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STATUTORY INSTRUMENTS

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**2007 No. 3380**

**The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007**

**PART 5**

**PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER**

**CHAPTER 1**

**Principal stage, assignment stage and grant stage**

**The three stages**

**14.**—(1) Where there is more than one bidder, the process for the award of licences shall consist of the procedure set out in Chapters 2 to 5 of this Part (“principal stage”), the procedure set out in Chapters 6 and 7 of this Part (“assignment stage”) and the procedure set out in Chapter 8 of this Part (“grant stage”).

(2) During the principal stage there shall be one or more rounds for the making of primary bids (“primary bid rounds”) and a further round for the making of supplementary bids (“supplementary bids round”).

(3) A bid made during the principal stage shall be a bid for a selection of lots.

(4) The number of lots available in each band (“available total”) is the number set out in subparagraphs (a) to (g)—

- (a) ten lots in the national 10 GHz band;
- (b) two lots in the national 28 GHz band;
- (c) one lot in the first sub-national 28 GHz band;
- (d) one lot in the second sub-national 28 GHz band;
- (e) one lot in the third sub-national 28 GHz band;
- (f) six lots in the national 32 GHz band;
- (g) six lots in the national 40 GHz band.

(5) Following completion of the principal stage, the paired frequency ranges that are to be assigned to the winning bidders shall be determined in accordance with the assignment stage.

(6) Licences for the paired frequency ranges so determined shall be granted in accordance with the grant stage.

## CHAPTER 2

### Primary bids and supplementary bids

#### Primary bids

**15.**—(1) A bid made during a primary bid round (“primary bid”) shall be at an amount in whole pounds, being the total amount of the round prices in that primary bid round for each lot included in the selection of lots in that primary bid.

(2) The round price means the price per lot determined in accordance with regulation 19 at which lots in a particular band are offered to bidders during a primary bid round.

(3) In order to make a primary bid a bidder must, on a form provided to the bidder by OFCOM (“primary bid form”)—

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and
- (b) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices in that primary bid round for the lots specified under subparagraph (a).

(4) In respect of each band, the number of lots in a band specified by a bidder under paragraph (3) (a) must not be greater than the available total for that band.

(5) Where the selection of lots in a primary bid includes lots in the national 10 GHz band, it must include at least two such lots.

(6) A bidder must not submit more than one primary bid in any primary bid round.

(7) The selection of lots in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid in accordance with paragraph (8) does not exceed the bidder’s eligibility limit for that primary bid round as determined in accordance with regulation 21 or 22 (as the case may be) and notified to the bidder in accordance with regulation 27(1) (c).

(8) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

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

**16.** Any bidder which does not submit a valid primary bid in the first primary bid round shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 23, which shall (where not already forfeited under regulation 64) be forfeited.

#### Supplementary bids

**17.**—(1) A bid made during the supplementary bids round (“supplementary bid”) shall be at an amount in whole pounds.

(2) The amount of the supplementary bid shall be determined by the bidder, subject to the restrictions set out in regulation 26.

(3) In order to make a supplementary bid a bidder must, on a form provided to the bidder by OFCOM (“supplementary bids form”)—

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and

- (b) specify an amount in whole pounds that it is willing to pay for the licence.
- (4) In respect of each band, the number of lots specified by a bidder under paragraph (3)(a) must not be greater than the available total for that band.
- (5) Where the selection of lots in a supplementary bid includes lots in the national 10 GHz band, it must include at least two such lots.
- (6) The selection of lots in a supplementary bid made by a bidder may be the same as or different from the selections of lots in primary bids made by the bidder.
- (7) A bidder may submit any number of supplementary bids in the supplementary bids round, subject to the restriction set out in paragraph (8).
- (8) A bidder may not submit more than one supplementary bid for each particular selection of lots.
- (9) A bidder is not required to submit a supplementary bid.

