Offshore Petroleum and Greenhouse Gas Storage Amendment (Cash Bidding) Act 2013

No. 141, 2013

An Act to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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Offshore Petroleum and Greenhouse Gas Storage Amendment (Cash Bidding) Act 2013

No. 141, 2013

An Act to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and for related purposes

[Assented to 13 December 2013]

The Parliament of Australia enacts:
1 Short title

This Act may be cited as the Offshore Petroleum and Greenhouse Gas Storage Amendment (Cash Bidding) Act 2013.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Cash-bid petroleum exploration permits


1 Section 110 (heading)
Repeal the heading, substitute:

110 Cash-bid petroleum exploration permit—application

2 Paragraph 110(1)(a)
Repeal the paragraph, substitute:

(a) invite applications for the grant by the Joint Authority of a petroleum exploration permit by way of cash bidding over the block or blocks specified in the notice; and

3 Paragraph 110(3)(c)
Repeal the paragraph, substitute:

(c) specify the matters that the Joint Authority will take into account in deciding under section 111 whether to invite the applicant to make a cash bid.

4 After subsection 110(3)
Insert:

Reserve price

(3A) Before publishing a notice under subsection (1), the Joint Authority must, in writing, determine a reserve price for the grant of the permit.

(3B) A notice under subsection (1) may specify the reserve price so determined, but does not need to do so.

(3C) A determination under subsection (3A) is not a legislative instrument.
More than one block

5 Subsection 110(6)

Repeal the subsection (not including the notes), substitute:

(6) An application under this section must be accompanied by details of:

(a) the technical qualifications of the applicant and of the applicant’s employees; and
(b) the technical advice available to the applicant; and
(c) the financial resources available to the applicant.

6 Sections 111 and 112

Repeal the sections, substitute:

111 Cash-bid petroleum exploration permit—cash bids

Invitations to make a cash bid

(1) For each application for a cash-bid petroleum exploration permit in accordance with a notice under subsection 110(1), the Joint Authority must, taking into account the matters specified in the notice under paragraph 110(3)(c), by written notice to each applicant:

(a) invite the applicant (an eligible applicant) to make a cash bid for the grant of the permit within a period stated in the invitation; or
(b) reject the application.

How to make a cash bid

(2) An eligible applicant may make a single cash bid in response to the invitation under subsection (1) by written notice to the Joint Authority:

(a) given within the period stated in the invitation; and
(b) specifying an amount (the cash bid) the applicant would be prepared to pay for the grant of a permit; and
(c) accompanied by a deposit of 10% of the cash bid.

Note 1: A cash bid must be made in an approved manner (see section 255).
Note 2: The Joint Authority can only make an offer of the grant of a permit to an applicant at a price that is equal to or higher than the reserve price (see sections 112 and 112A). The reserve price may be specified in the notice under subsection 110(1), but it need not be (see subsection 110(3B)).

(3) A deposit accompanying a notice under subsection (2) is taken to be paid to the Titles Administrator on behalf of the Commonwealth.

Lapsed applications

(4) If an eligible applicant does not respond to the invitation in accordance with subsection (2), the application lapses.

112 Cash-bid petroleum exploration permit—cash bids less than the reserve price

Scope

(1) This section applies to an eligible applicant for the grant of a cash-bid petroleum exploration whose cash bid under section 111 is less than the reserve price determined under section 110 for the grant of the permit.

Note: The reserve price may be specified in the notice under subsection 110(1) in relation to the grant of the permit, but it need not be (see subsection 110(3B)).

Rejection of applications generally

(2) The Joint Authority must reject the application by written notice to the applicant unless:

(a) the reserve price is not specified in the notice under subsection 110(1); and
(b) the applicant’s cash bid is:

(i) the only cash bid, or the highest cash bid, for the grant of the permit that is less than the reserve price; or
(ii) equal to one or more other cash bids which are the only cash bids, or the highest cash bids, for the grant of the permit that are less than the reserve price.

