

# **AUCTION OF TELEX CODES**

## **AUCTION RULES**

4 December 2008

(Updated on 16 December 2008)

INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY  
REPUBLIC OF SINGAPORE

## **Auction Rules for Allocation of Telex Codes**

### **1. Allocation of Telex Codes**

1.1 These Auction Rules set out the procedures by which IDA may allocate Telex Codes.

### **2. Applications**

2.1 Each Bidder must submit a duly completed Application Form (accompanied by the documents specified in the Application Form) and a crossed cheque for the amount bid plus 7% GST, made payable to the "Info-communications Development Authority of Singapore" in accordance with the requirements of these Auction Rules, delivered by hand in a **sealed** envelope to:

Info-communications Development Authority of Singapore  
8 Temasek Boulevard  
#14-00 Suntec Tower 3  
Singapore 038988

For the attention of: Mr Andrew J. Haire

**no later than 2.30 p.m. on the Submission Date, 19 December 2008.** IDA will not accept any Application Form and/or cheque that is not submitted in accordance with Section 2.1 and/or received after 2.30 p.m. on 19 December 2008.

2.2 Bidders are to ensure that the cheques submitted to IDA for the purposes of the Auction shall not be subsequently dishonoured. The cheques shall be dated on or before 19 December 2008.

2.3 Cheques will be returned to the unsuccessful Bidders after the Auction result has been announced. For the Winning Bidder, the cheque submitted in its bid will be taken as payment for the relevant Bid Price.

2.4 The Application Form must include the name, designation and mailing address of the Authorised Representative of the Bidder, together with specimen signatures and documentary evidence satisfactory to IDA of the appointment of each of such Authorised Representatives as a person having authority to act alone on behalf of, and bind, the Bidder in the Auction. The Bidder's Authorised Representative must be named in the Disclosure List submitted by that Bidder in its Application Form.

### 3. Information Session on Bidding Procedure

3.1 IDA will conduct an Information Session to highlight the logistical arrangements and procedures of the bidding process before the Submission Date for the Auction. The Authorised Representative of a Bidder must attend the Information Session.

3.2 Bidders interested in attending the Information Session are required to fax the Reply Letter as set out in Appendix 2 to the Auction Rules to:

Info-communications Development Authority of Singapore  
8 Temasek Boulevard #14-00  
Suntec Tower 3  
Singapore 038988  
Fax No: (65) 6211 2116

For the attention of: Mr Andrew J. Haire

3.3 Bidders interested in attending the Information Session are to register with IDA no later than **5 pm, 10 December 2008**. The Information Session will be held on **12 December 2008** at the address stated in Section 3.2. IDA will inform registered parties of the timing of the Information Session in due course.

### 4. Auction Details

4.1 All interested Bidders are required to submit the Application Forms (accompanied by the documents specified in the Application Form) and cheques, delivered by hand in **sealed** envelopes to IDA (address as per Section 2.1 above). The submission period is from **2 p.m. to 2.30 p.m. on 19 December 2008**. Upon arrival, Bidders will be directed to the location for the submission of the bids. **IDA will not accept any bid submitted later than 2.30 p.m.** as indicated in Section 2.1.

4.2 Upon receipt of the sealed envelope, IDA officers will open the envelope in the presence of the respective Bidder to check the documents submitted. IDA officers will then issue an acknowledgement slip for the receipt of the bid. Bidders can choose to remain at the submission location until 2.30 p.m. The Auction will close at 2.30 p.m. and IDA will not accept any submission beyond 2.30 p.m.

4.3 The Auction for Telex Codes is based on a **one-time sealed bid first price format**. This means that the Bidder who has submitted the highest Bid Price wins the Auction and it then pays the Bid Price it had submitted in its bid.

4.4 In the case of only one valid bid received, that Bidder will pay the Bid Price that it had submitted in its bid for the Telex Codes. If the highest Bid Price submitted is the same for more than one Bidder, IDA will conduct a

second round of Auction, with the new Reserve Price set to the highest bid amount submitted previously.

4.5 IDA will announce the Winning Bidder within five Business Days (or such longer time as IDA deems appropriate) of the announcement of the close of the Auction. All Bidders will receive notification from IDA in writing on the outcome of the Auction. The bids submitted will be available for viewing by any interested party upon request made in writing to IDA.

4.6 The Telex Codes will only be allocated to the Winning Bidder when full payment has been made by the Winning Bidder (i.e. the cheque issued to IDA is cleared by the bank). The effective date for the right to use the Telex Codes is from 1 May 2009 onwards.

4.7 If the Winning Bidder has not established an entity at the time of the Auction, the Telex Codes will be provisionally allocated to the Winning Bidder upon full payment of the bid amount. The Telex Codes will be allocated to the entity established by the Winning Bidder upon the establishment of the entity.