### **Number of primary bid rounds**

- 18.—**(1) After each primary bid round, OFCOM shall determine in respect of each band whether the total number of lots in the band included in selections of lots in valid primary bids submitted during that round (“bid total”) is greater than the available total for the band.
- (2) Where for each band the bid total is not greater than the available total—
    - (a) there shall be no further primary bid rounds; and
    - (b) there shall be a supplementary bids round.
  - (3) Where for at least one band the bid total is greater than the available total, there shall be another primary bid round unless OFCOM determine, in accordance with paragraph (4), that there shall be no further primary bid rounds.
  - (4) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be made available to bidders by OFCOM in accordance with regulation 32 following any further primary bid rounds would affect—
    - (a) the determination of the winning combination of principal stage bids in accordance with regulation 41;
    - (b) the determination of the base price payable by a winning bidder in accordance with regulation 42.
  - (5) Where OFCOM have determined under paragraph (3) that there shall be no further primary bid rounds, there shall be a supplementary bids round.

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

- 19.—**(1) In the first primary bid round, the round price for a lot in each band shall be the amount set out in Schedule 6.
- (2) In subsequent primary bid rounds, the round price for a lot in each band shall be determined by OFCOM in accordance with paragraph (3) or (5) (as the case may be).
  - (3) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for a band is greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be an amount that is higher than the amount that was the round price for a lot in that band in the previous primary bid round, subject to the limit in paragraph (4).
  - (4) Where paragraph (3) applies, the amount of the round price for a lot in that band in the next primary bid round shall not be more than twice the amount of the round price for a lot in that band in the previous primary bid round.

(5) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for the band is not greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be the same amount as it was in the previous primary bid round.

### **Bidder's eligibility limit for primary bid rounds**

**20.** Before each primary bid round OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 21 or 22 (as the case may be).

### **Determination of bidder's eligibility limit for the first primary bid round**

**21.**—(1) After the deadline specified in regulation 23(2) and before the start of the first primary bid round, OFCOM shall determine each bidder's eligibility limit for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by ten thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 23, but not including any sum forfeited under regulation 64).

(3) Where the number that results from the calculation in paragraph (2) is greater than forty-two, the eligibility limit shall be forty-two.

(4) Where the number that results from the calculation in paragraph (2) is not greater than forty-two, the eligibility limit shall be—

- (a) that number, or
- (b) where the number is not a whole number, that number rounded down to the nearest whole number.

### **Determination of bidder's eligibility limit for subsequent primary bid rounds**

**22.**—(1) For subsequent primary bid rounds, each bidder's eligibility limit shall be determined under paragraph (2) or (5) (as the case may be).

(2) Where a bidder makes a valid primary bid in a primary bid round, OFCOM shall determine the bidder's eligibility limit for the next primary bid round by calculating the number of eligibility points associated with the valid primary bid.

(3) The number of eligibility points associated with a valid primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

(4) The bidder's eligibility limit shall be a number equal to the number of eligibility points associated with that valid primary bid.

(5) Where a bidder does not make a valid primary bid in a primary bid round, the bidder's eligibility limit for the next primary bid round shall be zero.

### **Additional deposit before the first primary bid round**

**23.**—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 21 for the purpose of calculating the bidder's eligibility limit for the first primary bid round.

(2) A bidder wishing to pay such an additional sum must, by a deadline specified by OFCOM, pay the additional sum into OFCOM's bank account by a same day electronic transfer with accompanying information which identifies the bidder.

### **Valid primary bids**

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

- (a) the bid total for a band in accordance with regulation 18(1);
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42;

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

(2) The conditions are that—

- (a) the primary bid is made on a primary bid form that has been completed in accordance with regulation 15(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 15(6);
- (c) the primary bid complies with the restrictions set out in regulation 15(4) and (7) and with the requirement set out in regulation 15(5); and
- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 28(1) and is received by OFCOM in accordance with regulation 28(2).

### **Valid supplementary bids**

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

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42;

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

(2) The conditions in respect of a supplementary bid are that—

- (a) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 17(3);
- (b) the amount of the supplementary bid specified by the bidder under regulation 17(3)(b) complies with the restrictions set out in regulation 26;
- (c) the supplementary bid complies with the requirement set out in regulation 17(5);
- (d) the supplementary bid is submitted in accordance with the restrictions set out in regulation 17(4) and (8); and
- (e) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2).