Note: Applications to which paragraphs (a) and (b) apply may be rejected under subsection (3) of this section, or following the grant of the
Schedule 1  Cash-bid petroleum exploration permits

permit to another applicant under section 113. They may also lapse under section 260A if the applicant fails to respond to an offer made under subsection (3) of this section.

Offer of grant of permit at reserve price

(3) The following table applies if:

(a) the reserve price is not specified in the notice under subsection 110(1); and

(b) the only cash bids for the grant of the permit made under section 111 are less than the reserve price.

<table>
<thead>
<tr>
<th>Offer of grant of permit at reserve price</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>1</td>
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</tbody>
</table>

Note 1:  Section 259 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If an applicant breaches a requirement under section 258 to provide further information, the Joint Authority may refuse to give the applicant an offer document.

(4) In considering whether to give an offer document to an applicant under subsection (3), the Joint Authority must have regard to the difference between the applicant’s cash bid and the reserve price.

Refund of deposit to rejected applicants

(5) If the Joint Authority rejects an application under this section, the Titles Administrator, on behalf of the Commonwealth, must refund to the applicant an amount equal to the applicant’s deposit under section 111.

112A Cash-bid petroleum exploration permit—highest cash bids at or over the reserve price

Scope

(1) This section applies in relation to a cash bid (a qualifying cash bid) under section 111 by an eligible applicant for the grant of a cash-bid petroleum exploration permit that is equal to or higher than the reserve price determined under section 110.

Issue of offer documents etc.

(2) The following table sets out the circumstances in which the Joint Authority must give an offer document, or an invitation to make a tie-breaking cash bid, to an eligible applicant who makes a qualifying cash bid.

<table>
<thead>
<tr>
<th>Item</th>
<th>If …</th>
<th>the Joint Authority must …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>the applicant’s cash bid is: (a) the only qualifying cash bid; or (b) the single highest qualifying cash bid</td>
<td>give a written notice (called an offer document) to the applicant telling the applicant that the Joint Authority is prepared to grant the permit to the applicant.</td>
</tr>
<tr>
<td>2</td>
<td>2 or more eligible applicants (tied applicants) make qualifying cash</td>
<td>invite each tied applicant, by written notice (a tie-breaking invitation), to …</td>
</tr>
</tbody>
</table>
### Issue of offer documents or tie-breaking invitations

<table>
<thead>
<tr>
<th>Item</th>
<th>If …</th>
<th>the Joint Authority must …</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>bids that are:</td>
<td>make a higher cash bid within a period stated in the tie-breaking invitation.</td>
</tr>
<tr>
<td></td>
<td>(a) equal to each other’s cash bids; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) either the only qualifying cash bids, or higher than all the other qualifying cash bids</td>
<td></td>
</tr>
</tbody>
</table>

**Note 1:** Section 259 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).  
**Note 2:** If an applicant breaches a requirement under section 258 to provide further information, the Joint Authority may refuse to give the applicant an offer document.

### 112B Cash-bid petroleum exploration permit—tie-breaking invitation

**Scope**

(1) This section applies if the Joint Authority, under section 112A, makes a tie-breaking invitation to 2 or more tied applicants for the grant of a cash-bid petroleum exploration permit.

**Responses to the tie-breaking invitation**

(2) Before the end of the period stated in the tie-breaking invitation, a tied applicant may, by written notice to the Joint Authority, make a further cash bid (a *tie-breaking cash bid*) higher than the applicant’s previous cash bid.

**Note:** A tie-breaking cash bid must be made in an approved manner (see section 255).

(3) The following table sets out the process for dealing with responses (if any) to the tie-breaking invitation.

