
STATUTORY INSTRUMENTS

2006 No. 1806

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

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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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.