### **Restrictions on amount of supplementary bid**

**26.—**(1) The restrictions that apply to the amount of a supplementary bid specified by a bidder under regulation 17(3)(b) are that—

- (a) the amount of the supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the lots included in the selection of lots in that bid;
- (b) where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary round bid, the amount of the supplementary bid must be greater than the amount of the highest primary round bid made by the bidder for that selection of lots;
- (c) where—
  - (i) the bidder did not make a valid primary bid in the final primary bid round, or

- (ii) the total number of eligibility points associated with the supplementary bid in accordance with paragraph (4) is greater than the total number of eligibility points associated with the valid primary bid made by the bidder in the final primary bid round in accordance with paragraph (4),

the amount of the supplementary bid must not be greater than the amount determined in accordance with paragraph (2).

(2) That amount shall be the total amount of the round prices in the primary bid round referred to in paragraph (3) for the lots included in the selection of lots in the supplementary bid.

(3) That primary bid round is the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the restriction set out in regulation 15(7).

(4) The number of eligibility points associated with a primary bid or a supplementary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that bid in accordance with Schedule 7.

### CHAPTER 3

#### Procedure for primary bid rounds

##### **Notice to be given to bidders before primary bid rounds and extensions to rounds**

27.—(1) Before the start of each primary bid round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, the primary bid round will take place;
- (b) in respect of each band, the round price for the band in that primary bid round (determined in accordance with regulation 19);
- (c) the bidder's eligibility limit for that primary bid round (determined in accordance with regulation 21 or 22, as the case may be).

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

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

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

(3) This paragraph applies to a bidder where—

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

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

28.—(1) Except as provided for in regulation 29, a bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.

- (2) The completed primary bid form must be received by OFCOM by the end of round time.

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

**29.**—(1) Where OFCOM are satisfied that a bidder is unable to submit a primary 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 primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the primary 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 primary bid form**

**30.**—(1) Where, due to the manner of completion, a primary bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the primary 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 primary 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 primary bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the primary bid form in its entirety shall be rejected by OFCOM and the primary bid submitted on the primary bid form shall not be a valid primary bid and accordingly shall not be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 18(1);
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42.

#### **Notification that primary bid not valid**

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

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

**32.** After the end of a primary bid round and before the start of the subsequent primary bid round (or before the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of the bid total for each band for the primary bid round that has ended.

#### **Further deposit for primary bid rounds**

**33.**—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 15(3)(b) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) OFCOM may, having regard to the desirability of securing an efficient outcome of the principal 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 (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) is not less than the amount of the highest valid primary 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 for any primary bid rounds following notice being given under this paragraph the bidder's eligibility limit shall be zero.

## CHAPTER 4

### Procedure for supplementary bids round and final principal stage deposit

#### Notice to be given to bidders before supplementary bids round

34. Before the start of the supplementary bids round, OFCOM shall notify each bidder of —
- (a) the date on which, and the times on that date within which, the supplementary bids round will take place;
  - (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

#### Submission of supplementary bids form to OFCOM

35.—(1) Except as provided for in regulation 36, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 37, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

#### Alternative method for submission of supplementary bids form

36.—(1) Where OFCOM are satisfied that a bidder is unable to submit a supplementary bids 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 supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids 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.

#### Extension to supplementary bids round

- 37.—(1) Where—
- (a) OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round, and
  - (b) paragraph (2) applies,

the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.



(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

### **Incomplete or defective supplementary bids form**

**38.**—(1) Where, due to the manner of completion, a supplementary bids form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the supplementary bid or bids, 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 supplementary bid or bids.

(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 supplementary bids form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids in accordance with regulation 41;
  - (ii) the base price payable by a winning bidder in accordance with regulation 42;
- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids in accordance with regulation 41;
  - (ii) the base price payable by a winning bidder in accordance with regulation 42.