<table>
<thead>
<tr>
<th>Responses to the tie-breaking invitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>
### Responses to the tie-breaking invitation

<table>
<thead>
<tr>
<th>Item</th>
<th>If …</th>
<th>then …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>cash bid within the period stated in the tie-breaking invitation that is: (a) the only tie-breaking cash bid; or (b) the single highest tie-breaking cash bid</td>
<td>written notice (called an offer document) to that tied applicant telling the applicant that the Joint Authority is prepared to grant the permit to the applicant.</td>
</tr>
<tr>
<td>2</td>
<td>there are 2 or more tie-breaking cash bids by applicants (further-tie applicants) made within the period stated in the tie-breaking invitation that are: (a) equal to each other; and (b) either the only tie-breaking cash bids, or higher than all the other tie-breaking cash bids</td>
<td>the Joint Authority must give an offer document to the further-tie applicant whose tie-breaking cash bid was received earliest.</td>
</tr>
<tr>
<td>3</td>
<td>none of the tied applicants makes a tie-breaking cash bid within the period stated in the tie-breaking invitation</td>
<td>the Joint Authority must give an offer document to the tied applicant whose cash bid under section 111 was received earliest.</td>
</tr>
</tbody>
</table>

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**Note 1:** Section 259 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

**Note 2:** If an applicant breaches a requirement under section 258 to provide further information, the Joint Authority may refuse to give the applicant an offer document.

### 7 Section 113 (heading)
Repeal the heading, substitute:

113 Cash-bid petroleum exploration permit—grant

### 8 Paragraph 113(1)(a)
Omit “111 or 112”, substitute “112, 112A or 112B”.

### 9 Paragraph 113(1)(c)
Repeal the paragraph, substitute:
(c) the applicant has, within the applicable period under section 260, paid to the Titles Administrator, on behalf of the Commonwealth, the amount specified in the offer document as the balance of the permit price;

10 **Subsection 113(2)**

Repeal the subsection, substitute:

(2) If the Joint Authority grants a petroleum exploration permit to an applicant under subsection (1):

(a) the Joint Authority must reject all other applications for the permit (other than those that have already been rejected, or have lapsed), by written notice to each of those applicants (each *rejected applicant*); and

(b) the Titles Administrator, on behalf of the Commonwealth, must refund to each rejected applicant an amount equal to the rejected applicant’s deposit under section 111.

Note 1: An application may have already been rejected under section 111 (if the applicant is not invited to make a cash bid) or 112 (if the applicant’s cash bid is less than the reserve price).

Note 2: An application may have already lapsed under section 111 (if the applicant fails to respond to a cash-bid invitation) or 260A (if the applicant fails to respond to an offer).

11 **Section 255 (heading)**

Repeal the heading, substitute:

255 **Application and cash bid to be made in an approved manner**

12 **After subsection 255(1)**

Insert:

(1A) This section also applies to a cash bid, or a tie-breaking cash bid, made under section 111 or 112B for the grant of a petroleum exploration permit.

13 **Subsection 255(2)**

After “application”, insert “, cash bid or tie-breaking cash bid”.
14 **Paragraphs 259(3)(a) and (b)**

Repeal the paragraphs, substitute:

(a) specify, as the permit price:

(i) the amount of the cash bid, or tie-breaking cash bid, in relation to which the offer document is given; or

(ii) in the case of an offer document given under section 112—the amount of the reserve price determined under section 110 for the grant of the permit; and

(b) specify, as the balance of the permit price, an amount equal to the difference between the permit price and the deposit given by the applicant under section 111; and

(c) contain a statement to the effect that if the applicant does not pay the balance of the permit price to the Commonwealth within the period allowed for making a request under section 260:

(i) the application will lapse; and

(ii) except in the case of an offer document given under section 112—the applicant’s deposit will be forfeited to the Titles Administrator on behalf of the Commonwealth.

Note: An offer document may be given under section 112 for the grant of a permit at the reserve price to an applicant whose cash bid is less than the reserve price.

15 **Subsection 260(1) (table item 2)**

Omit “30 days”, substitute “14 days”.

16 **Subsection 260(4)**

After “item of the table”, insert “, except item 2,”.

