
STATUTORY INSTRUMENTS

2012 No. 2817

The Wireless Telegraphy (Licence Award) Regulations 2012

PART 3

QUALIFICATION STAGE

Notification of names of applicants and associates

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).

(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 applicant group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its applicant 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.

(4) If it appears to OFCOM from any application or notice that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify a deadline by when each applicant concerned must notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group.

Recording of applicant group members

6.—(1) Where there has been a change in the composition of an applicant's applicant group since the date of the application, that applicant must deliver to OFCOM revised versions of the documents provided under regulation 4(3)(a)(i), (ii) and (iii) which comply with those provisions following that change.

(2) OFCOM shall record the members of each applicant group, taking account of any changes notified under paragraph (1).

(3) Each applicant group so recorded shall constitute a bidder group.

Subsequent changes to bidder groups

7.—(1) An applicant or bidder may change its bidder group but, in relation to the award process, the applicant or bidder shall be subject to regulations 10(2), 112 and 114 if they apply to any such change.

(2) If a change involves the addition or departure of an associate, the applicant or bidder must notify OFCOM of the change and deliver to OFCOM revised versions of the documents provided under regulation 4(3)(a)(i) and (iii) which comply with those provisions following the change.

(3) If a change involves the addition of 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) a document in the form set out in Schedule 5 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; and
- (b) a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Changes to existing spectrum holdings before recording

8. If an applicant or, in relation to an applicant, any person referred to in regulation 4(3)(a)(iii) changes its existing spectrum holdings before spectrum holdings are recorded under regulation 16, the applicant must notify OFCOM and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Fitness to hold a licence

9.—(1) OFCOM shall, for each applicant which has submitted an application in accordance with regulation 4, determine whether that applicant is fit to hold a licence.

(2) In making their determination under paragraph (1), OFCOM shall take into account—

- (a) any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003(1);
- (b) whether the applicant is a fit and proper person to hold a licence having regard to the probity of—
 - (i) the applicant;
 - (ii) each other member of the applicant’s bidder group; and
 - (iii) each director of each member of the applicant’s bidder group;
- (c) whether any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) 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;
- (e) 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;
- (f) whether 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) whether any member of the applicant’s bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;

- (h) 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
 - (i) whether any person who is a member or a director or an employee of a member of the applicant's bidder group and is also a director or an 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.
- (3) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM require to make their determination.
- (4) 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.
- (5) Where OFCOM determine that an applicant is not fit to hold a licence the applicant shall be disqualified from the award process.
- (6) OFCOM shall inform an applicant which is disqualified of their decision and the reasons for it but that applicant's initial deposit shall not be forfeited because of that decision.

Qualification to participate in the award process

- 10.**—(1) Each applicant—
- (a) which was not disqualified under regulation 9, and
 - (b) which has no member of its bidder group which is also a member of the bidder group of another applicant which was not disqualified under regulation 9,
- shall be qualified to participate in the award process.
- (2) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant which was not disqualified under regulation 9 shall not be qualified to participate in the award process.
- (3) Where an applicant is not qualified to participate in the award process OFCOM shall inform that applicant of that fact but that applicant's initial deposit shall not be forfeited for that reason.

Publication of names of qualified applicants

11. OFCOM shall notify each applicant qualified to participate of the name of each other applicant who is so qualified, and the names of their associates, and shall publish the names of all applicants who are so qualified on OFCOM's internet website.

Withdrawal of an application

- 12.**—(1) OFCOM shall notify each applicant qualified to participate 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 receives notice from an applicant that it wishes to withdraw its application, signed by two authorised persons, the application shall be withdrawn and the applicant shall be excluded from the award process but that applicant's initial deposit shall not be forfeited for that reason.
- (3) That applicant shall not be re-admitted to the award process.
- (4) OFCOM shall notify all other applicants of the withdrawal.

Determination of number of bidders

13.—(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 12, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit.

(3) Where there are one or more bidders, OFCOM shall grant licences in accordance with the procedure set out in Part 4 of these Regulations.

(4) OFCOM shall publish the names of the bidders on OFCOM's internet website.

Additional deposit before the opt-in round and the first primary bid round

14.—(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 15 for the purpose of calculating the bidder's eligibility limit for the opt-in round (if the bidder has stated that it wishes to bid in that round) and 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.

Determination of bidder's eligibility limit for the opt-in round and first primary bid round

15.—(1) After the deadline specified in regulation 14(2), OFCOM shall determine each bidder's eligibility limit for the opt-in round (if the bidder has stated that it wishes to bid in that round) and for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by one hundred thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 14).

(3) Where the number that results from the calculation in paragraph (2) is not a whole number, that number shall be rounded down to the nearest whole number.

(4) The eligibility limit shall be that whole number.

(5) Where a bidder's eligibility limit calculated in accordance with this regulation is less than one point, that bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

Recording of spectrum holdings

16.—(1) After the deadline specified in regulation 14(2) OFCOM shall, for each bidder, record the existing spectrum holdings which have been notified by that bidder under regulation 4(3)(a)(iii), taking account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 6(1), 7(2), 7(3) or 8.

(2) The spectrum holdings so recorded are that bidder's "recorded spectrum holdings".

(3) After the recording of spectrum holdings, the bidder and, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) may change its existing spectrum holdings but in relation to the award process—

- (a) the bidder shall be subject to regulations 112 and 114 if they apply to that change; and
- (b) the bidder's recorded spectrum holdings shall not be amended.

(4) If there is such a change, the bidder concerned must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation [4\(3\)\(a\)\(iii\)](#) which complies with that provision following the change.