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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Contracts for Difference (Allocation) Regulations 2014**

**PART 5**

Allocation processes

CHAPTER 1

Valuation of applications

**Valuation of applications**

**29.**—(1) The delivery body must determine in respect of an allocation round the valuations in paragraph (2) (“applications valuations”) for—

- (a) each delivery year;
- (b) the period comprising all delivery years; and
- (c) any period after the last delivery year as may be set out in the allocation framework.

(2) The applications valuations are—

- (a) the valuation of each application and all applications;
- (b) the valuation of each qualifying application and all qualifying applications;
- (c) the valuation of—
  - (i) each application which is subject to a non-qualification review or an appeal, where the review or appeal has not been determined; and
  - (ii) all such applications;
- (d) where a pot applies for the allocation round, the valuation of—
  - (i) all applications to which the pot applies;
  - (ii) all qualifying applications to which the pot applies; and
  - (iii) all applications subject to a non-qualification review or an appeal, where the review or appeal has not been determined, to which the pot applies;
- (e) where maxima or minima apply, the valuation of—
  - (i) all applications to which maxima or minima apply;
  - (ii) all qualifying applications to which maxima or minima apply; and
  - (iii) all applications subject to a non-qualification review or an appeal, where the review or appeal has not been determined, to which maxima or minima apply.

(3) The applications valuations—

- (a) must be carried out in accordance with the appropriate method of calculation set out in the allocation framework; and
- (b) must not include the valuation of an application which has been withdrawn at the date on which the valuation is carried out.

- (4) The delivery body must make available to the Secretary of State the applications valuations.
- (5) The allocation framework for the allocation round must set out the dates by which the applications valuations must be carried out.
- (6) The allocation framework for the allocation round may—
  - (a) set out a period after the last delivery year for which applications valuations are required; and
  - (b) require the delivery body—
    - (i) to make available such further information or analysis in respect of such applications valuations as may be specified in the allocation framework;
    - (ii) to provide some or all of the applications valuations to a person or persons (other than the Secretary of State) as may be specified in the allocation framework; and
    - (iii) to make publicly available any or all of the applications valuations on such date or dates as may be specified in the allocation framework.

## CHAPTER 2

### Requirements applicable to allocation frameworks

#### **Requirements applicable to allocation frameworks**

- 30.**—(1) An allocation framework must ensure that, in respect of an allocation round to which it applies, the allocation process included in the framework complies with the following paragraphs.
- (2) Except in respect of a CFD notification which is required to be made further to Part 8—
    - (a) the total value of qualifying applications for which CFD notifications are to be given must not exceed the overall budget; and
    - (b) an allocation process must not result in an application being a successful application if that result would be in breach of sub-paragraph (a).
  - (3) Subject to paragraph (2)(b), where minima apply to an allocation round and the value of qualifying applications to which the minima apply is less than or equal to the minima, the allocation process must result in—
    - (a) all those applications being successful applications; and
    - (b) the final strike price which applies to those successful applications being the administrative strike price applicable to those applications.
  - (4) Where maxima apply to an allocation round, the allocation process must result in the value of successful applications to which such maxima apply not exceeding the maxima.
  - (5) Subject to paragraph (2)(b), for those applications where maxima do not apply or the maxima are not exceeded, the allocation process must result in—
    - (a) all those applications being successful applications; and
    - (b) the final strike price which applies to those successful applications being the administrative strike price applicable to those applications.
  - (6) Except for those applications which become successful applications further to paragraph (3) or (5), the allocation process must include a competitive process (or more than one) which when complied with by the delivery body enables the delivery body to determine—
    - (a) which qualifying applications are successful applications; and
    - (b) the final strike price applicable to those successful applications.
  - (7) The administrative strike price applicable to a qualifying application must be the maximum final strike price which may apply to that application.

- (8) The allocation process must apply to each qualifying application.

### CHAPTER 3

#### Commencement and completion of an allocation process

##### **Non-qualification review and appeal deadline dates**

**31.**—(1) The allocation framework must specify in respect of an allocation round—

- (a) the non-qualification review request date; and
- (b) the appeals deadline date.

(2) The allocation framework must include in respect of an allocation round a date on which the Secretary of State is minded to require the allocation process for the allocation round to commence (“the post-appeals indicative start date”).

(3) The post-appeals indicative start date must be no earlier than 10 working days after the appeals deadline date.

