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STATUTORY INSTRUMENTS

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**2006 No. 1806**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006**

*Made* - - - - *7th July 2006*

*Coming into force* - - *7th August 2006*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by section 3(1), (3), (4) and (5B) of the Wireless Telegraphy Act 1998<sup>(1)</sup> (“the 1998 Act”) and section 403(7) of the Communications Act 2003<sup>(2)</sup> (“the 2003 Act”) as applied by section 6(1) of the 1998 Act;

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the 2003 Act as applied by section 6(1) of the 1998 Act, published notice of their proposal in accordance with section 403(4)(b) of the 2003 Act as applied by section 6(1) of the 1998 Act and have considered the representations made to them before the time specified in that notice in accordance with section 403(4)(c) of the 2003 Act as applied by section 6(1) of the 1998 Act.

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 and shall come into force on 7th August 2006.

(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

**Interpretation**

2. In these Regulations —

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(1) 1998 c. 6. Section 3 of the 1998 Act was amended by the Communications Act 2003 (c. 21), section 167, section 406, Schedule 17, paragraph 149 and Schedule 19(1).  
(2) 2003 c. 21.

- (a) “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- (b) “authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;
- (c) “bid” has the meaning given in regulation 17(1);
- (d) “bid deposit” has the meaning given in regulation 19(3);
- (e) “bidder” means an applicant who has qualified to bid in the award process and who has not withdrawn from the award process before the last day for withdrawal;
- (f) “bidder group” means, in relation to an applicant or bidder:—
  - (i) that applicant or bidder;
  - (ii) each associate of that applicant or bidder; and
  - (iii) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 3;
- (g) “bidding menu document” has the meaning given in regulation 16(a);
- (h) “confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect the decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;
- (i) “frequency lot” means any of frequency lot A, frequency lot B, frequency lot C or frequency lot D as respectively defined in paragraphs (j) to (m);
- (j) “frequency lot A” means the frequencies between 412.0 megahertz and 412.5 megahertz and between 422.0 megahertz and 422.5 megahertz;
- (k) “frequency lot B” means the frequencies between 412.5 megahertz and 413.0 megahertz and between 422.5 megahertz to 423.0 megahertz;
- (l) “frequency lot C” means the frequencies between 413.0 megahertz and 413.5 megahertz and between 423.0 megahertz and 423.5 megahertz;
- (m) “frequency lot D” means the frequencies between 413.5 megahertz and 414.0 megahertz and between 423.5 megahertz and 424.0 megahertz;
- (n) “last day for withdrawal” has the meaning given in regulation 9(2)(b);
- (o) “licence” means one of the wireless telegraphy licences to be granted pursuant to these Regulations;
- (p) “material interest” means, whether held directly or indirectly:—
  - (i) any interest (construed in accordance with sections 208 and 209 of the Companies Act 1985(3)) in —
    - (aa) shares carrying more than twenty five percent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
    - (bb) shares, where the consent of the holder of those shares is required for the conduct of any business of the applicant or bidder; or
  - (ii) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

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(3) 1985 c. 6. Section 209 was inserted by S.I. 1993/1819. Section 209(1)(h) was amended by S.I. 1996/2827, and S.I. 2001/1228. Section 209(2), (2A) (2B) and (2C) were substituted by S.I. 2001/3649 and then amended by S.I. 2002/765. Section 209(9A) and (9B) were inserted by S.I. 1996/1560. Section 209(9B) was amended by S.I. 2001/3755. Section 209(10) was amended by the Law of Property (Miscellaneous Provisions) Act 1994 (c. 36) section 21(2) and Schedule 2.

- (q) “minimum bid” shall be construed in accordance with regulation 17(2);
- (r) “OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process and published on their internet website;
- (s) “pounds” means pounds sterling;
- (t) “sealed bid” has the meaning given in regulation 18(2);
- (u) “sealed bid delivery period” has the meaning given in regulation 15(1)(a);
- (v) “valid combination of bids” has the meaning given in regulation 24(3);
- (w) “valid bids” has the meaning given in regulation 23(1);
- (x) “winning combination of bids” shall be construed in accordance with regulation 24;
- (y) “winning bid” has the meaning given in regulation 24(1); and
- (z) “winning bidder” means a bidder who submitted a winning bid.

