

## STATUTORY INSTRUMENTS

# 2020 No. 1199

## The Wireless Telegraphy (Licence Award) Regulations 2020

### PART 10

#### Forfeit of deposit and exclusion

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

**122.**—(1) Subject to paragraph (2) if, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events specified in regulation 124 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process or would affect that bidder's overall bid constraint—

- (a) any sum paid as a deposit under these Regulations shall be forfeited (together with any interest which has accrued on the deposit) by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded from the award process by OFCOM giving that applicant or bidder notice in writing.

(2) If OFCOM are satisfied that any of the events specified in regulation 124(2)(d), 124(2)(e) or 124(2)(g)(ii) are occurring (or have occurred) only during the negotiation period OFCOM shall not require any deposit to be forfeited and shall not exclude any bidder.

##### Commencement Information

**II** Reg. 122 in force at 18.11.2020, see [reg. 1\(1\)](#)

##### Bids made by an excluded bidder

**123.**—(1) Where a bidder is excluded from the award process under regulation 122 during the principal stage, OFCOM shall determine whether it should disregard the bids (and other bidding indications made on its principal stage form) made in any principal stage rounds prior to the exclusion, in order to have a fair and efficient outcome to the award process.

(2) Where OFCOM determine that it is appropriate to disregard the bids (and other bidding indications) made in any principal stage rounds—

- (a) OFCOM shall notify bidders of the rounds for which they have determined to disregard the bids (and other bidding indications); and
- (b) resume the award process from the start of the principal stage round after the round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to rerun the award process from the start of the first principal stage round.

(3) Where a bidder is excluded from the award process under regulation 122 during the assignment stage—

- (a) OFCOM shall determine whether it should disregard the bids (and other bidding indications) made in any principal stage round prior to the exclusion in accordance with paragraphs (1) and (2); and
- (b) any adjacency agreement to which the bidder is a party and all of the assignment stage bids made by the bidder shall not be taken into consideration for the purposes of determining—
  - (i) the lots to be assigned under these Regulations; and
  - (ii) any additional price payable by a winning bidder under these Regulations.

**Commencement Information**

**I2** Reg. 123 in force at 18.11.2020, see **reg. 1(1)**

**Events**

**124.**—(1) The events referred to in regulation 122 are the events in paragraph (2) and the events in paragraph (3).

(2) Events 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 bidding in 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; and

- (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 8(3); or
  - (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.
- (3) Events in relation to a bidder (but not an applicant) are—
  - (a) a change, after OFCOM have recorded that bidder's existing spectrum holdings under regulation 17, to the existing spectrum holdings of a bidder or, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) except insofar as the change is a divestment of a part of or the whole of the existing spectrum holdings; and
  - (b) any person which has existing spectrum holdings which was not at the time OFCOM recorded the bidder's existing spectrum holdings under regulation 17 a person referred to in regulation 4(3)(a)(iii) becoming such a person during the award process.

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**Commencement Information**

**I3** Reg. 124 in force at 18.11.2020, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Wireless Telegraphy (Licence Award) Regulations 2020, PART 10.