
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Contracts for Difference (Allocation) Regulations 2014

PART 8

Pending applications

Application of this Part

49.—(1) This Part applies where—

- (a) an applicant has in accordance with regulations 43 and 44 made a qualification appeal in respect of an application; and
- (b) that appeal has not been determined when the allocation process for the allocation round commences.

(2) An application to which paragraph (1) applies is a “pending application” and an applicant to whom paragraph (1) applies is a “pending applicant”.

Strike price bids

50.—(1) Paragraphs (2) and (3) apply where, under the allocation framework, an applicant in respect of an application equivalent to the pending application (“an equivalent application”) is entitled to make a bid of strike prices before or during the allocation process.

(2) Where this paragraph applies, the delivery body—

- (a) must ensure that the pending applicant is able to make bids of strike prices in respect of the pending application to the same extent as an applicant may make such bids in respect of an equivalent application;
- (b) must not apply any bid (“a pending bid”) made by a pending applicant in the allocation process; and
- (c) except as provided by regulation 51(7), must ensure that it does not become aware of the content of a pending bid.

(3) Where this paragraph applies, the delivery body must destroy a pending bid—

- (a) if an appeal by the pending applicant is made to the High Court or the Court of Session under regulation 47 and the court rejects the appeal; or
- (b) if no appeal is made under regulation 47.

Successful applications determined by the Authority

51.—(1) This regulation applies where the Authority determines that a pending application is a qualifying application after the allocation process for the allocation round commenced.

(2) Where the allocation process, or such part of it as applies to equivalent applications, is to be re-run further to Chapter 4 or 5 of Part 5, the delivery body must ensure that the re-run process includes any pending application which is determined as a qualifying application.

(3) Where the determination of a pending application as a qualifying application is made after Part 6 applies, the delivery body must determine whether or not the pending application is a successful application.

(4) Subject to paragraph (5), paragraph (6) applies where—

- (a) a variation notice was not required to be given when the allocation process commenced and a period of more than 5 months has expired since the application closing date; or
- (b) a variation notice was required to be given when the allocation process commenced and a period of more than 5 months has expired since the date on which the variation notice was required to be given.

(5) The allocation framework for the allocation round may provide for a period other than “5 months” stated in paragraph (4)(a) or (b) and where such other period is provided, paragraph (4) has effect with that modification.

(6) Where this paragraph applies—

- (a) the delivery body must give a notice to the pending applicant stating that the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”) may be varied by the applicant;
- (b) if the pending applicant wishes to vary the target dates, the applicant must do so by giving a notice to the delivery body with any varied target dates by no later than 5 working days after the date of the variation notice; and
- (c) if such varied target dates are provided, the delivery body must make the determination under paragraph (3) using the varied target dates.

(7) The delivery body must make the determination required by paragraph (3) having regard to any pending bid made by the pending applicant, except any flexible bid.

(8) Where a pending application is a successful application, the delivery body must comply with regulation 43(2) in respect of that application.

(9) Paragraph (8) applies notwithstanding that the overall budget for the allocation round may be exceeded by reason of giving a CFD notification in respect of the pending application.

(10) In paragraph (7), “flexible bid” means a bid, where it is permitted under the allocation framework, in which the applicant specifies—

- (a) the first delivery year as a year after the first delivery year set out in the applicant’s application; or
- (b) the amount of electricity to be generated as an amount which is less than the amount set out in the applicant’s application.

Appeals to the High Court or the Court of Session

52.—(1) This regulation applies where—

- (a) under regulation 47 a pending applicant has made an appeal to the High Court or the Court of Session in respect of a pending application; and
- (b) the court holds that the Authority made an error of law in upholding the non-qualification determination in respect of the application.

(2) The court may in its discretion—

- (a) remit the pending application to the Authority to re-consider the non-qualification determination;
- (b) hold that the pending application is a qualifying application and require the delivery body to comply with, as appropriate, regulation 51(2) or (3) as is relevant to the application; or

(c) grant such further or other remedy as it thinks fit.

(3) Where—

(a) paragraph (2)(a) applies; and

(b) on a re-consideration the Authority determines that the pending application is a qualifying application,

the delivery body must comply with regulation 51(2) or (3) as is relevant to the application.

Notices that no CFD notification is given

53.—(1) The delivery body must comply with paragraphs (2) and (3) in respect of a pending application where—

(a) the Authority upholds a non-qualification determination and the pending applicant does not make an appeal under regulation 47 to the High Court or the Court of Session;

(b) the High Court or the Court of Session does not uphold an appeal; or

(c) regulation 52(2)(a) applies and the Authority determines that the pending application is not a qualifying application.

(2) The delivery body must give a notice to the pending applicant that states that no CFD notification is given in respect of the application and gives reasons for that statement.

(3) A notice under paragraph (2) must be given as soon as practicable after, as appropriate,—

(a) the time to appeal expires under regulation 47;

(b) the date of judgement of the court; or

(c) the date of the determination by the Authority under paragraph (1)(c).