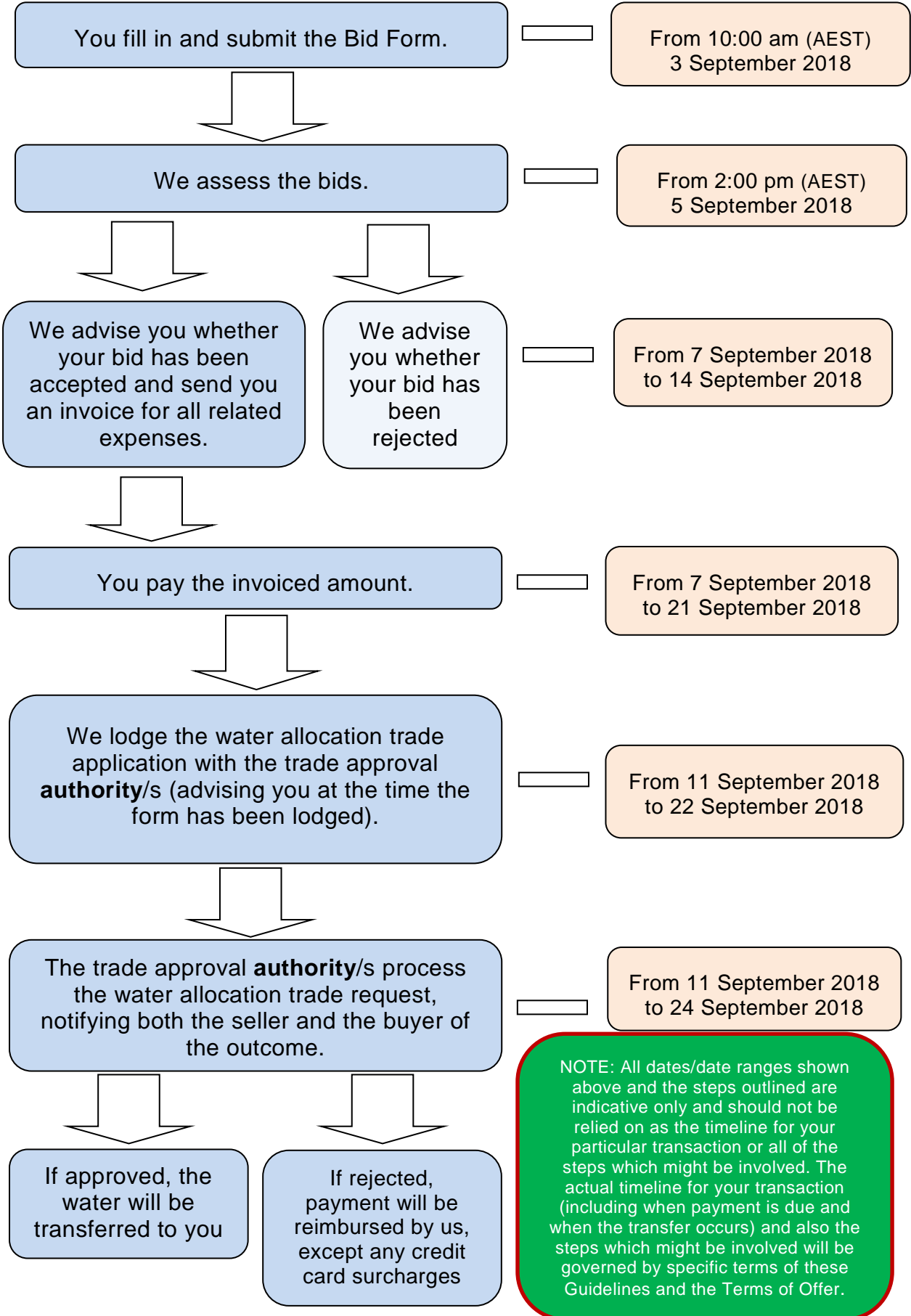
Bidders and Account Holders should not:

- (a) engage in any misleading or deceptive conduct, collusive bidding, anti-competitive conduct, or any other unlawful or unethical conduct in connection with their Bid;
- (b) attempt to solicit or solicit information from or influence improperly any current or former officer, employee, contractor or agent of the Commonwealth, or violate any Laws or Commonwealth policies regarding the offering of inducements in connection with their Bid; or
- (c) engage in, or procure or encourage others to engage in, activity that would result in a breach of the Lobbying Code of Conduct and APSC Circular 2008/4 *Requirements relating to the Lobbying Code of Conduct and post separation contact with Government*.

