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STATUTORY INSTRUMENTS

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**2008 No. 3190**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) (Cardiff) Regulations 2008**

*Made - - - - 15th December 2008*

*Coming into force - - 5th January 2009*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by sections 14(1), (2), (3), (4), (6) and (7) and section 122(7) of the Wireless Telegraphy Act 2006<sup>(1)</sup> (“the 2006 Act”).

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the 2006 Act, published notice of their proposal in accordance with section 122(4)(b) of the 2006 Act and have considered the representations made to them before the time specified in that notice in accordance with section 122(4)(c) of the 2006 Act.

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (Cardiff) Regulations 2008 and shall come into force on 5th January 2009.

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

**Interpretation**

2. In these Regulations—

“applicant” means a body corporate making an application for the licence;

“associate” means, in relation to an applicant or a bidder, a person who has a material interest in that applicant or bidder;

“auction stage” has the meaning given in regulation 15(1);

“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;

“bid form” has the meaning given in regulation 16(1);

“bid total” has the meaning given in regulation 18(1);

“bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;

“bidder group” means, in relation to an applicant or bidder—

- (a) that applicant or bidder;
- (b) each associate of that applicant or bidder; and
- (c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 2;

“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 decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

“electronic auction system” means the system established by OFCOM for bidders to participate in the award process;

“final round” shall be construed in accordance with regulation 18(3)(a);

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“last day for withdrawal” has the meaning given in regulation 9(1);

“licence” means the wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus at the site in Wenvoe, Cardiff which has the Ordnance Survey national grid reference ST110742 at the frequencies 742 to 750 megahertz for a period specified in the licence and, after that period, at the frequencies 542 to 550 megahertz.

“material interest” means, whether held directly or indirectly—

- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006(2)) in—
  - (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
  - (ii) any share or shares in the case of which the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or
- (b) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

“OFCOM” means the Office of Communications;

“OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their internet website;

“pounds” means pounds sterling;

“round extension” has the meaning given in regulation 23(2);

“round price” shall be construed in accordance with regulation 20;

“valid bid” has the meaning given in regulation 22(1); and

“winning bid” shall be construed in accordance with regulation 30.

## PART 2

### APPLICATION STAGE

#### Applications for the grant of the licence

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

#### Application

- 4.—(1) Only a body corporate may apply to OFCOM for the licence.
- (2) A body corporate may only make one application.
- (3) To apply for the licence, a body corporate must—
- (a) on the day specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA or at 2 Caspian Point, Caspian Way, Cardiff CF10 4DQ within the times on that day specified by OFCOM a sealed envelope containing—
    - (i) a document containing the application information required by, and the warranty set out in, Schedule 1 completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its bidder group, a document in the form set out in Schedule 2 which has been—
      - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
      - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
  - (b) by the deadline specified by OFCOM, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of ten thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website.

## PART 3

### QUALIFICATION STAGE

#### Assessment of bidder groups

- 5.—(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 deadline by when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).
- (2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its bidder group is also an associate of another applicant or is also an applicant.
- (3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact

by the deadline specified by OFCOM, and OFCOM shall specify a further deadline by when 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 is an applicant; and
- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM.

(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 to each of the applicants concerned of that fact and specify the deadline by when 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 versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(6) OFCOM shall record the members of each applicant's bidder group as soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (1), (3) and (5).

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

6.—(1) An applicant or a bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group but, in relation to the award process, the applicant shall be subject to regulation 7(2) and regulation 36 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 2 completed by the applicant or bidder 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 which are qualified to bid**

7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process if 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 the licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold the licence having regard to the probity of—
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) each director of each 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 is—
    - (i) to OFCOM;
    - (ii) to a member of the applicant's bidder group;
    - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
    - (iv) to a person for the purpose of enabling that person 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, 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 is 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, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM reasonably require to make their determination.
- (5) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, 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**

- 8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(1).
- (2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant which is so qualified and shall publish the names of all applicants which are qualified to bid on OFCOM's internet website.