## PART 2

### APPLICATION STAGE

#### **Applications for the grant of licences**

3. Applications for the grant of licences shall only be made in accordance with the procedure set out in these Regulations.

#### **Licences which may be granted**

4.—(1) The wireless telegraphy licences which may be granted pursuant to these Regulations are licences to —

- (a) establish or use stations for wireless telegraphy; and
- (b) install or use apparatus for wireless telegraphy;

in the United Kingdom.

(2) A maximum of four licences from a total of fifteen available licences may be granted pursuant to these Regulations.

(3) The frequencies on which the stations for wireless telegraphy and apparatus for wireless telegraphy are authorised to operate by each of the fifteen available licences shall comprise the fifteen combinations of frequency lots specified in paragraph (4).

(4) The fifteen combinations of frequency lots are —

- (a) frequency lot A;
- (b) frequency lot B;
- (c) frequency lot C;
- (d) frequency lot D;
- (e) frequency lots A and B;
- (f) frequency lots A and C;
- (g) frequency lots A and D;
- (h) frequency lots B and C;
- (i) frequency lots B and D;
- (j) frequency lots C and D;

- (k) frequency lots A, B and C;
- (l) frequency lots A, B and D;
- (m) frequency lots A, C and D;
- (n) frequency lots B, C and D;
- (o) frequency lots A, B, C and D.

### **Application**

- 5.—(1) Only a body corporate may apply to OFCOM for a licence.
- (2) A body corporate may only make one application.
- (3) To apply for a licence, a body corporate must, on the day specified by OFCOM for receipt of applications —
- (a) deliver a sealed envelope to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM, containing —
    - (i) a document containing the application information required by Schedule 1, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (ii) a document, in the form set out in Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (iii) for each person who is not an associate of the applicant which the applicant wishes to join its bidder group, a document in the form set out in Schedule 3, completed by the applicant (and signed on its behalf by two authorised persons) and completed by and signed by or on behalf of the person in respect of whom that document is completed; and
  - (b) have paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of twenty five thousand pounds.
- (4) OFCOM shall provide notification of the day and times mentioned in paragraph (3) by publication of that information on their internet website.

## **PART 3**

### **QUALIFICATION STAGE**

#### **Assessment of bidder groups**

- 6.—(1) OFCOM shall give notice to each applicant of —
- (a) the name of each other applicant and the names of their associates; and
  - (b) the latest time by which each applicant must notify OFCOM under paragraphs (3) and (4).
- (2) On receipt of that notice, each applicant shall examine the names of the other applicants and their associates and determine if any member of its bidder group is also an associate of another applicant or an applicant.
- (3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or an applicant, it must notify the other applicant and OFCOM by the time specified in the notice given by OFCOM under paragraph (1) of that fact, and OFCOM shall specify a further time by which each applicant concerned must —

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or an applicant; and
  - (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 5(3)(a)(i) and (ii).
- (4) Where an applicant determines that no member of its bidder group is an associate of another applicant or an applicant it must notify OFCOM of that fact by the time specified in the notice given by OFCOM under paragraph (1).
- (5) If it appears to OFCOM from any application, that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice of that fact to each of the applicants concerned and specify a day by which each applicant concerned must —
- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
  - (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 5(3)(a)(i), (ii) and (iii).
- (6) After the last day specified by OFCOM under paragraphs (3) and (5), OFCOM shall record the members of each applicant's bidder group.

#### **Subsequent changes to bidder groups**

7.—(1) After the recording by OFCOM of the members of each applicant's bidder group, an applicant may change its bidder group but, in relation to the award process, the applicant shall be subject to regulations 8(2) and 27 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, that applicant must notify OFCOM of the change and submit revised versions of the documents provided under regulation 5(3)(a)(i) and (ii).

(3) To add a person who is not an associate of the applicant to its bidder group, an applicant must deliver to OFCOM a document in the form set out in Schedule 3 completed by the applicant (and signed on its behalf by two authorised persons) and completed by and signed by or on behalf of the person in respect of whom that document is completed.

#### **Determination of applicants who are qualified to bid**

8.—(1) OFCOM shall determine whether each applicant who has submitted an application in accordance with regulation 5 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant's bidder group.