1.3 Commonwealth's rights

The Commonwealth may exclude from consideration any Bid if the Bid does not meet the Bid Form Requirements set out under paragraph 4.8 of these Guidelines, or if a Bidder or an Account Holder has contravened a provision in paragraph 1.2.

2. Overview and indicative timeline of process for buying Commonwealth allocations



3. Key terms and concepts

- 3.1 Terms which are not otherwise defined in these Guidelines are defined in the Terms of Offer. In preparing and submitting a Bid, it's important that Bidders and Account Holders understand the following key terms:
- (a) **Account Holder** is the allocation account holder, or all allocation account holders jointly (if there is more than one allocation account holder), on whose behalf the Bidder is completing this Bid Form. If the Bidder is completing the form on their own behalf, then the Bidder is also the Account Holder at the same time.
 - (b) **Bid** means the unconditional offer to purchase a volume of Water Allocation from the Commonwealth at a Bid Price. A Bid will be comprised of the Bid Form and any supporting documents (including where applicable any trade form(s) and evidence of authority) and must satisfy the Bid Form Requirements.
 - (c) **Bidder, you or your** is the person completing the Bid Form.
 - (d) **Bid Form** means the online 'smart form' which each Bidder must use to electronically submit their Bid.
 - (e) **Bid Form Requirements** means the requirements set out in paragraph 4.8 of these Guidelines.
 - (f) **Bid Period** means the 7 Business Day period during which a Bid will remain open for acceptance by us.
 - (g) **Bid Price** means the stated price (\$/ML) submitted by a Bidder in the Bidder's Bid.
 - (h) **Bid Price Limit** means the minimum price(s) (\$/ML) that we are willing to accept to proceed with a sale of Water Allocation in respect of the Sale Volume.
 - (i) **Commonwealth, us, we or our** means the Commonwealth of Australia as represented by the Commonwealth Environmental Water Holder in the Department of the Environment and Energy.
 - (j) **CEWO** means the Commonwealth Environmental Water Office.
 - (k) **CEWO Staff** means personnel employed or engaged by the Commonwealth Environmental Water Office.
 - (l) **CEWO Website** means the Commonwealth Environmental Water Office website located at <http://www.environment.gov.au/water/cewo/trade>.
 - (m) **Eligibility Criteria** means those requirements which are set out at paragraph 5.3 of these Guidelines.
 - (n) **Maximum Bid Volume** is the maximum Bid volume that we are willing to accept in respect of the Sale Volume.
 - (o) **Minimum Bid Volume** is the minimum Bid volume that we are willing to accept in respect of the Sale Volume.

- (p) **Payment Period** means the period of time during which payment must be made by a Bidder as set out in the Acceptance of Bid.
- (q) **Sale Close Time** 2:00 pm **(AEST)** 5 September 2018 or any extension to that date and time made by us.
- (r) **Sale Open Time** means 10 am **(AEST)** 3 September 2018.
- (s) **Sale Volume** means the total volume of Water Allocation offered for sale as part of this sale process and as described in Bid Form.

3.2 Further to the definitions above, the following additional detail is provided for those key concepts that are important that Bidders to understand:

Sale Volume

3.3 The Bid Form will describe the Sale Volume.

Bid Price Limit

3.4 A Bid Price Limit will be set for the Sale Volume.

3.5 The Bid Price Limit(s) will not be made publicly available and will be set by reference to our estimate of the prevailing market price and other relevant considerations, such as our assessment of the environmental value of the water being sold.