### **Withdrawal of an application**

- 9.—(1) OFCOM shall notify each applicant qualified to bid of the last day for withdrawal from the award process ("last day for withdrawal") and shall publish the last day for withdrawal on OFCOM's internet website.

(2) 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 notify all other applicants of the withdrawal.

- (3) Where an applicant withdraws its application in accordance with paragraph (2)—
- (a) that applicant shall not be re-admitted to the award process; and
  - (b) that applicant's initial deposit shall not be forfeited for that reason.

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

**10.**—(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 which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 36) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant the 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 the licence in accordance with the procedure set out in Part 5 of these Regulations.

(5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement of whether OFCOM will proceed to grant the licence in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

## **PART 4**

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

#### **Payment of licence fee**

**11.**—(1) Where there is only one bidder and where the initial deposit of that bidder has not been forfeited in accordance with regulation 36, OFCOM shall grant the bidder the licence.

(2) Where there is only one bidder and where the initial deposit has been forfeited in accordance with regulation 36, OFCOM shall give notice to that bidder of the deadline by which that bidder must pay into OFCOM's bank account with accompanying information that identifies the bidder, the licence fee.

- (3) The licence fee shall be ten thousand pounds.

#### **Failure to pay licence fee**

**12.** If the bidder fails to make payment in accordance with regulation 11(2), it shall not be granted the licence.

#### **Grant of licence**

**13.** Where OFCOM receive payment from a bidder to which regulation 11(2) applies in accordance with that regulation, OFCOM shall grant the bidder the licence.

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

- 14.** After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website the name of the bidder to which the licence has been granted; and
- (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 36) but not any interest which has accrued on the deposits.

## PART 5

### PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

#### CHAPTER 1

##### Auction stage

##### **Auction stage**

15.—(1) Where there is more than one bidder, the process for the award of the licence shall consist of the procedure set out in this Part (“auction stage”).

- (2) A bid made during the auction stage shall be a bid for the licence.
- (3) During the auction stage there shall be one or more rounds for the making of bids.

#### CHAPTER 2

##### Bids

##### **Bid requirements**

16.—(1) In order to make a bid a bidder must, on a form provided to the bidder by OFCOM (“bid form”), specify the amount that it is willing to pay for the licence.

(2) The amount of the bid shall be determined by the bidder, subject to the restrictions set out in regulation 21.

- (3) A bidder must not submit more than one bid in any one round.

##### **Requirement for a valid bid in the first round**

17.—(1) Any bidder which does not submit a valid bid in the first round shall be excluded from the award process and shall not receive a refund of its initial deposit nor any sum that the bidder has paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 36) be forfeited.

(2) Where there are no valid bids in the first round, there shall be no subsequent rounds and there shall be no winning bidder.

##### **Number of rounds**

18.—(1) After each round, OFCOM shall determine the total number of valid bids submitted at an amount equal to the round price for that round (“bid total”).

- (2) Where the bid total is more than one there shall be another round.
- (3) Where the bid total is one or zero or where there are no valid bids—
  - (a) that round shall be the final round; and
  - (b) OFCOM shall determine the winning bid and licence fee in accordance with regulation 30.

### **Participation in subsequent rounds**

19. Where there is another round in accordance with regulation 18(2), a bidder may make a bid in that round only if it made a valid bid in the previous round at an amount equal to the round price.

### **Determination of round prices for rounds**

20.—(1) In the first round, the round price shall be fifteen thousand pounds.

(2) In subsequent rounds, the round price shall be determined by OFCOM in accordance with paragraphs (3) and (4).

(3) The round price shall be higher than the round price in the previous round.

(4) The round price shall not be more than twice the round price in the previous round.

### **Amount of bids**

21.—(1) A bid made during the first round shall be at an amount in whole pounds that is—

- (a) at least ten thousand pounds; and
- (b) not more than the amount of the round price for the first round.

(2) A bid made during a subsequent round shall be at an amount in whole pounds that is—

- (a) more than the amount of the round price for the preceding round; and
- (b) not more than the amount of the round price for that round.

