
STATUTORY INSTRUMENTS

2007 No. 3380

The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 2

Primary bids and supplementary bids

Primary bids

15.—(1) 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 each lot included in the selection of lots in that primary bid.

(2) The round price means the price per lot determined in accordance with regulation 19 at which lots in a particular band are offered to bidders during a primary bid round.

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

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and
- (b) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices in that primary bid round for the lots specified under subparagraph (a).

(4) In respect of each band, the number of lots in a band specified by a bidder under paragraph (3) (a) must not be greater than the available total for that band.

(5) Where the selection of lots in a primary bid includes lots in the national 10 GHz band, it must include at least two such lots.

(6) A bidder must not submit more than one primary bid in any primary bid round.

(7) The selection of lots in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid in accordance with paragraph (8) does not exceed the bidder’s eligibility limit for that primary bid round as determined in accordance with regulation 21 or 22 (as the case may be) and notified to the bidder in accordance with regulation 27(1) (c).

(8) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

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

16. Any bidder which does not submit a valid primary bid in the first primary bid round shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 23, which shall (where not already forfeited under regulation 64) be forfeited.

Supplementary bids

17.—(1) A bid made during the supplementary bids round (“supplementary bid”) shall be at an amount in whole pounds.

(2) The amount of the supplementary bid shall be determined by the bidder, subject to the restrictions set out in regulation 26.

(3) In order to make a supplementary bid a bidder must, on a form provided to the bidder by OFCOM (“supplementary bids form”)—

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and
- (b) specify an amount in whole pounds that it is willing to pay for the licence.

(4) In respect of each band, the number of lots specified by a bidder under paragraph (3)(a) must not be greater than the available total for that band.

(5) Where the selection of lots in a supplementary bid includes lots in the national 10 GHz band, it must include at least two such lots.

(6) The selection of lots in a supplementary bid made by a bidder may be the same as or different from the selections of lots in primary bids made by the bidder.

(7) A bidder may submit any number of supplementary bids in the supplementary bids round, subject to the restriction set out in paragraph (8).

(8) A bidder may not submit more than one supplementary bid for each particular selection of lots.

(9) A bidder is not required to submit a supplementary bid.

Number of primary bid rounds

18.—(1) After each primary bid round, OFCOM shall determine in respect of each band whether the total number of lots in the band included in selections of lots in valid primary bids submitted during that round (“bid total”) is greater than the available total for the band.

(2) Where for each band the bid total is not greater than the available total—

- (a) there shall be no further primary bid rounds; and
- (b) there shall be a supplementary bids round.

(3) Where for at least one band the bid total is greater than the available total, there shall be another primary bid round unless OFCOM determine, in accordance with paragraph (4), that there shall be no further primary bid rounds.

(4) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be made available to bidders by OFCOM in accordance with regulation 32 following any further primary bid rounds would affect—

- (a) the determination of the winning combination of principal stage bids in accordance with regulation 41;
- (b) the determination of the base price payable by a winning bidder in accordance with regulation 42.

(5) Where OFCOM have determined under paragraph (3) that there shall be no further primary bid rounds, there shall be a supplementary bids round.

Determination of round prices for primary bid rounds

19.—(1) In the first primary bid round, the round price for a lot in each band shall be the amount set out in Schedule 6.

(2) In subsequent primary bid rounds, the round price for a lot in each band shall be determined by OFCOM in accordance with paragraph (3) or (5) (as the case may be).

(3) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for a band is greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be an amount that is higher than the amount that was the round price for a lot in that band in the previous primary bid round, subject to the limit in paragraph (4).

(4) Where paragraph (3) applies, the amount of the round price for a lot in that band in the next primary bid round shall not be more than twice the amount of the round price for a lot in that band in the previous primary bid round.

(5) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for the band is not greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be the same amount as it was in the previous primary bid round.

Bidder's eligibility limit for primary bid rounds

20. Before each primary bid round OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 21 or 22 (as the case may be).

Determination of bidder's eligibility limit for the first primary bid round

21.—(1) After the deadline specified in regulation 23(2) and before the start of the first primary bid round, OFCOM shall determine each bidder's eligibility limit for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by ten thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 23, but not including any sum forfeited under regulation 64).

(3) Where the number that results from the calculation in paragraph (2) is greater than forty-two, the eligibility limit shall be forty-two.

(4) Where the number that results from the calculation in paragraph (2) is not greater than forty-two, the eligibility limit shall be—

- (a) that number, or
- (b) where the number is not a whole number, that number rounded down to the nearest whole number.

Determination of bidder's eligibility limit for subsequent primary bid rounds

22.—(1) For subsequent primary bid rounds, each bidder's eligibility limit shall be determined under paragraph (2) or (5) (as the case may be).

(2) 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 the valid primary bid.

(3) The number of eligibility points associated with a valid primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

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

(5) 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.

Additional deposit before the first primary bid round

23.—(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 21 for the purpose of calculating the bidder's eligibility limit 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.

Valid primary bids

24.—(1) A primary bid shall only be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 18(1);
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42;

if it satisfies the conditions set out in paragraph (2) ("valid primary bid").

(2) The conditions are that—

- (a) the primary bid is made on a primary bid form that has been completed in accordance with regulation 15(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 15(6);
- (c) the primary bid complies with the restrictions set out in regulation 15(4) and (7) and with the requirement set out in regulation 15(5); and
- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 28(1) and is received by OFCOM in accordance with regulation 28(2).

Valid supplementary bids

25.—(1) A supplementary bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42;

if it satisfies the conditions set out in paragraph (2) ("valid supplementary bid").

(2) The conditions in respect of a supplementary bid are that—

- (a) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 17(3);
- (b) the amount of the supplementary bid specified by the bidder under regulation 17(3)(b) complies with the restrictions set out in regulation 26;
- (c) the supplementary bid complies with the requirement set out in regulation 17(5);

- (d) the supplementary bid is submitted in accordance with the restrictions set out in regulation 17(4) and (8); and
- (e) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2).

Restrictions on amount of supplementary bid

26.—(1) The restrictions that apply to the amount of a supplementary bid specified by a bidder under regulation 17(3)(b) are that—

- (a) the amount of the supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the lots included in the selection of lots in that bid;
- (b) where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary round bid, the amount of the supplementary bid must be greater than the amount of the highest primary round bid made by the bidder for that selection of lots;
- (c) where—
 - (i) the bidder did not make a valid primary bid in the final primary bid round, or
 - (ii) the total number of eligibility points associated with the supplementary bid in accordance with paragraph (4) is greater than the total number of eligibility points associated with the valid primary bid made by the bidder in the final primary bid round in accordance with paragraph (4),

the amount of the supplementary bid must not be greater than the amount determined in accordance with paragraph (2).

(2) That amount shall be the total amount of the round prices in the primary bid round referred to in paragraph (3) for the lots included in the selection of lots in the supplementary bid.

(3) That primary bid round is the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the restriction set out in regulation 15(7).

(4) The number of eligibility points associated with a primary bid or a supplementary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that bid in accordance with Schedule 7.