4. Submitting a Bid to buy Water Allocation

- 4.1 By submitting a completed Bid Form, you are making a Bid to purchase a stated volume of Water Allocation from the Commonwealth on the terms set out in the Bid Form and the Terms of Offer.

Who may submit a Bid

- 4.2 Bidders may only fall into one of the following categories:
- (a) the sole holder of a water Allocation Account;
 - (b) one holder of the water Allocation Account that has been authorised by all holders of the Allocation Account to act on their behalf; or
 - (c) an authorised representative of the holder(s) of the Allocation Account, such as an agent or broker.
- 4.3 Where submitted in accordance with paragraph 4.2(b) or 4.2(c), the Commonwealth may request to be provided with documentation that has been listed in the Bid Form which will provide evidence in support of any authority to complete.

Method for submitting a Bid

- 4.4 You must submit your Bid electronically using the Bid Form publically available on the CEWO Website.

Timeframes affecting a Bid

- 4.5 Bids must be received by us after the Sale Open Time and before the Sale Close Time. The Commonwealth advises that:
- (a) Bids received before the Sale Open Time will not be considered;
 - (b) it is the Account Holder's responsibility to ensure that the Bid is received before the Sale Close Time;
 - (c) any Bid not received before the Sale Close Time will not be considered unless it was late solely due to mishandling by the Commonwealth;
 - (d) a record of the time each Bid is received will be kept by us; and
 - (e) the Account Holder is responsible for allowing enough time before the Sale Close Time to complete and submit the Bid Form including correcting any errors and, where paragraph 4.12 applies, to obtain instructions and complete the process to submit any attachments by email or fax.
- 4.6 The Commonwealth may extend the Sale Close Time and will:
- (a) publish details of such extension on the CEWO Website; and
 - (b) issue an addendum on the CEWO Website notifying any decision to extend.

Bidders and Account Holders should refer to the CEWO Website for up to date details of any extension.

4.7 Your Bid will remain open for acceptance by us for the Bid Period.

Bid Form Requirements

4.8 The Bid Form will not be able to be submitted electronically unless:

- (a) an Allocation Account reference is supplied;
- (b) a Trading Zone is specified;
- (c) the volume of Water Allocation the subject of the Bid:
 - (i) is greater than or equal to the Minimum Bid Volume; and
 - (ii) is less than or equal to the Maximum Bid Volume;
- (d) the Bid includes a valid Australian Business Number for the Bidder;
- (e) the Bid contains completed closing declaration evidencing that the Bidder and Account Holder have not:
 - (i) been named by the Workplace Gender Equality Agency in a report to the Minister responsible for the *Workplace Gender Equality Act 2012* (Cth), as an employer currently not complying with the requirements of that Act; or
 - (ii) been subject to a judicial decision against it relating to employee entitlements, not including decisions under appeal, and have not paid the claim.

4.9 By submitting a Bid, the Bidder and Account Holder represent that neither has:

- (i) engaged in any misleading or deceptive conduct, collusive bidding, anti-competitive conduct, or any other unlawful or unethical conduct in connection with their Bid;
- (ii) attempted to solicit or solicit information from or influence improperly any current or former officer, employee, contractor or agent of the Commonwealth, or violate any Laws or Commonwealth policies regarding the offering of inducements in connection with the Bid; or
- (iii) engaged in, or procured or encouraged others to engage in, activity that would result in a breach of the Lobbying Code of Conduct and APSC Circular 2008/4 Requirements relating to the Lobbying Code of Conduct and post separation contact with Government.

4.10 Within the Bid Form you may be asked to submit a Trade Approval Form and any applicable evidence of authority. The Trade Approval Form(s) and evidence of authority should be as complete as possible, legible and correctly signed. It is the Account Holder's responsibility to ensure that the information provided in the Form(s) is complete and accurate and in the particular form required by the relevant Authority.