### **Valid bids**

22.—(1) A bid shall only be taken into consideration for the purposes of determining—

- (a) the bid total in accordance with regulation 18(1);
- (b) the winning bid in accordance with regulation 30(2); and
- (c) the licence fee payable by the winning bidder in accordance with regulation 30(5)

if it satisfies the conditions set out in paragraph (2) (“valid bid”).

(2) The conditions are that—

- (a) the bid is made on a bid form that has been completed in accordance with regulation 16(1);
- (b) the bid is submitted in accordance with the restriction set out in regulation 16(3);
- (c) the bidder complies with regulation 19 and 21;
- (d) the completed bid form is submitted to OFCOM in accordance with regulation 24(1) and is received by OFCOM in accordance with regulation 24(2); and
- (e) if regulation 26 applies, the bid is not rejected in accordance with regulation 26(3).

## **CHAPTER 3**

### **Procedure for rounds**

#### **Notice to bidders**

23.—(1) Before the start of a round, OFCOM shall notify each bidder of—

- (a) the day on which, and the times on that day during which, subject to paragraph (2), the round will be held; and
- (b) the round price for that round.



(2) The time notified by OFCOM under paragraph (1)(a) as the end of the round may be treated by a bidder in respect of—

- (a) no more than two rounds; and
- (b) for each round in respect of which paragraph (3) applies to the bidder, a further round,

as that time extended by thirty minutes, and OFCOM shall treat that extended time as the end of the round for the purposes of paragraph (1)(a) (“round extension”).

(3) This paragraph applies to a bidder where—

- (a) in respect of a previous round, the bidder treated the end of that round as extended by thirty minutes in accordance with paragraph (2);
- (b) the bidder submitted its completed bid form for that round so that it was received by OFCOM by the end of the round so extended; and
- (c) OFCOM have notified the bidder that they are satisfied that, in respect of that round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its bid form so that it was received by OFCOM by the end of the round without such an extension.

(4) Where there is a round extension in accordance with paragraph (2), OFCOM shall notify bidders when the round has been extended and when it has been concluded.

#### **Submission of bid form to OFCOM**

24.—(1) Except as provided for in regulation 25, a bidder must submit the completed bid form to OFCOM by using the electronic auction system.

(2) The completed bid form must be received by OFCOM by the time notified by OFCOM under regulation 23(1)(a) as the end of that round.

#### **Alternative method for submission of bid form**

25.—(1) Where OFCOM are satisfied that a bidder is unable to submit a bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

#### **Incomplete or defective bid forms**

26.—(1) Where, due to the manner of completion, a bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder’s intention in relation to the making of the bid, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder’s intention in relation to the making of the bid.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder’s intention, the bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the bid form in its entirety shall be rejected by OFCOM and the bid submitted on the bid form shall not be a valid bid.

### **Notification that bid is not valid**

27. Where a bidder submits a bid that is not a valid bid during a round OFCOM shall, after the end of that round, notify the bidder of that fact and shall give the reasons why the bid is not a valid bid.

### **Release of information on bids**

28. After the end of a round and before the start of a subsequent round, OFCOM shall notify each bidder of the number of bidders in that round that made—

- (a) a valid bid at the round price for that round; and
- (b) a valid bid at an amount less than the round price for that round.

### **Further deposit for subsequent rounds**

29.—(1) Where, in respect of a bid, the amount specified by a bidder is greater than the total amount that the bidder has on deposit OFCOM may, having regard to the desirability of securing an efficient outcome of the auction stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit is not less than the amount of the highest valid bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and following notice being given under this paragraph the bidder shall not submit a bid in any subsequent round.

## **CHAPTER 4**

### **Determination of winning bid, grant of licence and completion of award process**

#### **Determination of the winning bid and the licence fee**

30.—(1) Following the final round, OFCOM shall determine the winning bid and the identity of the winning bidder.

(2) Subject to paragraph (3), the winning bid shall be the highest valid bid made in the auction stage.