4.8 In the event that the Winning Bidder does not have an existing SBO (I) or FBO Licence, the Winning Bidder is required within 30 days of the provisional allocation/allocation of the Telex Codes to apply for an SBO (I) or FBO Licence for the provision of telex service. Where the Winning Bidder is an existing SBO (I) or FBO Licensee and the scope of its services and systems of its existing SBO (I) or FBO Licence does not allow for the provision of telex service, it must within 30 days of the allocation of the Telex Codes request IDA to modify the scope of its services and systems of its SBO (I) or FBO Licence to allow for the same.

4.9 IDA reserves the right to withdraw the allocation of Telex Codes if the Winning Bidder fails to possess a valid SBO (I) or FBO Licence for the provision of telex service.

## **5. Bidding by New Entity/Consortium**

5.1 In the event that a person or a consortium may wish to participate in the Auction but may not have established an entity at the time of the Auction, the Bidder representing the consortium is to ensure that an appropriate entity owned and controlled by the Bidder, or by the consortium, is established within 30 days from being notified by IDA that it has won the Auction.

## **6. Exclusion/Forfeiture up to the amount of the Reserve Price**

### **Exclusion**

6.1 If at any time IDA determines that a Bidder has failed to comply with one or more of the Auction Rules or the procedures relating to the Auction

(including without limitation any of the bidding procedures under the Auction Rules) or otherwise acted in a manner which IDA considers to be prejudicial to the Auction, IDA may upon notification to that Bidder at any time exclude that Bidder from the Auction and that Bidder may not participate, or participate further, in the Auction or any restart of the Auction.

## **Forfeiture**

6.2 IDA may determine that a Bidder shall forfeit all or part of that Bidder's bid up to the amount of the Reserve Price in any of the circumstances specified in Section 6.3 by serving a Forfeiture Notice on that Bidder. A Forfeiture Notice will be given and deemed received, in accordance with Section 9.2. Forfeitures will be settled in accordance with Section 7.

6.3 IDA may serve a Forfeiture Notice on a Bidder in each of the following circumstances:

- (a) if that Bidder acts in a manner that disrupts the Auction;
- (b) if that Bidder does not comply with Section 4.8;
- (c) if that Bidder is excluded from the Auction pursuant to Section 6.1;
- (d) if that Bidder engages in any of the prohibited activities referred to in Section 8; or
- (e) if that Bidder does not comply with any of its obligations under Section 11.

6.4 The amount which shall be forfeited by a Bidder in any of the circumstances specified in Section 6.3 shall be determined by IDA, provided that the aggregate of the amounts forfeited by a Bidder shall not exceed the Reserve Price for the purposes of the Auction at the time the Forfeiture is determined.

## **7. Settlement of Forfeitures (if any)**

7.1 If at the close of the Auction, a Bidder is not entitled to a provisional allocation or allocation of the Telex Codes (unsuccessful Bidder) and is not subject to any Forfeiture, that Bidder's cheque will be returned to that Bidder as soon as it is reasonably possible upon the announcement of the result of the Auction.

7.2 If upon the close of the Auction, a Bidder is not entitled to a provisional allocation or allocation of the Telex Codes (unsuccessful Bidder) but is subject to one or more Forfeitures, the Forfeiture Amounts payable by that Bidder will be transferred by that Bidder to a bank account to be specified by IDA.

7.3 If upon the close of the Auction, a Bidder is entitled to a provisional allocation or allocation of the Telex Codes (Winning Bidder), and, if that Bidder is subject to one or more Forfeitures, within seven (7) Business Days from the date of IDA's notification that Bidder shall transfer to the IDA Bank Account the amount of the Forfeitures payable by that Bidder. Where that Bidder refuses to or fails to pay the full amount of its Forfeitures to IDA within seven (7) Business days from the date of IDA's notification, IDA may, in addition to any other remedy available to IDA, do one or both of the following:

- (a) bar that Bidder from participating in future auctions of telex codes for a period of up to 12 months;
- (b) refuse to allocate the Bidder any telex codes for a period of up to 12 months.

For the avoidance of doubt, if an action is taken under Section 7.3 or Section 9.5, the Winning Bidder's bid shall be considered null and void as from the date when the bid was received by IDA. IDA reserves the right to allocate the Telex Codes to the next highest bidder.