Issues affecting submission of a Bid

- 4.11 The Bid Form requires declarations to be made and will validate some details at the point of submission. You will need to allow enough time to complete and submit the Bid Form including correcting any errors before the Sale Close Time.
- 4.12 If you are unable to submit any required attachments to the Bid Form (including trade forms and/or evidence of authority) online or are having technical difficulty doing so, we may, at our discretion, accept those attachments via email or fax prior to the Sale Close Time. To receive instructions on how to complete and submit attachments to the Bid Form by email or fax, you will need to contact us on 1800 803 772 or via ewatertrade@environment.gov.au, ensuring sufficient time to complete the submission process for those attachments before the Sale Close Time.
- 4.13 Any attachment not received before the Sale Close Time will not be considered unless it was late solely due to mishandling by the Commonwealth or acceptance does not give the Bidder or Account Holder an unfair advantage.
- 4.14 Once you submit your online Bid Form a confirmation message will appear in your internet browser indicating it has been sent for processing.
- 4.15 On receipt of your Bid, a confirmation of receipt will be generated and issued to the email address you entered in the Bid Form. If you do not receive this confirmation of receipt then it is possible that the email address you entered on the Bid Form is incorrect. If you do not receive this confirmation of receipt and you consider that your Bid may not have been received:
- (a) you should check any junk mail folders in case the confirmation of receipt has been filed there; and
 - (b) you may contact us on 1800 803 772 or via ewatertrade@environment.gov.au before the Sale Close Time to advise that you did not receive a confirmation of receipt and you consider that your Bid may not have been received. In this case you may then resubmit your Bid subject to any further directions we give you. Following the Sale Close Time, we will determine if your Bid was submitted twice and, if so, we will remove the first of the duplicate Bids.
- 4.16 You may submit more than one Bid per sale process, however a new Bid Form must be downloaded and submitted for each Bid. Each Bid Form must be complete, contain all requested information and be capable of being read independently.

- 4.17 Do not submit multiple Bid Forms for a single Bid. Each Bid Form that we receive will be treated as a separate Bid (including if it is for the same volume and at the same price as another Bid Form from the same Bidder), unless paragraph 4.15 above applies to the circumstances. If multiple Bids are received and accepted, the Account Holder may be bound to multiple purchases.
- 4.18 Once you have submitted a Bid Form, you cannot propose amendments to the Bid (including the Bid Price and volume offered). To change a submitted Bid you will need to:
- (a) withdraw your Bid Form; and
 - (b) submit a new Bid Form prior to the Sale Close Time.
- 4.19 Withdrawing a Bid before the Sale Close Time requires us receiving written notice to ewatertrade@environment.gov.au that includes in the email subject title 'Withdraw Bid reference number xxxxx'. You will know if we have received your written notice because you will receive an automatic reply to your email.
- 4.20 You cannot withdraw your Bid after the Sale Close Time.

5. How Bids are evaluated

5.1 After the Sale Close Time the Commonwealth will conduct its evaluation with a view to determining which Bid or Bids will comprise the best return to the Commonwealth while minimising cost.

5.2 Withdrawn Bids will not be evaluated.

Eligibility Criteria

5.3 Bids that do not meet any one or more of the **Eligibility Criteria** described below (subject to paragraph 5.7) will be not be accepted. For a Bid to be **Eligible**, it must be:

- (a) submitted electronically using a Bid Form via the CEWO Website in accordance with the **Bid Form Requirements** of paragraph 4.8 above;
- (b) received by us after the Sale Open Time and before the Sale Close Time, subject to paragraph 4.5(c);
- (c) nominate a valid Allocation Account into which the Water Allocation can be transferred (subject to paragraph 5.8);
- (d) offer a Bid Price which is equal to or greater than the Bid Price Limit for the Sale Volume; and
- (e) nominate a valid email address via which we can communicate with the Bidder (subject to paragraph 5.8).