(3) Where there is more than one valid bid of equal highest value, OFCOM shall employ a method of random selection amongst those bids to determine which shall be the winning bid.

(4) The winning bidder shall be the bidder which submitted the winning bid.

(5) Subject to paragraph (6), the licence fee shall be the amount of the highest valid bid in the auction stage that was not made by the winning bidder.

(6) Where there is only one valid bid in the first round, the licence fee shall be ten thousand pounds.

#### **Notification of results of the auction stage**

31. OFCOM shall notify the winning bidder of the winning bid and the licence fee.

### **Procedure where amount of winning bidder's deposit is less than the licence fee**

**32.**—(1) Where the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) is an amount that is less than the amount of the licence fee calculated in accordance with regulation 30—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with subparagraph (b); and
- (b) the winning bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the winning bidder, a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the licence fee calculated in accordance with regulation 30 and the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36).

(3) Where the winning bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the winning bidder the licence.

(4) Where the winning bidder has not satisfied the requirement set out in paragraph (1)(b), that bidder—

- (a) shall not be entitled to the grant of the licence under these Regulations; and
- (b) shall not receive a refund of its initial deposit and any sum paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 36) be forfeited.

### **Procedure where amount of winning bidder's deposit is greater than or equal to the licence fee**

**33.**—(1) Where the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) is greater than or equal to the amount of the licence fee calculated in accordance with regulation 30, OFCOM shall—

- (a) grant the winning bidder the licence; and
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to the winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) and the amount of the licence fee calculated in accordance with regulation 30, but not any interest which has accrued on the deposit.

### **Licences not awarded**

**34.**—(1) Where OFCOM do not grant the licence to the winning bidder because that bidder has failed to make payment in accordance with regulation 32(1)(b), OFCOM shall select the appropriate bidder (from among the remaining bidders) which should next be offered the licence in accordance with the order of precedence set out in paragraph (3) and OFCOM shall follow paragraphs (5) and (6) of regulation 30 but having regard only to valid bids made by the remaining bidders to determine the licence fee and the procedures in regulation 31 and either regulation 32 or 33 (as the case may be) in order to receive payment of the licence fee and grant the licence.

(2) Should that bidder fail to make payment, OFCOM shall follow the same procedure to offer the licence to the next bidder in the order of precedence until the licence is awarded or the list of remaining bidders is exhausted.

(3) The order of precedence amongst the list of remaining bidders shall be determined by the amount of the highest valid bid made by each of those bidders such that higher amounts shall prevail over lower amounts and, where the highest valid bids of any two or more bidders are for equal amounts, OFCOM shall employ a method of random selection to determine the precedence among those bidders.

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

- 35.** After the grant of the licence, OFCOM shall complete the award process by—
- (a) publishing on their internet website details of all valid bids made by each bidder, the name of the person to whom the licence was granted, and the amount of the licence fee paid; and
  - (b) refunding to—
    - (i) applicants which were not qualified or which withdrew in accordance with regulation 9; and
    - (ii) bidders which were not the winning bidder;
 the initial deposit and any sum paid as a deposit under regulation 29 (where such deposits have not been forfeited under regulation 36) but not any interest which has accrued on the deposits.

## **PART 6**

### **ACTIVITY RULES**

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

- 36.** If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 37 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—
- (a) the initial deposit and any sum or sums paid as a deposit under regulation 29 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**

- 37.** The events referred to in regulation 36, in relation to an applicant 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 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 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, 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 OFCOM;
    - (ii) to a member of that applicant's or bidder's bidder group;

- (iii) to a provider of finance for the purpose of raising finance for a bid; or
- (iv) to a person for the purpose of enabling that person 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 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 receiving or 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—
  - (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 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 6(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**

**38.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of the 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 the licence.

#### **Notification to OFCOM**

**39.** 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 who are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM—

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1 9HA;  
or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their internet website.

