
STATUTORY INSTRUMENTS

2012 No. 2414

The Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012

PART 8

Best and final offer stage

Best and final offer stage

13.—(1) Where the competent authority has decided in accordance with regulation 12(3) that a best and final offer stage is to be held, the competent authority must determine in accordance with the proposal evaluation criteria set out in the proposal documentation, which qualifying bidders are to be the selected qualifying bidders who are invited to participate in a best and final offer stage.

(2) The competent authority must give notice to each qualifying bidder as to whether that qualifying bidder has or has not been invited to participate in a best and final offer stage.

(3) The competent authority must issue to each selected qualifying bidder the best and final offer documentation, which must include the information specified in Schedule 3.

(4) A best and final offer stage must include two phases—

- (a) the dialogue phase to be conducted in accordance with regulation 14; and
- (b) the final offer phase to be conducted in accordance with regulations 15 and 16.

Best and final offer stage: dialogue phase

14.—(1) The dialogue phase must commence on the date specified in the best and final offer documentation.

(2) During the dialogue phase the competent authority may, in accordance with the best and final offer documentation, discuss with each selected qualifying bidder—

- (a) any matter concerning the regulated business information;
- (b) any aspect of that selected qualifying bidder's proposal for providing a smart meter communications service.

(3) In respect of the dialogue phase, the competent authority—

- (a) must ensure fairness of treatment among all selected qualifying bidders and in particular must ensure that any information provided is provided in a non-discriminatory manner; and
- (b) must not reveal to a selected qualifying bidder solutions proposed or any confidential information communicated by any other such bidder without that other bidder's agreement.

Best and final offer stage: final offer phase

15.—(1) The competent authority must determine when the dialogue phase ends in accordance with any requirements set out in the best and final offer documentation.

(2) At the end of the dialogue phase, the competent authority must commence the final offer phase by giving the notice described in paragraph (3).

- (3) The notice described in this paragraph is a notice to each selected qualifying bidder—
- (a) informing them that the dialogue phase is ended and that the final offer phase is commenced;
 - (b) providing an updated statement of the regulated business information;
 - (c) confirming or updating the evaluation criteria that were included in the best and final offer documentation; and
 - (d) inviting them to submit a best and final offer in accordance with the requirements of the best and final offer documentation (including a confirmation of the date and time requirements for such submission).

Best and final offer stage: evaluation

16.—(1) The competent authority must evaluate each best and final offer submitted to it by a selected qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which selected qualifying bidder is to become the preferred applicant.

(2) The competent authority may evaluate each best and final offer submitted to it by a selected qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which selected qualifying bidder is to become a reserve applicant.

(3) The competent authority may determine that up to two selected qualifying bidders become reserve applicants in accordance with paragraph (2).

(4) Where the competent authority determines that two selected qualifying bidders become reserve applicants in accordance with paragraph (3), it must, in accordance with the evaluation criteria set out in the best and final offer documentation, determine a first reserve applicant and a second reserve applicant.

(5) The competent authority may decline to consider a best and final offer submitted to it by a selected qualifying bidder where the competent authority determines that the submitted best and final offer does not comply in any material respect with the requirements specified in the best and final offer documentation.