
STATUTORY INSTRUMENTS

2012 No. 2817

The Wireless Telegraphy (Licence Award) Regulations 2012

PART 4

BIDDING PROCEDURE

CHAPTER 4

The primary bid rounds

Primary bids

25.—(1) A primary bid must be for a selection of lots which matches a permissible bid selection for that bidder.

(2) For each primary bid round there shall be a round price for each type of lot, which is the price at which each lot of that type is offered to bidders during that primary bid round.

(3) 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 the lots included in the selection of lots specified in the bid.

(4) The round prices for the first primary bid round are set out in regulation 32.

(5) The round prices for each subsequent primary bid round shall be determined by OFCOM in accordance with regulation 33.

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

- (a) the number of 800 MHz paired frequency lots it wishes to be included in a licence at the round price for those lots;
- (b) the number of 2.6 GHz paired frequency lots it wishes to be included in a licence at the round price for those lots;
- (c) the number of 2.6 GHz individual frequency lots it wishes to be included in a licence at the round price for those lots;
- (d) if it wishes the 800 MHz coverage obligation lot to be included in a licence at the round price for that lot;
- (e) if it wishes a 2.6 GHz concurrent low power 10 MHz lot to be included in a licence at the round price for those lots; and
- (f) if it wishes a 2.6 GHz concurrent low power 20 MHz lot to be included in a licence at the round price for those lots.

(7) A bidder must not submit more than one primary bid in each primary bid round.

(8) The selection of lots specified in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid does not exceed the bidder’s eligibility limit for that primary bid round (determined in accordance with regulation 15 or 40 and notified to the bidder in accordance with regulation 52(1)(c)).

(9) The number of eligibility points associated with a primary bid shall be the number equal to the total of the eligibility points associated with the lots included in the selection of lots specified in the primary bid.

Valid primary bids

26. A primary bid is a valid primary bid if the bidder complies with the provisions of regulations 25 and 54 in respect of that primary bid.

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

27. Any bidder which does not submit a valid primary bid in the first primary bid round having an associated eligibility of at least one eligibility point 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.

Number of primary bid rounds

28.—(1) After each primary bid round OFCOM shall determine if there is excess demand in accordance with regulation 29.

(2) Where OFCOM have determined that there is no excess demand there shall be no further primary bid rounds but there shall be a supplementary bids round.

(3) Where there is excess demand there shall be another primary bid round, unless OFCOM determine that they are satisfied that it is unlikely that the information that would be made available to bidders following any such further primary bid rounds would change—

- (a) the winning principal stage bids in accordance with regulation 67; or
- (b) the base price payable by a winning bidder in accordance with regulation 68.

(4) If OFCOM determine under paragraph (3) that it is unlikely that the information that would be made available to bidders would change either of these things there shall be no further primary bid rounds but there shall be a supplementary bids round.

Determination of excess demand

29.—(1) There is excess demand if any of the following conditions is satisfied—

- (a) the adjusted demand for any type of lot is greater than the number of lots of that type that are available in the award process;
- (b) the number produced by adding together the adjusted demand for 2.6 GHz concurrent low power 10 MHz lots and the adjusted demand for 2.6 GHz concurrent low power 20 MHz lots is greater than ten;
- (c) the adjusted demand for 2.6 GHz concurrent low power 10 MHz lots is greater than zero and the adjusted demand for 2.6 GHz paired frequency lots is greater than twelve; or
- (d) the adjusted demand for 2.6 GHz concurrent low power 20 MHz lots is greater than zero and the adjusted demand for 2.6 GHz paired frequency lots is greater than ten.

(2) OFCOM shall determine the adjusted demand for types of lots in accordance with regulation 30.

Determination of adjusted demand

30.—(1) This paragraph applies where—

- (a) there are no valid opt-in bids; or
 - (b) at least one opted-in bidder submitted a valid primary bid in the most recent primary bid round, and that bid was for a selection of lots which included (in addition to any other lots which were included) all of the lots comprised in one of that bidder's valid opt-in bids.
- (2) Where paragraph (1) applies, the adjusted demand for a type of lot is the total number of lots of that type selected in the valid primary bids submitted in the most recent primary bid round.
- (3) Where paragraph (1) does not apply, the adjusted demand for a type of lot is the number determined in accordance with paragraph (4).
- (4) The number is the total of—
- (a) the number of lots of that type selected in the key bid, and
 - (b) the number of lots of that type selected in the valid primary bids submitted in the most recent primary bid round, but not including the valid primary bid (if any) of the bidder which submitted the key bid.
- (5) The key bid shall be identified by OFCOM in accordance with regulation 31.