5.4 We may elect to not accept an **Eligible** Bid if we consider that:

- (a) there is a material risk that the trades not proceeding or being unreasonably delayed due to the Bidder's or Account Holder's conduct in tenders or programs for the sale or purchase of water access rights to or from the Commonwealth (or any resulting trades) within the preceding 2 years;
- (b) there is a material risk that the trade relating to the Bid would not be completed or would not proceed in a timely way (including due to restrictions on transfers out of the Source Jurisdiction or the Source Trading Zone or restrictions on transfers into the Destination Jurisdiction or the Destination Trading Zone); and/or
- (c) rectifying a failure of the Bidder to submit any trade form(s), or the submission of incomplete or inaccurate trade form(s) or other Bid information is reasonably likely to delay the progression of the trade.

5.5 As the Sale Process comprises a spot sale, and the timeframes available for allocation are compressed, Bids may also be excluded at any time if the Commonwealth seeks clarification or otherwise requests information from the Bidder or Account Holder and the Bidder or Account Holder does not respond in the timeframe requested.

- 5.6 Bids which satisfy the **Eligibility Criteria** of paragraph 5.3 and have not been rejected in accordance with paragraph 5.4 will be grouped by Bid Price (highest to lowest) and within each price group, ranked by volume (highest to lowest). Bids will be accepted in order of their ranking until:
- (a) all Bids have been accepted; or
 - (b) the Sale Volume has been fully allocated; or
 - (c) accepting the next ranked Bid would exceed the Sale Volume, then in determining whether to accept any remaining Bids the Commonwealth may, at its discretion:
 - (i) not accept some or all of the remaining Bids;
 - (ii) accept Bids which would see the Sale Volume exceeded; and/or
 - (iii) enter into negotiations with some or all remaining Bidders in relation to volume or price of a Bid (including, but not limited to, a best and final offer process).
- 5.7 We may at our discretion clarify with you minor errors or omissions in form or content we identify with a submitted Bid Form or trade form(s) (including any errors in Allocation Account reference, email address or the trade form(s) or evidence of authority or the non-submission of trade form(s) or evidence of authority), but we are under no obligation to do so.
- 5.8 The Commonwealth reserves the right to contact a Bidder to ascertain:
- (a) a valid email address; and/ or
 - (b) a valid Allocation Account reference,
- if the details provided in the Bid Form are not valid.
- 5.9 Despite any other provision in these Guidelines:
- (a) the Commonwealth is not bound to accept any Bid(s) to sell any volume at any price;
 - (b) the Commonwealth may ask a Bidder(s) to extend the Bid Period;
 - (c) the Commonwealth may exclude or not accept a Bid if the Commonwealth considers a Bidder or Account Holder has contravened paragraph 1.2 of the Sales Guidelines;
 - (d) the Commonwealth may add or remove any Bidder from consideration at any time after the Sale Close Time;
 - (e) the Commonwealth may negotiate or decline to negotiate with any Bidder, and discontinue negotiations at any time; and/ or
 - (f) the Commonwealth may allow, or refuse to allow, a preferred Bidder to enter into a contract in the name of a different legal entity to that which submitted the Bid.

Confidentiality

- 5.10 The Commonwealth will treat as confidential information contained in Bids. Where a Bid is accepted, the Commonwealth may disclose information regarding the Bid for the purposes of completing Trade Approval Forms and other steps necessary to effect the Trade.

6. What happens after your Bid is submitted

- 6.1 We will notify all Bidders of whether their Bid has been accepted or rejected within the Bid Period. Notification may be issued on a staggered basis reflecting the progression of evaluation. Please contact us if you have not received notification within this time. Unsuccessful Bidders will be offered an opportunity for a debrief.
- 6.2 Successful Bidders will receive an Acceptance of Bid notice advising that their Bid has been accepted and confirming relevant details.
- 6.3 If we determine or anticipate that it will take longer than the Bid Period to complete evaluation of Bids or if further consideration of your or other Bids is needed, then we may request in writing that you agree to an extension of the Bid Period. Such extension may be subject to conditions (such as a deadline for acceptance) and will not be binding until and unless you agree to it. Any agreement to an extension does not necessarily mean that we will accept your Bid.
- 6.4 A binding Agreement is formed between the Account Holder and us on the basis of the Acceptance of Bid, the Terms of Offer and the Bid Form. This Agreement is formed at the time we send the Acceptance of Bid (whether by email or by any other method of delivery), despite any subsequent delays in delivery or receipt by you of this communication. Among other obligations, the Account Holder must pay the total of all amounts set out in the Acceptance of Bid within the Payment Period.
- 6.5 Once the Commonwealth has received payment we will complete and lodge an application for the Trade with the appropriate trade approval Authority. We will notify you once the Trade Approval Form is lodged.
- 6.6 Trade approval may take a number of weeks. You may be advised of the outcome of the Trade approval request directly by the relevant Authority with which the Trade application was lodged. If there are any queries regarding the status or progress of trade approval, you should contact the relevant Authority directly.
- 6.7 The Terms of Offer detail the process to be followed by the parties where Trade approval is not granted by the relevant Authority.