### **Notification that supplementary bid not valid**

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

### **Final principal stage deposit**

**40.**—(1) By the deadline notified to bidders under regulation 34(b), each bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 or 33 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is not less than whichever is the greater of—

- (a) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 15(3)(b);
- (b) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 17(3)(b).

(2) Where a bidder does not satisfy the requirements set out in paragraph (1), OFCOM shall notify the bidder and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 23 or 33 or under paragraph (1),

which shall (where not already forfeited under regulation 64) be forfeited, and all of that bidder's primary bids and supplementary bids (if any) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids in accordance with regulation 41;
- (b) the base price payable by a winning bidder in accordance with regulation 42.

## CHAPTER 5

### Determination of winning principal stage bids and conclusion of principal stage

#### **Determination of the winning principal stage bids and the winning combination of principal stage bids**

**41.**—(1) The winning principal stage bids shall be those valid principal stage bids that comprise the winning combination of principal stage bids.

(2) Unless paragraph (4) applies, the winning combination of principal stage bids shall be the valid combination of principal stage bids having the highest total value of amounts bid.

(3) A valid combination of principal stage bids is any combination of valid principal stage bids within which—

- (a) there is at most one valid principal stage bid from any one bidder; and
- (b) in respect of each band, the bid total for that band for the bids included in the combination is not greater than the available total for that band.

(4) Where there is more than one valid combination of principal stage bids for which the total value is equal highest, the winning combination of principal stage bids shall be determined in accordance with the order of precedence set out in paragraph (5) or, where paragraph (6) applies, in accordance with that paragraph.

(5) The order of precedence shall be determined by the number of eligibility points associated with each such valid combination of principal stage bids in accordance with paragraph (7) such that valid combinations of principal stage bids with which a greater number of eligibility points are associated prevail over valid combinations of principal stage bids with which a lesser number of eligibility points are associated.

(6) Where there is more than one valid combination of principal stage bids for which—

- (a) the total value is equal highest, and
- (b) the associated number of eligibility points is equal highest,

OFCOM shall employ a method of random selection from amongst those valid combinations of principal stage bids to determine the winning combination of principal stage bids.

(7) The number of eligibility points associated with a valid combination of principal stage bids shall be a number equal to the total of the eligibility points associated with each lot included in the selections of lots in the bids constituting that valid combination of principal stage bids in accordance with Schedule 7.

#### **Determination of base prices for winning principal stage bids**

**42.** In respect of each winning principal stage bid, OFCOM shall determine an amount in accordance with Schedule 8 ("base price") which shall be payable by the relevant winning bidder.<sup>(1)</sup>

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(1) OFCOM have provided notes on the determination of the licence fees payable by bidders in a document called 'Notes on determination of licence fees payable by bidders in relation to the award of the 10, 28, 32 and 40 GHz spectrum bands: Schedules 8 and 9 to the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007' published on 30th November 2007.

### **Notification of results of principal stage and refund of deposits**

**43.** Following the determination of the winning principal stage bids and the winning combination of principal stage bids under regulation 41 and the determination of the base price for each winning principal stage bid under regulation 42, OFCOM shall—

- (a) notify each winning bidder of—
  - (i) the selection of lots in its winning principal stage bid;
  - (ii) the base price for that winning principal stage bid;
- (b) notify each bidder of—
  - (i) the names of the winning bidders;
  - (ii) in respect of each winning bidder, the selection of lots in its winning principal stage bid; and
- (c) refund to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders the initial deposits and any sum paid as a deposit under regulation 23, 33 or 40 (where such deposits have not been forfeited under regulation 16, 40 or 64), but not any interest which has accrued on the deposits.

## **CHAPTER 6**

Assignment of paired frequency range to a winning bidder for a band  
where only one winning principal stage bid includes lots in the band

### **Procedure where there is only one winning principal stage bid for lots in a band and that bid includes all lots in the band**

**44.—**(1) This regulation applies to any band where lots in that band were specified in only one winning principal stage bid and all of the available lots in that band were so specified.