Identifying the key bid

31.—(1) The key bid is the bid which has the lowest value of n calculated in accordance with paragraph (2) out of all of the bids which satisfy—

- (a) the requirement in paragraph (3) (“the first requirement”); and
 - (b) the requirement in paragraph (4) (“the second requirement”).
- (2) For each such bid, the value of n is the difference (if any) between—
- (a) the total amount of the round prices in the most recent primary bid round for the lots included in the bid; and
 - (b) the amount of the bid.
- (3) The first requirement is that the bid must be a valid opt-in bid or a valid primary bid made by an opted-in bidder.
- (4) The second requirement is that if the bid is a valid primary bid it must be for a selection of lots which includes (in addition to any other lots which are included) all of the lots comprised in one of the valid opt-in bids made by that bidder.
- (5) Where there is more than one bid for which the value of n is lowest (“tied n bids”), the key bid shall be determined in accordance with the order of precedence set out in paragraph (6).
- (6) Tied n bids with a lesser value of a prevail over tied n bids with a greater value of a , where a is calculated in accordance with paragraph (7).
- (7) For each tied n bid, the value of a is the total amount of the round prices in the most recent primary bid round for the lots included in the tied n bid, less the total amount of the round prices (in the most recent primary bid round) for those lots included in the tied n bid which were also included in the valid primary bid (if any) submitted in the most recent primary bid round by the bidder which submitted the tied n bid.
- (8) Where there is more than one tied n bid for which the value of a is lowest (“tied a bids”), the key bid shall be determined in accordance with the order of precedence set out in paragraph (9).
- (9) Tied a bids with a lesser value of b prevail over tied a bids with a greater value of b , where b is calculated in accordance with paragraph (10).
- (10) For each tied a bid, the value of b is the total amount of the round prices in the most recent primary bid round for the lots included in the valid primary bid (if any) submitted in the most recent primary bid round by the bidder which submitted the tied a bid, less the total amount of the round

prices (in the most recent primary bid round) for those lots included in the valid primary bid which were also included in the tied *a* bid.

(11) Where a bidder which submitted a tied *a* bid did not submit a valid primary bid in the most recent primary bid round, the value of *b* in relation to that tied *a* bid shall be zero.

(12) Where there is more than one tied *a* bid for which the value of *b* is lowest (“tied *b* bids”), OFCOM shall employ a method of random selection from amongst those tied *b* bids to identify the key bid.

Round prices for the first primary bid round

32. For the first primary bid round, the round price for—

- (a) each 800 MHz paired frequency lot shall be two hundred and twenty five million pounds;
- (b) each 2.6 GHz paired frequency lot shall be fifteen million pounds;
- (c) each 2.6 GHz individual frequency lot shall be one hundred thousand pounds;
- (d) the 800 MHz coverage obligation lot shall be two hundred and fifty million pounds;
- (e) each 2.6 GHz concurrent low power 10 MHz lot shall be three million pounds; and
- (f) each 2.6 GHz concurrent low power 20 MHz lot shall be six million pounds.

Determination of round prices for subsequent primary bid rounds

33.—(1) For each subsequent primary bid round, the round price for each type of lot shall be determined by OFCOM.

(2) The round price for each 800 MHz paired frequency lot shall be determined in accordance with regulation 34.

(3) The round price for each 2.6 GHz paired frequency lot shall be determined in accordance with regulation 35.

(4) The round price for each 2.6 GHz individual frequency lot shall be determined in accordance with regulation 36.

(5) The round price for the 800 MHz coverage obligation lot shall be determined in accordance with regulation 37.

(6) The round price for each 2.6 GHz concurrent low power 10 MHz lot shall be determined in accordance with regulation 38

(7) The round price for each 2.6 GHz concurrent low power 20 MHz lot shall be determined in accordance with regulation 39.

Round price for 800 MHz paired frequency lots

34.—(1) The round price for each 800 MHz paired frequency lot shall be the same as it was for the previous primary bid round except where paragraph (3) applies.

(2) Where paragraph (3) applies the round price shall be higher than it was for the previous primary bid round, but not more than twice the amount of the round price for the previous primary bid round.

(3) This paragraph applies where the adjusted demand for 800 MHz paired frequency lots in the previous primary bid round is greater than four.

Round price for 2.6 GHz paired frequency lots

35.—(1) The round price for each 2.6 GHz paired frequency lot shall be the same as it was for the previous primary bid round except where any of paragraphs (3), (4) or (5) apply.

(2) Where any of paragraphs (3), (4) or (5) apply the round price shall be higher than it was for the previous primary bid round, but not more than twice the amount of the round price for the previous primary bid round.

(3) This paragraph applies where the adjusted demand for 2.6 GHz paired frequency lots in the previous primary bid round is greater than fourteen.

(4) This paragraph applies where—

- (a) the adjusted demand for 2.6 GHz concurrent low power 10 MHz lots in the previous round is greater than zero; and
- (b) the adjusted demand for 2.6 GHz paired frequency lots in the previous round is greater than twelve.

(5) This paragraph applies where—

- (a) the adjusted demand for 2.6 GHz concurrent low power 20 MHz lots in the previous round is greater than zero; and
- (b) the adjusted demand for 2.6 GHz paired frequency lots in the previous round is greater than ten.

Round price for 2.6 GHz individual frequency lots

36.—(1) The round price for each 2.6 GHz individual frequency lot shall be the same as it was for the previous primary bid round except where paragraph (3) applies.

(2) Where paragraph (3) applies the round price shall be higher than it was for the previous primary bid round, but not more than twice the amount of the round price for the previous primary bid round.