(3) In making their determination under paragraph (1), OFCOM shall take into account whether —

- (a) the grant of a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a licence having regard to the probity of —
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) any director of any member of the applicant's bidder group;
- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;

- (d) any member of the applicant’s bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
  - (e) any member of the applicant’s bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
  - (f) any member of the applicant’s bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person except where the disclosure was —
    - (i) to a member of the applicant’s bidder group;
    - (ii) to OFCOM;
    - (iii) for the purpose of raising finance for the applicants' application and was to a provider of finance; or
    - (iv) for the purpose of enabling the recipient to decide whether to participate as a member of the applicant’s bidder group;
  - (g) any member of the applicant’s bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
  - (h) any member of the applicant’s bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
  - (i) any person who is a member or a director or employee of a member of the applicant’s bidder group and also a director or employee of a member of another bidder group is —
    - (i) taking part in the preparation of both bidder groups for participation in the award process; or
    - (ii) receiving confidential information relating to both bidder groups.
- (4) Applicants must, by a time notified by OFCOM, provide to OFCOM any information or documentation which OFCOM require to make their determination.
- (5) If an applicant does not provide such information or documentation within the notified time, OFCOM shall also take that fact into account in making their determination.
- (6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant’s initial deposit shall not be forfeited for that reason.

**Publication of determination**

- 9.—(1) OFCOM shall notify each applicant of their determination under regulation 8(1).
- (2) OFCOM shall also notify each applicant qualified to bid of —
    - (a) the identity of the other applicants who are so qualified; and
    - (b) the last day for withdrawal from the award process (“last day for withdrawal”).
  - (3) OFCOM shall publish the identity of the applicants which are qualified to bid in the award process and the last day for withdrawal on their internet website.

**Withdrawal of an application**

- 10.—(1) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant’s intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall —

- (a) notify all other applicants of the withdrawal; and
  - (b) refund, on completion of the award process, the applicant's initial deposit except where the initial deposit has been forfeited under regulation 27.
- (2) Once an applicant withdraws its application, that applicant shall not be re-admitted to the award process.

#### **Determination of number of bidders**

11.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants who were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not already been forfeited under regulation 27) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant a licence in accordance with the procedure set out in Part 4 of these Regulations.

(4) Where the number of bidders is more than one, OFCOM shall grant licences in accordance with the procedure set out in Part 5 of these Regulations.

(5) OFCOM shall publish the identity of the bidders on their internet website along with a statement of whether OFCOM will proceed to grant licences in accordance with Part 4 or Part 5 of these Regulations.

## **PART 4**

### **PROCEDURE WHERE THERE IS ONLY ONE BIDDER**

#### **Licence selection menu**

12.—(1) Where there is only one bidder, OFCOM shall give notice to that bidder of the day by which that bidder must —

- (a) deliver to OFCOM a licence selection menu in the form set out in Schedule 4, completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
- (b) pay into OFCOM's bank account with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).

(2) The bidder must select one of the licences (and not more than one) listed on the licence selection menu.

(3) The licence fee shall be —

- (a) where the bidder has selected a licence which authorises use of frequencies comprising one frequency lot, fifty thousand pounds;
- (b) where the bidder has selected a licence which authorises use of frequencies comprising any two frequency lots, one hundred thousand pounds;
- (c) where the bidder has selected a licence which authorises use of frequencies comprising any three frequency lots, one hundred and fifty thousand pounds; and
- (d) where the bidder has selected a licence which authorises use of frequencies comprising all four frequency lots, two hundred thousand pounds.

(4) The sum which that bidder shall pay to OFCOM shall be —

- (a) where the initial deposit has not been forfeited in accordance with regulation 27, a sum equal to the licence fee less the initial deposit; and

- (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.
- (5) If the bidder fails to notify OFCOM of its licence selection or fails to pay OFCOM the required sum in accordance with this regulation it shall —
  - (a) not be entitled to the grant of a licence; and
  - (b) not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 27) be forfeited.

### **Grant of licence**

13. Where OFCOM have received from the bidder a licence selection menu completed in accordance with regulation 12 and the sum determined in accordance with regulation 12(4) by the time specified, OFCOM shall grant the bidder the licence selected on the licence selection menu.

