

---

STATUTORY INSTRUMENTS

---

**2008 No. 3190**

**The Wireless Telegraphy (Licence Award) (Cardiff) Regulations 2008**

**PART 3**

**QUALIFICATION STAGE**

**Assessment of bidder groups**

5.—(1) OFCOM shall give notice to each applicant of—

- (a) the name of each other applicant and the names of their associates; and
- (b) the deadline by when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).

(2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its bidder group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM, and OFCOM shall specify a further deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or is an applicant; and
- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM.

(5) If it appears to OFCOM from any application that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
- (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(6) OFCOM shall record the members of each applicant's bidder group as soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (1), (3) and (5).

### **Subsequent changes to bidder groups**

6.—(1) An applicant or a bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group but, in relation to the award process, the applicant shall be subject to regulation 7(2) and regulation 36 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the documents provided under regulation 4(3)(a)(i) which comply with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 2 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed.

### **Determination of applicants which are qualified to bid**

7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant's bidder group.

(3) In making their determination under paragraph (1) OFCOM shall take into account whether—

- (a) the grant of the licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold the licence having regard to the probity of—
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) each director of each member of the applicant's bidder group;
- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) any member of the applicant's bidder group has colluded or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose, or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
  - (i) to OFCOM;
  - (ii) to a member of the applicant's bidder group;
  - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
  - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (g) any member of the applicant's bidder group has obtained, is obtaining or attempting to obtain confidential information relating to another applicant;

- (h) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
  - (i) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
    - (i) taking part in the preparation of both bidder groups for participation in the award process; or
    - (ii) receiving confidential information relating to both bidder groups.
- (4) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM reasonably require to make their determination.
- (5) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.
- (6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

#### **Publication of determination**

- 8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(1).
- (2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant which is so qualified and shall publish the names of all applicants which are qualified to bid on OFCOM's internet website.

#### **Withdrawal of an application**

- 9.—(1) OFCOM shall notify each applicant qualified to bid of the last day for withdrawal from the award process ("last day for withdrawal") and shall publish the last day for withdrawal on OFCOM's internet website.
- (2) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall notify all other applicants of the withdrawal.
- (3) Where an applicant withdraws its application in accordance with paragraph (2)—
  - (a) that applicant shall not be re-admitted to the award process; and
  - (b) that applicant's initial deposit shall not be forfeited for that reason.

#### **Determination of number of bidders**

- 10.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.
- (2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 36) but not any interest which has accrued on the deposits.
- (3) Where there is only one bidder, OFCOM shall grant the licence in accordance with the procedure set out in Part 4 of these Regulations.
- (4) Where the number of bidders is more than one, OFCOM shall grant the licence in accordance with the procedure set out in Part 5 of these Regulations.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

(5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement of whether OFCOM will proceed to grant the licence in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.