(3) This paragraph applies where the adjusted demand for 2.6 GHz individual frequency lots in the previous primary bid round is greater than nine.

Round price for the 800 MHz coverage obligation lot

37.—(1) The round price for the 800 MHz coverage obligation lot shall be the same as it was for the previous primary bid round except where paragraph (3) applies.

(2) Where paragraph (3) applies the round price shall be higher than it was for the previous primary bid round, but not more than twice the amount of the round price for the previous primary bid round.

(3) This paragraph applies where the adjusted demand for the 800 MHz coverage obligation lot in the previous primary bid round is greater than one.

Round price for 2.6 GHz concurrent low power 10 MHz lots

38.—(1) The round price for each 2.6 GHz concurrent low power 10 MHz lot shall be the same as it was for the previous primary bid round except where paragraph (5) or (6) applies.

(2) Where paragraph (5) applies, but not paragraph (6), the round price shall be higher than it was for the previous primary bid round but not more than the upper 10 MHz limit.

(3) Where paragraph (6) applies, but not paragraph (5), the round price shall not be lower than it was for the previous primary bid round, and shall be—

- (a) not less than the lower 10 MHz limit, and

(b) not more than the upper 10 MHz limit,
subject to paragraph (7).

(4) Where paragraph (5) and paragraph (6) both apply, the round price shall be higher than it was for the previous primary bid round, and shall be—

- (a) not less than the lower 10 MHz limit, and
- (b) not more than the upper 10 MHz limit,

subject to paragraph (7).

(5) This paragraph applies where the number produced by adding together the adjusted demand for 2.6 GHz concurrent low power 10 MHz lots in the previous round and the adjusted demand for 2.6 GHz concurrent low power 20 MHz lots in the previous round is greater than ten.

(6) This paragraph applies where the adjusted demand for 2.6 GHz paired frequency lots in the previous round is greater than twelve.

(7) In a case where the lower 10 MHz limit is greater than the upper 10 MHz limit, the upper 10 MHz limit shall be disregarded and the round price shall be an amount equal to the lower 10 MHz limit.

(8) In this regulation—

“upper 10 MHz limit” means twice the amount of the round price for 2.6 GHz concurrent low power 10 MHz lots for the previous round; and

“lower 10 MHz limit” means one fifth of the amount that OFCOM have determined to be the round price for 2.6 GHz paired frequency lots for the round in respect of which OFCOM is determining the round price.

Round price for 2.6 GHz concurrent low power 20 MHz lots

39.—(1) The round price for each 2.6 GHz concurrent low power 20 MHz lot shall be the same as it was for the previous primary bid round except where paragraph (5) or (6) applies.

(2) Where paragraph (5) applies, but not paragraph (6), the round price shall be higher than it was for the previous primary bid round but not more than the upper 20 MHz limit.

(3) Where paragraph (6) applies, but not paragraph (5), the round price shall not be lower than it was for the previous primary bid round, and shall be—

- (a) not less than the lower 20 MHz limit, and
- (b) not more than the upper 20 MHz limit,

subject to paragraph (7).

(4) Where paragraph (5) and paragraph (6) both apply, the round price shall be higher than it was for the previous primary bid round, and shall be—

- (a) not less than the lower 20 MHz limit, and
- (b) not more than the upper 20 MHz limit,

subject to paragraph (7).

(5) This paragraph applies where the number produced by adding together the adjusted demand for 2.6 GHz concurrent low power 10 MHz lots in the previous round and the adjusted demand for 2.6 GHz concurrent low power 20 MHz lots in the previous round is greater than ten.

(6) This paragraph applies where the adjusted demand for 2.6 GHz paired frequency lots in the previous round is greater than 10.

(7) In a case where the lower 20 MHz limit is greater than the upper 20 MHz limit, the upper 20 MHz limit shall be disregarded and the round price shall be an amount equal to the lower 20 MHz limit.

(8) In this regulation—

(a) “upper 20 MHz limit” means twice the amount of the round price for 2.6 GHz concurrent low power 20 MHz lots for the previous round; and

(b) “lower 20 MHz limit” means the amount produced by adding together—

(i) the amount that OFCOM have determined to be the round price for 2.6 GHz concurrent low power 10 MHz lots for the round in respect of which OFCOM is determining the round price; and

(ii) one fifth of the amount that OFCOM have determined to be the round price for 2.6 GHz paired frequency lots for that round.

Bidders’ eligibility limit for second and subsequent primary bid rounds

40. Before the second primary bid round and before each subsequent primary bid round OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 41.

Determination of bidders’ eligibility limit for second and subsequent primary bid rounds

41.—(1) 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 that valid primary bid.

(2) The number of eligibility points associated with a valid primary bid shall be the number equal to the total of the eligibility points associated with the lots included in the selection specified in that valid primary bid.

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

(4) 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.

(5) Where regulation 59(4) applies, a bidder’s eligibility limit for the next primary bid round shall be zero, notwithstanding any determination of an eligibility limit under paragraphs (1) to (4).