
STATUTORY INSTRUMENTS

2006 No. 1806

The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

Notice to bidders

15.—(1) Where there is more than one bidder, OFCOM shall give notice to each of the bidders of —

- (a) the day on which and the times on that day within which sealed bids must be delivered to OFCOM (the “sealed bid delivery period”);
- (b) the identity of all bidders; and
- (c) a password which the bidder must specify on its bidding menu document to confirm that it has originated from that bidder.

(2) OFCOM shall publish on their internet website the identity of the bidders to whom OFCOM have given notice and the sealed bid delivery period.

Bid documentation

16. The bid documentation shall consist of —

- (a) a bidding menu document in the form set out in Schedule 5, completed by the bidder in accordance with regulation 17, signed on its behalf by two authorised persons and bearing that bidder’s password (a “bidding menu document”); and
- (b) a document in the form set out in Schedule 6, completed in respect of the bidder and signed on its behalf by two authorised persons.

Completion of the bidding menu document

17.—(1) Where a bidder wishes to specify a sum on the bidding menu document which it commits to pay for a licence (a “bid”) it must specify an amount in whole pounds in words and figures which must be greater than or equal to the minimum bid.

(2) The minimum bid shall be:—

- (a) fifty thousand pounds for a licence which authorises use of frequencies comprising one frequency lot;
- (b) one hundred thousand pounds for a licence which authorises use of frequencies comprising any two frequency lots;
- (c) one hundred and fifty thousand pounds for a licence which authorises use of frequencies comprising any three frequency lots; and

- (d) two hundred thousand pounds for a licence which authorises use of frequencies comprising all four frequency lots.
- (3) On the bidding menu document a bidder must —
 - (a) specify a bid against a licence;
 - (b) only specify one bid against any one licence; and
 - (c) specify a bid against at least one licence but need not specify a bid against each licence.

Submission of sealed bids to OFCOM

- 18.**—(1) The completed bid documentation must be placed in a non-transparent envelope and sealed.
- (2) The sealed non-transparent envelope containing the bid documentation constitutes a sealed bid.
- (3) Sealed bids must be delivered to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA and be placed in the box marked for delivery of sealed bids during the sealed bid delivery period.
- (4) Only a bidder may submit a sealed bid to OFCOM.
- (5) A bidder may only submit one sealed bid.

Bid deposit

- 19.**—(1) In addition to the initial deposit paid at the time of application, a bidder must, on the day specified for delivery of sealed bids under regulation 15, 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.
- (2) The further sum to be paid under paragraph (1) shall —
 - (a) where the initial deposit has not been forfeited in accordance with regulation 27, be a sum representing the difference between —
 - (i) the bidder's initial deposit; and
 - (ii) the highest sum which that bidder has specified on the bidding menu document against any of the licences; or
 - (b) where the initial deposit has been forfeited in accordance with regulation 27, be a sum equal to the highest sum which that bidder has specified on the bidding menu document against any of the licences.
- (3) The total amount on deposit after payment of the further sum constitutes the bid deposit.

Opening of sealed bids

20. OFCOM shall only open sealed bids which were submitted to OFCOM in accordance with regulation 18(1) and (3) and shall reject sealed bids which were not so submitted.

Incomplete or defective completion of bid documents

21.—(1) Where, due to the manner of completion, bid documentation is incomplete or defective but OFCOM can identify the bidder and ascertain the bidder's intention in relation to bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified time that OFCOM have correctly identified the bidder and ascertained its intention in relation to bids.

(2) Where the bidder confirms in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not confirm in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be rejected by OFCOM.

Rejection of opened sealed bids from the award process

22.—(1) OFCOM shall also reject and exclude from the award process the entirety of an opened sealed bid where —

- (a) in any case where regulation 21(1) does not apply, the bidder has not completed the bid documentation in accordance with the requirements of these Regulations;
- (b) the sealed bid was submitted by a person other than a bidder;
- (c) the bidder has submitted more than one sealed bid; or
- (d) the entirety of the bid deposit has not been paid into OFCOM's bank account in accordance with regulation 19.

(2) OFCOM shall notify any bidder whose sealed bid has been rejected and shall give reasons for the rejection.

(3) OFCOM shall also notify any bidder to whom a notice was given under regulation 15(1) but in respect of whom a sealed bid was not opened.

Valid bids

23.—(1) Only bids specified on a bidding menu document in accordance with regulation 17 and contained in a sealed bid which has not been rejected by OFCOM ("valid bids") shall be taken into consideration for the purpose of determining the winning combination of bids under regulation 24.

(2) Any bidder to whom a notice was given under regulation 15(1) who does not submit a valid bid shall be excluded from the award process and shall not receive a refund of its initial deposit, or its bid deposit where a bid deposit has been paid, which shall (where not already forfeited under regulation 27) be forfeited.

Determination of the winning bids and the winning combination of bids

24.—(1) The winning bids shall be those valid bids that comprise the winning combination of bids.

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

(3) A valid combination of bids is any combination of valid bids for licences where within that combination of bids —

- (a) there is at most one valid bid from any one bidder; and
- (b) each frequency lot is included at most once.

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

(5) The order of precedence shall be determined by —

- (a) the number of frequency lots included within each such valid combination of bids such that valid combinations of bids including a greater number of frequency lots prevail over valid combinations of bids including fewer frequency lots; and
- (b) where any two or more such valid combinations of bids include the equal highest number of frequency lots, OFCOM shall employ a method of random selection from amongst those valid combinations of bids to determine the winning combination of bids.

Grant of licences and payment of refunds to winning bidders

25.—(1) After determining the winning bids and the identity of the winning bidders in accordance with regulation 24, OFCOM shall —

- (a) grant each winning bidder the licence in respect of which that bidder submitted a winning bid; and
- (b) refund to each winning bidder a sum calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference between the winning bidder's bid deposit and the winning bidder's winning bid.

(3) The licence fee in respect of a winning bidder's licence shall be a sum equal to the winning bid made by that winning bidder.

Completion of the award process

26. After the grant of licences and the payment of refunds to winning bidders, OFCOM shall complete the award process by —

- (a) publishing on their internet website the identity of all bidders, the details of all valid bids, the identity of the persons to whom licences were granted, the details of the frequency lots in respect of which those licences were granted and the details of the licence fees paid; and
- (b) refunding to applicants who were not qualified or who withdrew in accordance with regulation 10, and unsuccessful bidders the initial deposits or bid deposits, (where such deposits have not already been forfeited under regulations 23(2) or 27) but not any interest which has accrued on the deposits.