### **Completion of the award process**

14. After the grant of a licence, OFCOM shall complete the award process by —
- (a) publishing on their internet website the identity of the person to whom a licence has been granted, the frequency lots in respect of which the licence was granted and the total licence fee paid; and
  - (b) refunding to applicants who were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not already been forfeited under regulation 27) but not any interest which has accrued on the deposits.

## **PART 5**

### **PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER**

#### **Notice to bidders**

- 15.—(1) Where there is more than one bidder, OFCOM shall give notice to each of the bidders of —
- (a) the day on which and the times on that day within which sealed bids must be delivered to OFCOM (the “sealed bid delivery period”);
  - (b) the identity of all bidders; and
  - (c) a password which the bidder must specify on its bidding menu document to confirm that it has originated from that bidder.
- (2) OFCOM shall publish on their internet website the identity of the bidders to whom OFCOM have given notice and the sealed bid delivery period.

#### **Bid documentation**

16. The bid documentation shall consist of —
- (a) a bidding menu document in the form set out in Schedule 5, completed by the bidder in accordance with regulation 17, signed on its behalf by two authorised persons and bearing that bidder’s password (a “bidding menu document”); and
  - (b) a document in the form set out in Schedule 6, completed in respect of the bidder and signed on its behalf by two authorised persons.



### **Completion of the bidding menu document**

17.—(1) Where a bidder wishes to specify a sum on the bidding menu document which it commits to pay for a licence (a “bid”) it must specify an amount in whole pounds in words and figures which must be greater than or equal to the minimum bid.

- (2) The minimum bid shall be:—
- (a) fifty thousand pounds for a licence which authorises use of frequencies comprising one frequency lot;
  - (b) one hundred thousand pounds for a licence which authorises use of frequencies comprising any two frequency lots;
  - (c) one hundred and fifty thousand pounds for a licence which authorises use of frequencies comprising any three frequency lots; and
  - (d) two hundred thousand pounds for a licence which authorises use of frequencies comprising all four frequency lots.
- (3) On the bidding menu document a bidder must —
- (a) specify a bid against a licence;
  - (b) only specify one bid against any one licence; and
  - (c) specify a bid against at least one licence but need not specify a bid against each licence.

### **Submission of sealed bids to OFCOM**

18.—(1) The completed bid documentation must be placed in a non-transparent envelope and sealed.

(2) The sealed non-transparent envelope containing the bid documentation constitutes a sealed bid.

(3) Sealed bids must be delivered to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA and be placed in the box marked for delivery of sealed bids during the sealed bid delivery period.

(4) Only a bidder may submit a sealed bid to OFCOM.

(5) A bidder may only submit one sealed bid.

### **Bid deposit**

19.—(1) In addition to the initial deposit paid at the time of application, a bidder must, on the day specified for delivery of sealed bids under regulation 15, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit.

- (2) The further sum to be paid under paragraph (1) shall —
- (a) where the initial deposit has not been forfeited in accordance with regulation 27, be a sum representing the difference between —
    - (i) the bidder’s initial deposit; and
    - (ii) the highest sum which that bidder has specified on the bidding menu document against any of the licences; or
  - (b) where the initial deposit has been forfeited in accordance with regulation 27, be a sum equal to the highest sum which that bidder has specified on the bidding menu document against any of the licences.
- (3) The total amount on deposit after payment of the further sum constitutes the bid deposit.

### **Opening of sealed bids**

20. OFCOM shall only open sealed bids which were submitted to OFCOM in accordance with regulation 18(1) and (3) and shall reject sealed bids which were not so submitted.

### **Incomplete or defective completion of bid documents**

21.—(1) Where, due to the manner of completion, bid documentation is incomplete or defective but OFCOM can identify the bidder and ascertain the bidder's intention in relation to bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified time that OFCOM have correctly identified the bidder and ascertained its intention in relation to bids.

(2) Where the bidder confirms in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not confirm in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be rejected by OFCOM.

### **Rejection of opened sealed bids from the award process**

22.—(1) OFCOM shall also reject and exclude from the award process the entirety of an opened sealed bid where —

- (a) in any case where regulation 21(1) does not apply, the bidder has not completed the bid documentation in accordance with the requirements of these Regulations;
- (b) the sealed bid was submitted by a person other than a bidder;
- (c) the bidder has submitted more than one sealed bid; or
- (d) the entirety of the bid deposit has not been paid into OFCOM's bank account in accordance with regulation 19.