##### **Notices of requests for review or appeal**

**32.**—(1) The delivery body must give a notice to the Secretary of State as soon as practicable after the non-qualification review request date stating the number, if any, of review notices received.

(2) Paragraph (3) applies where—

- (a) the delivery body gives a notice under paragraph (1) which states that at least one review notice has been received; and
- (b) in respect of at least one request made for a non-qualification review, the delivery body upholds the non-qualification determination.

(3) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body as soon as practicable after the appeals deadline date stating the number, if any, of qualification appeals made.

(4) Paragraph (5) applies where a notice has been given under paragraph (3) which states that at least one qualification appeal has been made.

(5) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body by no later than 10 working days before the post-appeals indicative start date which states—

- (a) the number, if any, of qualification appeals which are not determined at the date on which the notice is given; and
- (b) where at least one qualification appeal is not determined, the estimated date for its determination.

(6) Paragraph (7) applies where a notice has been given under paragraph (5) which states that at least one qualification appeal is not determined.

(7) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body by no later than 3 working days before the post-appeals indicative start date which states the matters set out in paragraph (5)(a) and (b).

(8) Paragraph (9) applies where a notice has been given under paragraph (7) which states that at least one qualification appeal is not determined.

(9) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body which states the matters set out in paragraph (5)(a) and (b)—

- (a) by no later than 10 working days after the post-appeals indicative start date; and

- (b) where a notice is given under sub-paragraph (a) which states that at least one qualification appeal is not determined, at no later than 10 working day intervals thereafter until all qualification appeals are determined by the Authority.

### **Commencement of the allocation process**

**33.**—(1) Where a notice is given under—

- (a) regulation 32(1) that no review notice has been received, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body gives the notice;
- (b) regulation 32(3) that no qualification appeal has been received, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body receives the notice;
- (c) regulation 32(5) or (7) which states that no qualification appeal is not determined, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body receives the notice;
- (d) regulation 32(9) which states that at least one qualification appeal is not determined, the delivery body must not commence the allocation process unless the delivery body receives a notice under paragraph (2).

(2) The Secretary of State may give a notice to the delivery body which directs the delivery body to commence the allocation process on the date stated in the notice (“the directed date”), which must be a date after the appeals deadline date.

(3) Where a notice is given under paragraph (2), the Secretary of State may withdraw it by giving a notice to that effect to the delivery body at any time before the directed date.

(4) A copy of a notice given under paragraph (2) or (3) must be given by the Secretary of State to the Authority.

(5) Where—

- (a) before the directed date a qualification appeal is determined; and
  - (b) the application subject to the qualification appeal is determined as a qualifying application,
- the Authority must immediately give a notice to the Secretary of State and the delivery body stating details of that qualifying application.

(6) Where further to this regulation the delivery body must commence the allocation process, the delivery body must give a notice to the CFD counterparty which states—

- (a) when the allocation process has commenced; and
- (b) which qualification appeals are not determined at that date.

### **Delay to the commencement of allocation processes**

**34.**—(1) This regulation applies where the commencement of an allocation process under regulation 33 is more than 5 months after the application closing date.

(2) The Secretary of State may give a notice to the delivery body to require it to give a notice (“a variation notice”) to each qualifying applicant and pending applicant which states that the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”) may be varied by the applicant by a period not greater than that specified in the Secretary of State’s notice.

(3) The delivery body must comply with a notice given to it by the Secretary of State under paragraph (2).

(4) Where a variation notice is given, a qualifying applicant or pending applicant who wishes to vary the target dates 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.

(5) Where varied target dates are provided in accordance with paragraph (4), the delivery body must—

- (a) substitute those dates for those provided with the application; and
  - (b) to the extent that those dates affect any of the applications valuations determined under regulation 29, re-determine in accordance with regulation 29 such of the applications valuations as are affected.
- (6) The delivery body must not continue with the allocation process until the later of—
- (a) the time to provide varied target dates has expired; or
  - (b) any re-determination of applications valuations required under paragraph (4)(b) has been made.

### **Completion of the allocation process**

**35.**—(1) The delivery body must give a notice to the Secretary of State once the delivery body is satisfied that it has completed the allocation process.

- (2) The delivery body must provide to the CFD counterparty—
- (a) a copy of a notice given under paragraph (1); and
  - (b) a statement of which qualification appeals, if any, are not determined at the date of the notice.