## **8. Prohibited Activities - Collusion, Disclosure of Information, Misleading or False Information and Connected Persons**

8.1 Before and during the Auction, no Bidder may:

- (a) disclose any Confidential Information, whether directly or indirectly, to any person other than IDA or the persons named in the Disclosure List submitted by that Bidder, provided that no Confidential Information may be disclosed by a Bidder to a person named in such Disclosure List if IDA has notified that Bidder that disclosure is not permitted to such person because that person is also named in the Disclosure List submitted by any other Bidder or otherwise; or
- (b) collude or attempt to collude with any other Bidder(s) in an attempt to influence the proceedings or results of the Auction or any allocation of the number level(s).

Each Bidder will remain bound by the provisions of this Section 8.1 until the close of the Auction or the allocation of the Telex Codes whichever is earlier, notwithstanding that any such Bidder may be excluded from the Auction in accordance with the provisions of these Auction Rules.

8.2 If IDA determines that any Bidder has disclosed any Confidential Information in breach of the obligation pursuant to Section 8.1 or has colluded, attempted to collude, or is colluding with any other Bidder(s), such Bidder will upon notification be excluded from the Auction and may not participate, or participate further, in the Auction.

8.3 If IDA does not become aware of any breach of Section 8.1 until after the close of the Auction or the allocation of the Telex Codes, and any Bidder considered by IDA to have been involved in such breach was allocated the Telex Codes, then if IDA in its sole discretion determines fit and appropriate, the allocation of the Telex Codes will be revoked.

8.4 No Bidder will submit an Application Form or any document attached thereto, or any document submitted in response to a request for clarification from IDA or any information to IDA, which contains any information which the Bidder knows to be, or has reason to believe may be, false or misleading.

8.5 Any person who is an employee of a Bidder or a member of a Bidder's Group and who is also an employee of one or more other Bidders or other Bidders' Group(s) (for the purpose of this Section 8, a "**Connected Person**") will be excluded from participating, directly or indirectly, in the Auction. Each Bidder is obliged to ensure that:

- (a) any Connected Person is not in any way involved in the Bidder's preparation for, or participation in, the Auction;
- (b) no Confidential Information is disclosed to or otherwise enters the possession of any Connected Person; and
- (c) no Connected Person is an Authorised Representative.

8.6 For the purpose of this Section 8, Bidder shall include a person which has submitted an Application Form in accordance with Section 2.1.

## **9. IDA's Discretionary Powers and Disclaimers**

9.1 Notwithstanding any other provision in these Auction Rules, IDA may at any time:

- (a) change any of the times or dates and/or shorten or extend any of the time periods referred to in or determined pursuant to these Auction Rules, provided that IDA will give all Bidders at least twenty-four hours notice of any such change, save in emergency situations where such changes may be made without notice;
- (b) delay, cancel or suspend the Auction if in the opinion of IDA this is in the public interest; and/or
- (c) amend, supplement and/or vary these Auction Rules, provided that any such amendment, supplement and variation are made at least two Business Days prior to the Submission Date, and are publicly announced on its website.

9.2 IDA will have sole discretion in making any determination pursuant to these Auction Rules and may take into account all or any facts, circumstances or matters which it considers to be relevant.

9.3 For avoidance of doubt, IDA is not bound by any determination made pursuant to these Auction Rules to make a similar determination in future allocation of telex codes. All determinations by IDA will be based on its policy objectives and on the facts at that point in time.

9.4 Any person participating in the Auction must take all necessary steps to carefully examine and acquaint itself with these Auction Rules. The submission of the Application Form and cheque in accordance with Section 2 shall be deemed to constitute such person's acknowledgement of, and agreement to abide by, these Auction Rules.

9.5 In the event the Winning Bidder's cheque is subsequently dishonoured, IDA may, in addition to any other remedy available to IDA, do one or both of the following:

- (a) bar that Bidder from participating in future auctions of telex codes for a period of up to 12 months;
- (b) refuse to allocate the Bidder any telex codes for a period of up to 12 months.

For the avoidance of doubt, if an action is taken under Section 7.3 or Section 9.5, the Winning Bidder's bid shall be considered null and void as from the date when the bid was received by IDA. IDA reserves the right to allocate the Telex Codes to the next highest bidder.

## **10. Communications and Notifications**

10.1 Any notification or other communication to be given to IDA by a Bidder must be in writing and signed by or on behalf of the person giving it and must be delivered by hand or sent by fax to:

Info-communications Development Authority of Singapore  
8 Temasek Boulevard  
#14-00 Suntec Tower 3  
Singapore 038988  
Facsimile No.: (65) 6211-2116  
For the attention of: Mr Andrew J. Haire

Any such notification or other communication:

- (a) if delivered by hand, will be deemed received by IDA when delivered; and/or

- (b) if sent by fax, will be deemed received by IDA at the time of transmission (provided instantaneous confirmation of transmission is received by the sender),

provided that where delivery occurs after 6.00 p.m. on a Business Day or on a day which is not a Business Day, receipt will be deemed to occur at 9.00 a.m. on the following Business Day.