17 **At the end of subsection 260(4)**

Add:

Note: For the failure to request the grant of cash-bid petroleum exploration permits under item 2 of the table, or the failure to pay for such permits, see section 260A.
18 After section 260

Insert:

260A Cash-bid petroleum exploration permits—failure to respond to offer

Scope

(1) This section applies if:
   (a) an offer document has been given to an applicant (the *non-responding applicant*) for the grant of a cash-bid petroleum exploration permit who has made a cash bid, or a tie-breaking cash bid, for the grant of the permit; and
   (b) at the end of the applicable period under section 260, the non-responding applicant:
      (i) has not made a request under that section; or
      (ii) has not paid the amount specified in the offer document as the balance of the permit price that the applicant must pay for the permit.

Lapse of application and forfeit of deposit

(2) At the end of the applicable period:
   (a) the application lapses; and
   (b) unless the offer document was given under section 112—an amount equal to the non-responding applicant’s deposit under section 111 is forfeited to the Commonwealth; and
   (c) if the offer document was given under section 112—the Titles Administrator, on behalf of the Commonwealth, must refund to the non-responding applicant an amount equal to that applicant’s deposit under section 111.

Further offers

(3) The following table requires or allows an offer document to be given to an applicant other than the non-responding applicant by applying sections 112, 112A and 112B as if applicants whose applications have lapsed or been rejected (*lapsed or rejected applicants*), including the non-responding applicant, had not made cash bids.
### Further offers

<table>
<thead>
<tr>
<th>Item</th>
<th>If …</th>
<th>then, at the end of the applicable period …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>there are any cash bids for the permit remaining at the end of the applicable period (apart from those made by lapsed or rejected applicants) that are equal to or higher than the reserve price determined under section 110</td>
<td>sections 112A and 112B apply as if the lapsed or rejected applicants had not made cash bids under section 111.</td>
</tr>
<tr>
<td>2</td>
<td>(a) the reserve price determined under section 110 for the grant of the permit is not specified in the notice under subsection 110(1); and (b) the only remaining cash bids under section 111 (apart from those made by lapsed or rejected applicants) are less than the reserve price</td>
<td>section 112 applies as if the lapsed or rejected applicants had not made cash bids under section 111.</td>
</tr>
</tbody>
</table>

**Note:** Sections 112, 112A and 112B set out the circumstances in which the Joint Authority may, or must, give an offer document to an applicant for a cash-bid petroleum exploration permit.

### 19 Section 261 (heading)

Repeal the heading, substitute:

**261 Special petroleum exploration permits and s 181 petroleum production licences—failure to pay**

### 20 Subsection 261(1)

Repeal the subsection.

### 21 Subsection 261(2) (heading)

Repeal the heading.

### 22 Subsection 261(2)

Omit “(2) If.”, substitute “If.”.
Schedule 1  Cash-bid petroleum exploration permits

23  Section 695K (heading)
Repeal the heading, substitute:

695K  Purposes of the Account and transfers to general CRF

24  Section 695K
Before “The purposes”, insert “(1)”.

25  At the end of section 695K
Add:

(2) The following amounts must be debited from the Account:

(a) if a cash-bid petroleum exploration permit is granted to an applicant in accordance with section 113—an amount equal to the amount specified as the permit price in the offer document given to the applicant;

(b) if a deposit paid by an applicant for the grant of a cash-bid petroleum exploration permit is forfeited to the Commonwealth under subsection 260A(2)—an amount equal to the amount of the deposit.

Note 1: Amounts equal to the amounts mentioned in this subsection are paid into the Special Account under section 695J. The effect of this subsection is to transfer those amounts from the Special Account to the general Consolidated Revenue Fund.

Note 2: Subsection 260A(2) provides for a deposit made by an applicant for the grant of a permit to be forfeited to the Commonwealth if the applicant fails to respond to an offer for the grant of the permit.

26  After paragraph 695M(1)(a)
Insert:

(aa) a cash-bid petroleum exploration permit; and

[Minister’s second reading speech made in—
House of Representatives on 20 November 2013
Senate on 5 December 2013]

(230/13)