(2) OFCOM shall notify any bidder whose sealed bid has been rejected and shall give reasons for the rejection.

(3) OFCOM shall also notify any bidder to whom a notice was given under regulation 15(1) but in respect of whom a sealed bid was not opened.

### **Valid bids**

23.—(1) Only bids specified on a bidding menu document in accordance with regulation 17 and contained in a sealed bid which has not been rejected by OFCOM ("valid bids") shall be taken into consideration for the purpose of determining the winning combination of bids under regulation 24.

(2) Any bidder to whom a notice was given under regulation 15(1) who does not submit a valid bid shall be excluded from the award process and shall not receive a refund of its initial deposit, or its bid deposit where a bid deposit has been paid, which shall (where not already forfeited under regulation 27) be forfeited.

### **Determination of the winning bids and the winning combination of bids**

24.—(1) The winning bids shall be those valid bids that comprise the winning combination of bids.

(2) Unless paragraph (4) applies, the winning combination of bids shall be the valid combination of bids having the highest total value of amounts bid.

(3) A valid combination of bids is any combination of valid bids for licences where within that combination of bids —

- (a) there is at most one valid bid from any one bidder; and
- (b) each frequency lot is included at most once.

(4) Where there is more than one valid combination of bids for which the total value is equal highest, the winning combination of bids shall be determined in accordance with the order of precedence set out in paragraph (5).

(5) The order of precedence shall be determined by —

- (a) the number of frequency lots included within each such valid combination of bids such that valid combinations of bids including a greater number of frequency lots prevail over valid combinations of bids including fewer frequency lots; and
- (b) where any two or more such valid combinations of bids include the equal highest number of frequency lots, OFCOM shall employ a method of random selection from amongst those valid combinations of bids to determine the winning combination of bids.

#### **Grant of licences and payment of refunds to winning bidders**

**25.**—(1) After determining the winning bids and the identity of the winning bidders in accordance with regulation 24, OFCOM shall —

- (a) grant each winning bidder the licence in respect of which that bidder submitted a winning bid; and
- (b) refund to each winning bidder a sum calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference between the winning bidder's bid deposit and the winning bidder's winning bid.

(3) The licence fee in respect of a winning bidder's licence shall be a sum equal to the winning bid made by that winning bidder.

#### **Completion of the award process**

**26.** After the grant of licences and the payment of refunds to winning bidders, OFCOM shall complete the award process by —

- (a) publishing on their internet website the identity of all bidders, the details of all valid bids, the identity of the persons to whom licences were granted, the details of the frequency lots in respect of which those licences were granted and the details of the licence fees paid; and
- (b) refunding to applicants who were not qualified or who withdrew in accordance with regulation 10, and unsuccessful bidders the initial deposits or bid deposits, (where such deposits have not already been forfeited under regulations 23(2) or 27) but not any interest which has accrued on the deposits.

## **PART 6**

### **ACTIVITY RULES**

#### **Forfeit of deposit and exclusion from award process**

**27.** If, in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 28 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process —

- (a) the initial deposit, or the bid deposit where a bid deposit has been paid, shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

## **Events**

**28.** The events referred to in regulation 27, in relation to an applicant who is qualified to bid or bidder, are —

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group is colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group is acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, is disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person except where the disclosure is —
  - (i) to a member of that applicant's or bidder's bidder group;
  - (ii) to OFCOM;
  - (iii) for the purpose of raising finance for a bid and is to a provider of finance; or
  - (iv) for the purpose of enabling the recipient to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group is obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group is —
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group;
- (i) a change is occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of —
  - (i) a person ceasing to be a member of that bidder group;
  - (ii) a person joining that bidder group under the procedure in regulation 7(3);
  - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

## PART 7

### MISCELLANEOUS

#### **General power of exclusion**

**29.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

**30.** If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel which are specified by OFCOM for that purpose on their internet website and must deliver that notice to OFCOM —

- (a) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA;
- (b) by fax to a number dedicated to the award process which is published by OFCOM on their internet website; or
- (c) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website.