## **CHAPTER 4**

### **Auditing, re-runs and termination**

#### **Auditing**

**36.**—(1) As soon as practicable after a notice is given under regulation 35(1), the delivery body must obtain an audit of the calculations made by it in the allocation process (“a process audit”).

- (2) A process audit must—
- (a) be carried out by a person (“the auditor”) independent of the delivery body and who is qualified to perform an audit of the calculations made in the allocation process; and
  - (b) include provision of a report to the delivery body (“an audit report”) which—
    - (i) sets out whether or not the auditor considers that calculations have been made correctly and accurately; and
    - (ii) where applicable, identifies any calculations which the auditor considers were not correctly or accurately made and identifies the consequences of those calculations.
- (3) Where during an allocation process bids of strike prices are made—
- (a) the audit report must not include any information which would enable the identification of which bids were made by which applicant; and
  - (b) the delivery body must provide details of those bids to—
    - (i) the auditor; and
    - (ii) the Authority, where the Authority requests the details.

(4) Subject to paragraph (5), where the delivery body is provided with an audit report it must make the report publicly available as soon as practicable after Part 6 applies to the allocation round.

(5) The delivery body may exclude from publication any part of the audit report which the delivery body considers to contain commercially confidential information.

(6) In this regulation, “audit of the calculations” means an audit of whether or not the calculations required by the allocation framework were—

- (a) applied correctly; and
- (b) made accurately.

### **Provision of audit report to the Secretary of State**

**37.**—(1) Subject to regulation 40(1), as soon as practicable after the audit report is received, the delivery body must give a notice to the Secretary of State which—

- (a) includes the audit report; and
- (b) having regard to the report, states whether the delivery body intends—
  - (i) to proceed in accordance with Part 6 and, if so, the date on which it intends to do so (“a proceed notice”); or
  - (ii) to re-run the allocation process or any part of it as set out in the notice and, if so, the date on which it intends to commence the re-run (“a re-run notice”).

(2) A date under paragraph (1)(b) must be not be earlier than 2 working days after the date of the notice.

### **Proceeding, re-running an allocation process or terminating an allocation round**

**38.**—(1) Subject to regulation 40(1)(a), where the delivery body gives—

- (a) a proceed notice, the Secretary of State may give the delivery body a direction—
  - (i) to re-run the allocation process or a part of it as set out in the direction and when to commence the re-run (“a re-run direction”); or
  - (ii) to take no further steps in respect of the allocation round (“a halt direction”);
- (b) a re-run notice, the Secretary of State may give the delivery body—
  - (i) a direction to proceed in accordance with Part 6 and when to do so (“a proceed direction”); or
  - (ii) a halt direction.

(2) A direction under paragraph (1) may not be given later than 2 working days after the date of the proceed notice or the re-run notice.

(3) The Secretary of State must give a termination notice as soon as practicable after giving a halt direction.

### **Re-running an allocation process**

**39.**—(1) Paragraph (2) applies where the delivery body—

- (a) gives a re-run notice and does not receive in respect of that notice—
  - (i) a proceed direction; or
  - (ii) a halt direction; or
- (b) receives a re-run direction.

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

- (a) subject to regulation 40(1)(b), in accordance with the re-run notice or re-run direction commence the re-run of the allocation process or part of it; and

- (b) after completion of the re-run, comply with regulation 35.

## CHAPTER 5

### Delay and re-running the allocation process

#### **Delay after completion of allocation processes**

- 40.**—(1) Where the delay period has expired—
- (a) a proceed notice or a proceed direction must not be given; and
  - (b) the delivery body must not re-run part only of the allocation process.
- (2) Where paragraph (1) applies the delivery body must—
- (a) re-run the allocation process;
  - (b) comply with regulation 34(2) to (6); and
  - (c) after completion of the re-run, comply with regulation 35 and Chapter 4 of this Part.
- (3) In this regulation, “delay period” means—
- (a) where a variation notice was not required to be given when the allocation process commenced, a period of more than 5 months has expired since the application closing date; or
  - (b) where a variation notice was required to be given when the allocation process commenced, a period of more than 5 months has expired since the date on which the variation notice was required to be given.
- (4) The allocation framework for the allocation round may provide for a period other than “5 months” stated in paragraph (3)(a) or (b) and where such other period is provided, “delay period” has effect with that modification.