7. Payment and charges

- 7.1 The Bidder and Account Holder are jointly liable for all lodging and registration fees associated with the Trade. If there are any queries regarding these charges, you should contact the relevant Authority directly.
- 7.2 We will only accept payment by electronic funds transfer (EFT) or by credit card. Payment by any other method including cheque and cash is not permitted. Details for payment will be provided to successful Bidders in the Acceptance of Bid notice.
- 7.3 If you choose to pay by credit card, please note that any charges and fees imposed on us by the credit provider in connection with that payment will be passed on to you (surcharge). A copy of the surcharges is available at <<https://onlineservices.environment.gov.au/help/articles/what-are-credit-card-surcharges>>. Please note that the credit card surcharge is non-refundable. There are no additional fees payable for an electronic transfer.
- 7.4 If you have any further questions regarding this process please contact us on 1800 803 772 or via ewatertrade@environment.gov.au

8. Further information

- 8.1 The Commonwealth may use email automation platforms to communicate effectively and efficiently with Bidders. When we send an email, it bounces from server to server as it crosses the Internet and where an email automation platform company has servers located overseas, information we send to Bidders may be transferred to, stored, or processed overseas. We use email automation platforms with appropriate security and privacy protocols to ensure information is transmitted securely and personal information is protected. For information on how we are using personal information that we collect, please see our **Privacy Policy**.
- 8.2 The Commonwealth has no liability to any Bidder or Account Holder should any information or material provided with respect to these Guidelines, the Terms of Offer or the Bid Form be inaccurate or incomplete or if actual volumes or other relevant matters in relation to any sale or allocation vary from those advised by the Commonwealth at any time.
- 8.3 Nothing in these Guidelines is to:
- (a) be taken to be; or
 - (b) relied upon,
- as an offer capable of acceptance or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.
- 8.4 By lodging a Bid, the Bidder and Account Holder(s) will be deemed to have made their own judgements relating to this Sale Process, and not to have relied upon:
- (a) any representation (whether oral or in writing) other than as expressed in these Guidelines; or
 - (b) other conduct of the Commonwealth, or any of its officers, employees, agents, advisers or subcontractors.
- 8.5 The Commonwealth is not bound to accept any Bid(s). We may also, at our discretion, suspend or abandon the sale process altogether.
- 8.6 The Commonwealth is committed to continuing assessment of the impact of water trading and will publish findings of that assessment. We may be seeking feedback from some Bidders as part of the assessment.
- 8.7 Following completion of the sale process, records of Bids will be kept in accordance with the requirements of relevant Laws including the *Privacy Act 1988* (Cth) and the *Archives Act 1983* (Cth) and any applicable Commonwealth or Department privacy policies. These records may be used to support the Commonwealth's ongoing functions including as a source of data to analyse and report on historical water markets.

- 8.8 You are solely responsible for all costs and expenses that you incur in connection with participating in this Sale Process, including the costs associated with preparing and lodging a Bid and responding to requests from the Commonwealth.
- 8.9 Unless otherwise specified, where we have a right or discretion under these Guidelines, we can exercise that right or give that discretion in our absolute discretion.
- 8.10 If you have any further questions regarding this process please contact us on 1800 803 772 or via ewatertrade@environment.gov.au