10.2 Unless specified otherwise, any notification or other communication to be given by IDA to a Bidder must be in writing and delivered by hand or sent by fax to the address or fax number given for such purposes in the Application Form.

Any notification or other communication:

- (a) if delivered by hand, will be deemed received when delivered; and/or
- (b) if sent by fax, will be deemed received at the time of transmission (provided instantaneous confirmation of transmission is received by the sender),

provided that where delivery occurs after 6.00 p.m. on a Business Day or on a day which is not a Business Day, receipt will be deemed to occur at 9.00 a.m. on the following Business Day.

## **11. Duty to Inform IDA**

11.1 If at any time during the Auction, a Bidder knows or ought reasonably to have known that IDA has made an error with regard to a bid or other information communicated to one or more Bidders, the Bidder will inform IDA at the earliest opportunity.

## **12. Governing Law and Jurisdiction**

12.1 These Auction Rules and the relationship between IDA and each of the Bidders shall be governed by, and interpreted in accordance with Singapore law.

12.2 The courts of Singapore are to have exclusive jurisdiction to settle any disputes which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, these Auction Rules or otherwise arising in connection with these Auction Rules. The submission of an Application Form shall be deemed to constitute each of such Bidder's irrevocable submission to the jurisdiction of the courts of Singapore.

### 13. Definitions

**Application Form** means the application form to be submitted by an interested person, the form of which is attached as Appendix 1 to these Auction Rules;

**Auction** means the auction procedures specified in these Auction Rules for allocating the Telex Codes;

**Auction Rules** means these rules issued by IDA relating to the procedures by which IDA may allocate the Telex Codes, as amended or varied by IDA from time to time in accordance with these rules;

**Authorised Representative** means a person whom a Bidder has authorised to act in the Auction on its behalf, the particulars of whom have been submitted to IDA in accordance with Section 2.4;

**Bidder**, unless otherwise specified, means any person which has submitted an Application Form and a cheque accompanying its bid in accordance with Section 2;

**Business Day** means a day excluding Saturdays, Sundays and public holidays in Singapore;

**Confidential Information** means any information whatsoever directly or indirectly relating to any proposed action or omission by a Bidder relating to the Auction, any information pertaining to the results or the proceedings of the Auction or any information, whether oral or in writing, which has not been made public by IDA, which if made public or disclosed would be likely to have an effect on the amount which any Bidder proposes to bid, including without limitation information relating to a Bidder's business case, auction strategy and any amount a Bidder is willing to bid, but excluding any information which enters the public domain other than as a result of a breach by any Bidder of these Auction Rules. For the purposes of this definition, a reference to a Bidder will be deemed to include any Bidder excluded from the Auction by IDA;

**Connected Person** has the meaning given in Section 8.5;

**Disclosure List** means a list of all persons to whom Confidential Information has been disclosed. This list is provided to IDA by that Bidder in accordance with the Application Form;

**Forfeiture** means the forfeiture of all or part of the Reserve Price as may be determined by IDA in accordance with Section 6.2 to 6.4;

**Forfeiture Amount** means the aggregate of any Forfeitures to be settled by that Bidder;

**Forfeiture Notice** means a notice in writing of the imposition of a Forfeiture pursuant to Section 6.2;

**Group** means, in relation to a Bidder:

- (a) any holding company of the Bidder;
- (b) any subsidiary of the Bidder;
- (c) any subsidiary of any holding company of the Bidder; and
- (d) any other company in which two or more of the shareholders or directors (directly or indirectly) own more than 50 per cent of or control more than 50 per cent of the voting rights attaching to, shares of the Bidder.

For the purpose of this definition, the terms holding company and subsidiary will have the meanings given in the Companies Act (Cap. 50);

**GST** means goods and services tax payable in accordance with the Goods and Services Tax Act (Cap. 117A);

**IDA** means the Info-communications Development Authority of Singapore;

**IDA Bank Account** means the bank account to which payments are to be made as notified by IDA.

**Information Memorandum** means the information memorandum issued by IDA dated 4 December 2008 relating to the allocation of the Telex Codes;

**Information Session** means the information session held in accordance with Section 3;

**Person** means any natural person, or company incorporated under the Companies Act (Cap. 50);

**Submission Date** means 19 December 2008, or such other date (post 19 December 2008) as IDA may otherwise determine;

**Telex Codes** means the set of telex codes (TDC: 87 and TNIC: RS) to be allocated in the Auction, as given in Section A.2.1 of the *Information Memorandum on the Auction of Telex Codes*; and

**Winning Bidder** means the Bidder which is allocated the Telex Codes and Winning Bid means the bid submitted by the same Bidder;