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

- 40.**—(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 under these Regulations to be delivered at the place specified or by the deadline specified under these Regulations; or
  - (b) for any action which is required to be undertaken in accordance with these Regulations to be completed by the deadline specified.
- (2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify the applicants or bidders (as the case may be) that—
- (a) delivery must be made on a different day or within different times on that day or at a different place;
  - (b) the action must be completed on a different day or by a different deadline.

### **Changes to round times and use of electronic auction system**

- 41.**—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the start of the round.
- (2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the end of the round.
- (3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all reasonable steps to notify bidders of an alternative method of participating in the award process and any requirements relating to the authentication of communications made by means of the alternative method.
- (4) Bidders must use the alternative method of participating in the award process in accordance with a notification under paragraph (3).

### **Rerunning rounds**

- 42.**—(1) Where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect on the continuation of the round), OFCOM shall—
- (a) notify bidders of their determination;
  - (b) disregard the bids made in that round;
  - (c) resume the award procedure from the end of the previous round (or, if there was no previous round, from the start of the first round).
- (2) Where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 of these Regulations because of technical failure (or an event or circumstance with similar effect on the continuation of the award process), OFCOM may, in order to secure a fair and efficient outcome—
- (a) disregard bids made in one or more rounds; and
  - (b) resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to resume the award process from the start of the first round.
- (3) OFCOM shall notify bidders of their determination under paragraph (2).

## **Refunds**

**43.** 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.

15 December 2008

*Philip Rutnam*  
Partner, Spectrum Policy  
for and by authority of the Office of  
Communications

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## SCHEDULE 1

Regulation 4(3)(a)(i)

### APPLICATION FORM AND WARRANTY

#### **1. Details of the applicant**

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 from registered office)

Name of contact person

Contact telephone number

Contact fax number

Contact electronic mail address

Bank sort code and account number

#### **2. Authorised persons**

Provide details of the name and position in the applicant of at least three and no more than five 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.

#### **3. Directors or members of managing body**

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

#### **4. Bidder group**

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (Cardiff) Regulations 2008 ("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 2 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

#### **5. Qualification to bid**

In relation to the determination by the Office of Communications ("OFCOM") under regulation 7 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 the 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 the 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;



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- (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 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.

## **6. Other information**

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.

## **7. Warranty**

Provide the following warranty as part of your application—

[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) (Cardiff) Regulations 2008 ("the Regulations"), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have the 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
- (d) the applicant is aware of the provisions in regulations 36 and 37 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.

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## SCHEDULE 2

Regulation 4(3)(a)(ii)

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) (Cardiff) Regulations 2008 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 7(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 36 and 37 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.

**1. Applicant/bidder**

In relation to regulations 7(2), 36 and 37 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.

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

[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 36 and 37 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 if it has ever—

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

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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 a wireless telegraphy licence to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus at Wenvoe, Cardiff.

To apply, a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. An initial deposit of ten thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 7(2)). OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 7(3). Under regulation 8, OFCOM will publish on their internet website the names of all applicants qualified to bid.

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 if there is more than one bidder.

Under Part 4 the licence fee shall be ten thousand pounds. Where the bidder has forfeited its initial deposit in accordance with regulation 36, OFCOM will give the bidder a notice, setting out the deadline by when the bidder must transfer to OFCOM the balance of the licence fee. Where the bidder has not forfeited its deposit, no additional sum is due and OFCOM shall grant the bidder the licence.

Under Part 5 there will be bidding process with at least one round during which bidders will be able to make bids for the licence. From the bids made, OFCOM will determine the winning bid, the winning bidder and the licence fee.

If in relation to an applicant which is qualified to bid or a bidder OFCOM are satisfied that certain events are occurring or have occurred and that the occurrence would materially affect the outcome of the award process, the applicant or bidder concerned will forfeit sums on deposit held by OFCOM and may be excluded from the award process (regulation 36).

The Ordnance Survey national grid reference site location (in regulation 2) can be found on the Ordnance Survey website at [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk). The Ordnance Survey can be contacted at Ordnance Survey Service Centre, Romsey Road, Southampton SO16 4GU, telephone 08456 050505.

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