(2) In respect of each such band, the paired frequency range to be assigned to the bidder that submitted the winning principal stage bid that specified all of the lots in that band shall be the paired frequency range comprising all of the frequencies in that band.

### **Procedure where there is only one winning principal stage bid for lots in a band and that bid does not include all lots in the band**

**45.—**(1) This regulation applies to any band where lots in that band were specified in only one winning principal stage bid and not all of the available lots in the band were so specified.

(2) In respect of each such band, OFCOM shall notify the bidder that submitted the winning principal stage bid of—

- (a) the paired frequency ranges in the band that the relevant bidder may select, being the paired frequency ranges which satisfy the following conditions—
  - (i) the bandwidth of the paired frequency range is the same as the total bandwidth of the lots in that band specified in the bidder's winning principal stage bid;
  - (ii) the frequencies in that band that are not included in the paired frequency range form one paired frequency range; and
- (b) a deadline by when its selection must be received by OFCOM.

(3) To select a paired frequency range the bidder must, on a form provided to the bidder by OFCOM ("paired frequency range selection form"), select no more than one of the paired frequency ranges notified to the bidder by OFCOM under paragraph (2)(a).

(4) Except as provided for in paragraph (5), the bidder must submit the completed paired frequency range selection form to OFCOM by using the electronic auction system, and the form must be received by OFCOM by the deadline notified to the bidder under paragraph (2)(b).

(5) Where OFCOM are satisfied that a bidder is unable to submit a paired frequency range selection 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 paired frequency range selection form and any requirements relating to the authentication of communications made by means of the alternative method.

(6) Where OFCOM have notified the bidder under paragraph (5), the bidder must submit the paired frequency range selection form by means of the alternative method and must comply with any requirements which have been notified to it under that paragraph relating to the authentication of communications.

(7) Where, due to the manner of completion, a paired frequency range selection form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, 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 selection.

(8) 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 paired frequency range selection form in its entirety shall be accepted by OFCOM on that basis.

(9) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the paired frequency range selection form in its entirety shall be rejected by OFCOM and OFCOM shall determine which of the paired frequency ranges notified to the bidder under paragraph (2)(a) shall be assigned to the bidder.

(10) Where OFCOM have received from the bidder in accordance with paragraph (4) a paired frequency range selection form completed in accordance with paragraph (3), the paired frequency range to be assigned to the bidder shall be the paired frequency range selected on the paired frequency range selection form that the bidder submitted to OFCOM.

(11) Where paragraph (10) does not apply, OFCOM shall determine which of the paired frequency ranges notified to the bidder under paragraph (2)(a) shall be assigned to the bidder.

## CHAPTER 7

Assignment of paired frequency ranges to winning bidders for a band  
where more than one winning principal stage bid includes lots in the band

### Assignment stage round and assignment stage bids

**46.—**(1) The procedure set out in this chapter applies to any band where lots in that band were specified in more than one winning principal stage bid.

(2) In respect of those bands, there shall be one further round ("assignment stage round") to determine which paired frequency ranges in those bands shall be assigned to winning bidders.

(3) Only bidders that submitted a winning principal stage bid where the lots specified in that bid included a lot or lots in one or more of the bands to which the assignment stage round relates may take part in the assignment stage round.

(4) A bid made during the assignment stage round ("assignment stage bid") shall be a bid for a paired frequency range at an amount in whole pounds specified by the bidder.

(5) A bidder taking part in the assignment stage round may only bid for the paired frequency ranges that OFCOM determine are available to that bidder in accordance with regulation 47.

(6) A bidder may submit no more than one assignment stage bid for each paired frequency range so determined.

(7) A bidder is not required to submit an assignment stage bid.

(8) In order to make an assignment stage bid for a paired frequency range in a band, a bidder must, on a form provided to the bidder by OFCOM (“assignment stage bid form”), specify an amount in whole pounds that it is willing to pay for a licence that includes that paired frequency range, in addition to the base price for that bidder’s winning principal stage bid determined under regulation 42.