#### **Changes to timing or location**

**31.—**(1) Paragraph (2) applies where OFCOM determine that it is impracticable for any reason —

- (a) for any document which is to be delivered to OFCOM's premises under these Regulations to be delivered at the place or within the times specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed within the times specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify applicants and bidders that —

- (i) delivery must be made on a different day or within different times on that day or at a different place;
- (ii) the action must be completed on a different day or within different times.

#### **Refunds**

**32.** OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations or the licences.

*Stephen Carter*  
Chief Executive of the Office of  
Communications For and by authority of the  
Office of Communications

7th July 2006

## SCHEDULE 1

Regulation 5(3)(a)(i)

### APPLICATION INFORMATION

#### **Details of the applicant**

1. Provide the following details for the applicant —
  - Applicant's full name
  - Registered number of company
  - Registered office of company
  - Applicant's contact address (if different to registered office)
  - Telephone number
  - Fax number
  - Electronic mail address
  - Bank Sort Code and Account Number

#### **Authorised persons**

2. Provide details of the name and position in the applicant of three persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

#### **Directors or members**

3. Provide the name and job title of each of the directors or members of the managing body of the applicant.

#### **Bidder group**

4. Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 3 to the Regulations in accordance with regulation 5(3)(a)(iii) of the Regulations.

#### **Qualification to bid**

5. In relation to the determination by the Office of Communications ("OFCOM") under regulation 8 of the Regulations concerning whether or not to qualify the applicant to bid in the award process —

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;

- (d) state whether any member of the applicant’s bidder group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;
- (e) state whether any member of the applicant’s bidder group, or any person to whom confidential information has been disclosed, has disclosed confidential information, whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure —
  - (i) was to a member of the applicant’s bidder group; or
  - (ii) was to OFCOM;
- (f) state whether any member of the applicant’s bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (g) state whether any member of the applicant’s bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process and provide a description of the services concerned; and
- (h) state whether (and provide a description of any circumstances in which) any person who is a director or employee of a member of the applicant’s bidder group and also a director or employee of a member of another bidder group is —
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups.

**Other information**

- 6. Provide a brief description of the substance of —
  - (a) agreements (if any) relating to the management of the applicant; and
  - (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its bidder group or its directors or officers.

SCHEDULE 2

Regulation 5(3)(a)(ii)

APPLICATION DOCUMENT

[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that —

- (a) the persons authorised in section 2 of the applicant’s application have read and understood the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (“the Regulations”), the terms of the licence to be granted under the Regulations, the Wireless Telegraphy Act 1949 and the Wireless Telegraphy Act 1998;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and

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- (d) the applicant is aware of the provisions in regulations 27 and 28 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

### SCHEDULE 3

Regulation 5(3)(a)(iii)

#### DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER GROUP WHO IS NOT AN ASSOCIATE

[Insert name of applicant or bidder] (the “applicant/bidder”) wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder’s bidder group as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (“the Regulations”) for the purpose of the award process under the Regulations.

Under regulation 8(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant’s bidder group. Regulations 27 and 28 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

#### **Applicant/bidder**

1. In relation to regulations 8(2), 27 and 28 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications (“OFCOM”) that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in bidder group who is not an associate] is not a member of any other applicant’s or bidder’s bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in bidder group who is not an associate] —

- (a) has ever been or becomes a member of any other applicant’s or bidder’s bidder group;
- (b) has ever been or becomes a subsidiary of a member of any other applicant’s or bidder’s bidder group during the award process; or
- (c) has ever obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

#### **[Insert name of person to be included in bidder group who is not an associate]**

2. [Insert name of person to be included in bidder group who is not an associate] represents and warrants to OFCOM that it —

- (a) consents to be a member of the applicant/bidder’s bidder group;
- (b) is not a member of any other applicant’s or bidder’s bidder group; and
- (c) is aware of the provisions in regulations 27 and 28 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder —

- (a) if it has ever been or becomes a member of any other applicant’s or bidder’s bidder group;



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- (b) if it has ever been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) if it has ever obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

SCHEDULE 4

Regulation 12(1)(a)

LICENCE SELECTION MENU

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

E-mail address:

Licence in respect of:	Selected licence (indicate selected licence with a tick (✓) against only one of the licences listed):
1. Frequency lot A:	
2. Frequency lot B:	
3. Frequency lot C:	
4. Frequency lot D:	
5. Frequency lots A and B:	
6. Frequency lots A and C:	
7. Frequency lots A and D:	
8. Frequency lots B and C:	
9. Frequency lots B and D:	
10. Frequency lots C and D:	
11. Frequency lots A, B and C:	
12. Frequency lots A, B and D:	
13. Frequency lots A, C and D:	
14. Frequency lots B, C and D:	
15. Frequency lots A, B, C and D	

SCHEDULE 5

Regulation 16(a)

BIDDING MENU DOCUMENT

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

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E-mail address:

Password allocated by the Office of Communications (“OFCOM”):

	Licence in respect of:	Bid amount (in words)	Bid amount (in figures)
1.	Frequency lot A:		
2.	Frequency lot B:		
3.	Frequency lot C:		
4.	Frequency lot D:		
5.	Frequency lots A and B:		
6.	Frequency lots A and C:		
7.	Frequency lots A and D:		
8.	Frequency lots B and C:		
9.	Frequency lots B and D:		
10.	Frequency lots C and D:		
11.	Frequency lots A, B and C:		
12.	Frequency lots A, B and D:		
13.	Frequency lots A, C and D:		
14.	Frequency lots B, C and D:		
15.	Frequency lots A, B, C and D:		

SCHEDULE 6

Regulation 16(b)

BIDDER DOCUMENT

[Insert name of bidder] represents and warrants to the Office of Communications (“OFCOM”) that —

- (a) all of the statements made in any document submitted to OFCOM under regulation 5(3) (a), 6(5)(b) or 7 of the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (“the Regulations”) are and remain true;
- (b) it has complied with the Regulations and all requirements of OFCOM under the Regulations; and

- (c) it has notified OFCOM in accordance with regulation 7 of the Regulations of any changes to its bidder group subsequent to its application.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency bands 412.0 megahertz to 414.0 megahertz and 422.0 megahertz to 424.0 megahertz.

A maximum of four licences from a total of fifteen available licences will be granted in accordance with the procedure set out in these Regulations.

To apply a body corporate must deliver the documents required by regulation 5(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. Information is required about applicants' bidder groups, a term defined in regulation 2(f). An initial deposit of twenty five thousand pounds must also be paid to OFCOM (regulation 5(3)(b)).

Regulation 6 provides for a procedure under which overlaps between applicants' bidder groups can be drawn to the attention of the applicants and time is allowed for applicants to notify OFCOM of any changes to bidder groups which have the effect that such overlaps are removed. An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 8(2)).

OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 8(3). Under regulation 9, OFCOM will publish the identity of all applicants qualified to bid on their internet website and will also notify applicants of the last day when they may withdraw from the award process without forfeiture of the initial deposit.

OFCOM will follow the procedure in Part 4 of these Regulations where there is only one bidder, or the procedure in Part 5 of these Regulations where there is more than one bidder.

Under Part 4, where there is only one bidder, OFCOM will invite the bidder to select which of the fifteen available licences it wishes to purchase. The licence fee will be fifty thousand pounds for each frequency lot comprising the licence. If the bidder does not make a selection or does not pay the licence fee by the required time, the bidder will not be granted a licence and will forfeit sums on deposit held by OFCOM (regulation 12(5)).

Under Part 5, where the number of bidders is more than one, OFCOM will give each bidder a notice, setting out the delivery period within which completed bid documentation must be provided to OFCOM (regulation 15). The bid documentation must be completed in accordance with regulations 16 and 17 and sealed bids submitted in accordance with regulation 18. Bidders must also pay to OFCOM a further deposit (regulation 19).

OFCOM will determine the winning bids and the identity of the winning bidders under Part 5 by following the procedure set out in regulation 24. OFCOM will then grant each winning bidder the licence in respect of which that bidder submitted a winning bid and refund as appropriate any sums due under regulation 25(2).

If in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that certain events are occurring or have occurred and the occurrence would materially affect the outcome of the award process the applicant or bidder concerned will forfeit sums on deposit and may be excluded from the award process (regulation 27).

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A full regulatory impact assessment of the effect these Regulations will have on the cost to business has been prepared and is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA, telephone 020 7981 3000 or on the OFCOM website at <http://www.ofcom.org.uk>. Copies of the report have also been placed in the libraries of both Houses of Parliament.