
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the process for competitive tenders that will apply to the grant of smart meter communication licences under the Electricity Act 1989 and the Gas Act 1986.

Regulation 4 sets out that the tender exercise must be used to select the person to whom both a smart meter communication licence is to be granted under both the Electricity Act 1989 and the Gas Act 1986, and that the competent authority selecting that person must have regard to the need for the person awarded the licences to be suitable to be granted both.

Regulation 5 determines the which of the Secretary of State and the Authority is to run particular tender exercises (the “competent authority”).

Regulation 6 sets out the mandatory and discretionary stages of a tender exercise.

Regulation 7 gives the competent authority the discretion to determine when to hold a tender exercise, and requires the competent authority to publish a notice specifying the date on which the tender exercise will begin, or beginning it, including any additional information as is deemed necessary.

Regulations 8 and 9 describe the qualification stage of the tender exercise and how qualifying bidders will be determined. Schedule 1 sets out the information to be included in the qualification documentation.

Regulation 10 describes the proposal stage of the tender exercise, and Schedule 2 sets out the information to be included in the proposal documentation.

Regulation 11 describes additional procedure for the proposal stage of the tender exercise used to select the person to whom the first electricity and gas smart meter communication licences are to be granted. The procedure allows for the competent authority to change and update information during the stage.

Regulation 12 describes how the preferred applicant may be selected at the proposal stage, or allows the competent authority to hold a discretionary best and final offer stage to be held. The competent authority may also select up to two reserve applicants. Where two reserve applicants are selected, the competent authority must determine which is the first reserve applicant, and which is the second reserve applicant.

Regulation 13 describes the best and final offer stage of a tender exercise, including how the qualifying bidders who are to take part in it are selected. Schedule 3 sets out the information in the best and final offer documentation. The best and final offer stage has two phases: a dialogue phase where the applicants and the competent authority discuss the requirements of the licence holder and proposal of the applicant; and a final offer phase involving the submission by the applicant of bids.

Regulation 14 describes the dialogue phase of the best and final offer stage.

Regulation 15 describes the final offer phase of the best and final offer stage.

Regulation 16 describes how the preferred applicants are selected at the end of the best and final offer stage. The competent authority may also select up to two reserve applicants. Where two reserve applicants are selected, the competent authority must determine which is the first reserve applicant, and which is the second reserve applicant.

Regulation 17 requires the competent authority to publish a notice of its selection of a preferred applicant. The preferred applicant may be required to satisfy certain matters before it becomes the

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successful bidder. The reserve bidder may be treated as the preferred bidder if the original preferred bidder fails to satisfy the matters withdraws or is disqualified from a tender exercise. Where there are two reserve applicants, the first reserve applicant is initially treated as the preferred bidder in preference to the second reserve applicant. The second reserve applicant may be treated as preferred bidder where the first reserve applicant fails to satisfy remaining matters that apply with respect to it becoming the successful applicant, or where it is disqualified or withdraws.

Regulation 18 requires the competent authority to publish a notice when it has selected the successful applicant.

Regulation 19 requires the competent authority to give details of the successful applicant to unsuccessful applicants and requires at least ten working days to elapse before the smart meter communication licences are granted to the successful applicant. The competent authority is required to publish a notice to confirm its determination to grant the licences to the successful applicant.

Regulation 20 provides for participants to withdraw from a tender exercise.

Regulation 21 provides for the competent authority to cancel a tender exercise in the circumstances described in Schedule 4. A tender exercise may be re-run from a particular stage until a successful applicant is identified or a tender exercise can be determined as failed.

Regulation 22 allows the competent authority to disqualify a participant from a tender exercise in the circumstances described in Schedule 5.

Regulation 23 describes the rules for changes to bidder groups.

Regulation 24 covers the requirements for publications, and allows the competent authority to notify a participant of any changes to the delivery of documents or actions required.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Smart Meter Programme, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.