### Determination of paired frequency ranges

47. For each band to which the assignment stage round relates, the paired frequency ranges in the band that are available to a bidder in the assignment stage round shall be the paired frequency ranges that satisfy the following conditions—

- (a) the bandwidth of the paired frequency range is equal to the total bandwidth of the lots in the band that were specified in the bidder’s winning principal stage bid; and
- (b) the frequency limits of the two blocks of frequencies comprised in the paired frequency range are such that the following conditions could be satisfied—
  - (i) each winning bidder that specified lots in that band in its winning principal stage bid is assigned a paired frequency range that, in respect to that bidder’s winning principal stage bid, satisfies the condition set out in paragraph (a);
  - (ii) there is no overlap between the paired frequency ranges so assigned; and
  - (iii) any frequencies in the band that are not so assigned form one paired frequency range.

### Assignment stage bid deposit

48.—(1) Each bidder that makes an assignment stage bid must, by a deadline specified by OFCOM, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23, 33 or 40 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is an amount that is not less than the amount,  $d$ , calculated in accordance with the formula set out in paragraph (2).

(2) The formula is—

$$d = b + \sum a$$

where—

“ $b$ ” is the amount of the base price of the bidder’s winning principal stage bid (determined in accordance with regulation 42);

“ $a$ ” is, in respect of each band to which the assignment stage round relates, the amount of the highest assignment stage bid made by the bidder for a paired frequency range in that band.

(3) Where a bidder does not satisfy the provisions set out in paragraph (1)—

- (a) all of the assignment stage bids submitted by the bidder in the assignment stage round shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of assignment stage bids under regulation 57;

- (ii) the additional price payable by a winning bidder under regulation 58;
- (b) the bidder will be deemed to have made a valid assignment stage bid of zero for each paired frequency range available to the bidder in accordance with regulation 47 for the purposes mentioned in sub-paragraph (a).

#### **Valid assignment stage bids**

**49.**—(1) An assignment stage bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58;

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

(2) The conditions are—

- (a) the assignment stage bid is submitted in accordance with the restrictions set out in regulation 46(5) and (6);
- (b) the assignment stage bid is made on an assignment stage bid form that has been completed in accordance with regulation 46(8);
- (c) the completed assignment stage bid form is submitted to OFCOM in accordance with regulation 51(1) and is received by OFCOM in accordance with regulation 51(2).

#### **Notice to bidders before the assignment stage round**

**50.** Before the start of the assignment stage round, OFCOM shall notify each bidder that may take part in the assignment stage bid round in accordance with regulation 46(3) of—

- (a) the paired frequency ranges that are available to that bidder as determined in accordance with regulation 47;
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

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

**51.**—(1) Except as provided for in regulation 52, a bidder must submit the completed assignment stage bid form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 53, the completed assignment stage bid form must be received by OFCOM by the time notified to the bidder under regulation 50(b) as the end of the assignment stage round.

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

**52.**—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage 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 assignment stage bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage 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.



### **Extension to assignment stage round**

**53.**—(1) Where—

- (a) OFCOM have not received a completed assignment stage bid form from a bidder by the time notified to bidders under regulation 50(b) as the end of the assignment stage round, and
- (b) paragraph (2) applies,

the time by which the bidder's completed assignment stage bid form must be received by OFCOM shall be the time thirty minutes after the time notified to bidders under regulation 50(b) as the end of the assignment stage round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its assignment stage bid form so that it was received by OFCOM by the time notified to bidders under regulation 50(b) as the end of the assignment stage round.

### **Incomplete or defective assignment stage bid form**

**54.**—(1) Where, due to the manner of completion, an assignment stage bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of assignment stage bids, 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 assignment stage bids.

(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 assignment stage bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the assignment stage bids made on the assignment stage bid form, that assignment stage bid or those assignment stage bids (as the case may be) shall be invalid, and regulation 56 shall apply accordingly;
- (b) in all other cases, the assignment stage bid form in its entirety shall be rejected by OFCOM and all of the assignment stage bids made on that assignment stage bids form shall be invalid, and regulation 56 shall apply accordingly.

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

**55.** Where a bidder submits an assignment stage bid that is not a valid assignment stage bid OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the bid is not a valid assignment stage bid.

### **Procedure where there is no valid assignment stage bid**

**56.** In respect of each paired frequency range available to a bidder in accordance with regulation 47, where the bidder does not make a valid assignment stage bid for a paired frequency range, the bidder shall be deemed to have made a valid assignment stage bid of zero for the paired frequency range for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58.



### **Determination of the winning assignment stage bids and the winning combination of assignment stage bids**

**57.**—(1) For each band to which the assignment stage round relates, OFCOM shall determine separately the winning assignment stage bids for paired frequency ranges in that band.

(2) For each such band, the winning assignment stage bids for paired frequency ranges in the band shall be those valid assignment stage bids for paired frequency ranges in that band that comprise the winning combination of assignment stage bids.

(3) Unless paragraph (5) applies, the winning combination of assignment stage bids shall be the valid combination of assignment stage bids having the highest total value of amounts bid.

(4) A valid combination of assignment stage bids is any combination of valid assignment stage bids for paired frequency ranges in that band within which—

- (a) there is one valid assignment stage bid from each winning bidder that specified lots in that band in its winning principal stage bid;
- (b) there is no overlap between the paired frequency ranges comprised in those valid assignment stage bids; and
- (c) any frequencies in that band which are not included in those valid assignment stage bids form one paired frequency range.

(5) Where there is more than one valid combination of assignment stage bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of assignment stage bids to determine the winning combination of assignment stage bids.

### **Determination of additional prices for winning assignment stage bids**

**58.** In respect of each winning assignment stage bid, OFCOM shall determine an amount in whole pounds in accordance with Schedule 9 (“additional price”) which shall be payable by the relevant winning bidder.

### **Notification of results of assignment stage**

**59.** Following determination of the winning assignment stage bids and the winning combination of assignment stage bids under regulation 57, and the determination of the additional price for each winning assignment stage bid under regulation 58, OFCOM shall notify each winning bidder of—

- (a) the paired frequency ranges in respect of which the bidder made winning assignment stage bids;
- (b) the additional price for each winning assignment stage bid made by the bidder.

## **CHAPTER 8**

### **Grant stage**

### **Determination of the licence fee**

**60.** The licence fee payable by a winning bidder shall be an amount equal to the total of—

- (a) the base price for the bidder’s winning principal stage bid determined by OFCOM under regulation 42; and
- (b) the additional price for each winning assignment stage bid made by the bidder determined by OFCOM under regulation 58.

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

**61.**—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) is an amount that is less than the amount of the winning bidder's licence fee calculated in accordance with regulation 60—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b);
- (b) the bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the 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 winning bidder's licence fee calculated in accordance with regulation 60 and the amount of the bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64).

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

- (a) the paired frequency range or ranges (as the case may be) that are to be assigned to the bidder in accordance with Chapter 6 of this Part; and
- (b) the paired frequency range or ranges (as the case may be) for which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part.

(4) Where a bidder does not satisfy the requirement set out in paragraph (1)(b), the bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 23, 33, 40 or 48, which shall (where not already forfeited under regulation 64) be forfeited.

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

**62.**—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 60, OFCOM shall—

- (a) grant the winning bidder a licence for—
  - (i) the paired frequency range or ranges (as the case may be) that are to be assigned to the bidder in accordance with Chapter 6 of this Part;
  - (ii) the paired frequency range or ranges (as the case may be) in respect of which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part;
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a 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 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) and the amount of the winning bidder's licence fee calculated in accordance with regulation 60, but not any interest which has accrued on the deposit.

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

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

**63.** After the grant of licences and the payment of refunds to winning bidders in accordance with regulation [62\(1\)\(b\)](#), OFCOM shall complete the award process by publishing on their internet website details of all valid principal stage bids and all valid assignment stage bids made by each bidder, the names of the persons to whom licences were granted, the details of the paired frequency ranges in respect of which those licences were granted and the details of the licence fees paid.