
STATUTORY INSTRUMENTS

2008 No. 3190

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

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

Auction stage

15.—(1) Where there is more than one bidder, the process for the award of the licence shall consist of the procedure set out in this Part (“auction stage”).

(2) A bid made during the auction stage shall be a bid for the licence.

(3) During the auction stage there shall be one or more rounds for the making of bids.

CHAPTER 2

Bids

Bid requirements

16.—(1) In order to make a bid a bidder must, on a form provided to the bidder by OFCOM (“bid form”), specify the amount that it is willing to pay for the licence.

(2) The amount of the bid shall be determined by the bidder, subject to the restrictions set out in regulation 21.

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

Requirement for a valid bid in the first round

17.—(1) Any bidder which does not submit a valid bid in the first round shall be excluded from the award process and shall not receive a refund of its initial deposit nor any sum that the bidder has paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 36) be forfeited.

(2) Where there are no valid bids in the first round, there shall be no subsequent rounds and there shall be no winning bidder.

Number of rounds

18.—(1) After each round, OFCOM shall determine the total number of valid bids submitted at an amount equal to the round price for that round (“bid total”).

(2) Where the bid total is more than one there shall be another round.

- (3) Where the bid total is one or zero or where there are no valid bids—
 - (a) that round shall be the final round; and
 - (b) OFCOM shall determine the winning bid and licence fee in accordance with regulation 30.

Participation in subsequent rounds

19. Where there is another round in accordance with regulation 18(2), a bidder may make a bid in that round only if it made a valid bid in the previous round at an amount equal to the round price.

Determination of round prices for rounds

- 20.—(1) In the first round, the round price shall be fifteen thousand pounds.
- (2) In subsequent rounds, the round price shall be determined by OFCOM in accordance with paragraphs (3) and (4).
- (3) The round price shall be higher than the round price in the previous round.
- (4) The round price shall not be more than twice the round price in the previous round.

Amount of bids

- 21.—(1) A bid made during the first round shall be at an amount in whole pounds that is—
 - (a) at least ten thousand pounds; and
 - (b) not more than the amount of the round price for the first round.
- (2) A bid made during a subsequent round shall be at an amount in whole pounds that is—
 - (a) more than the amount of the round price for the preceding round; and
 - (b) not more than the amount of the round price for that round.

Valid bids

- 22.—(1) A bid shall only be taken into consideration for the purposes of determining—
 - (a) the bid total in accordance with regulation 18(1);
 - (b) the winning bid in accordance with regulation 30(2); and
 - (c) the licence fee payable by the winning bidder in accordance with regulation 30(5)if it satisfies the conditions set out in paragraph (2) (“valid bid”).
- (2) The conditions are that—
 - (a) the bid is made on a bid form that has been completed in accordance with regulation 16(1);
 - (b) the bid is submitted in accordance with the restriction set out in regulation 16(3);
 - (c) the bidder complies with regulation 19 and 21;
 - (d) the completed bid form is submitted to OFCOM in accordance with regulation 24(1) and is received by OFCOM in accordance with regulation 24(2); and
 - (e) if regulation 26 applies, the bid is not rejected in accordance with regulation 26(3).

CHAPTER 3

Procedure for rounds

Notice to bidders

- 23.—(1) Before the start of a round, OFCOM shall notify each bidder of—

- (a) the day on which, and the times on that day during which, subject to paragraph (2), the round will be held; and
 - (b) the round price for that round.
- (2) The time notified by OFCOM under paragraph (1)(a) as the end of the round may be treated by a bidder in respect of—
- (a) no more than two rounds; and
 - (b) for each round in respect of which paragraph (3) applies to the bidder, a further round, as that time extended by thirty minutes, and OFCOM shall treat that extended time as the end of the round for the purposes of paragraph (1)(a) (“round extension”).
- (3) This paragraph applies to a bidder where—
- (a) in respect of a previous round, the bidder treated the end of that round as extended by thirty minutes in accordance with paragraph (2);
 - (b) the bidder submitted its completed bid form for that round so that it was received by OFCOM by the end of the round so extended; and
 - (c) OFCOM have notified the bidder that they are satisfied that, in respect of that round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its bid form so that it was received by OFCOM by the end of the round without such an extension.
- (4) Where there is a round extension in accordance with paragraph (2), OFCOM shall notify bidders when the round has been extended and when it has been concluded.

Submission of bid form to OFCOM

- 24.—(1) Except as provided for in regulation 25, a bidder must submit the completed bid form to OFCOM by using the electronic auction system.
- (2) The completed bid form must be received by OFCOM by the time notified by OFCOM under regulation 23(1)(a) as the end of that round.

Alternative method for submission of bid form

- 25.—(1) Where OFCOM are satisfied that a bidder is unable to submit a bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the bid form and any requirements relating to the authentication of communications made by means of the alternative method.
- (2) The bidder must submit the bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Incomplete or defective bid forms

- 26.—(1) Where, due to the manner of completion, a bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder’s intention in relation to the making of the bid, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder’s intention in relation to the making of the bid.
- (2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder’s intention, the bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the bid form in its entirety shall be rejected by OFCOM and the bid submitted on the bid form shall not be a valid bid.

Notification that bid is not valid

27. Where a bidder submits a bid that is not a valid bid during a round OFCOM shall, after the end of that round, notify the bidder of that fact and shall give the reasons why the bid is not a valid bid.

Release of information on bids

28. After the end of a round and before the start of a subsequent round, OFCOM shall notify each bidder of the number of bidders in that round that made—

- (a) a valid bid at the round price for that round; and
- (b) a valid bid at an amount less than the round price for that round.

Further deposit for subsequent rounds

29.—(1) Where, in respect of a bid, the amount specified by a bidder is greater than the total amount that the bidder has on deposit OFCOM may, having regard to the desirability of securing an efficient outcome of the auction stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit is not less than the amount of the highest valid bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and following notice being given under this paragraph the bidder shall not submit a bid in any subsequent round.

CHAPTER 4

Determination of winning bid, grant of licence and completion of award process

Determination of the winning bid and the licence fee

30.—(1) Following the final round, OFCOM shall determine the winning bid and the identity of the winning bidder.

(2) Subject to paragraph (3), the winning bid shall be the highest valid bid made in the auction stage.

(3) Where there is more than one valid bid of equal highest value, OFCOM shall employ a method of random selection amongst those bids to determine which shall be the winning bid.

(4) The winning bidder shall be the bidder which submitted the winning bid.

(5) Subject to paragraph (6), the licence fee shall be the amount of the highest valid bid in the auction stage that was not made by the winning bidder.

(6) Where there is only one valid bid in the first round, the licence fee shall be ten thousand pounds.

Notification of results of the auction stage

31. OFCOM shall notify the winning bidder of the winning bid and the licence fee.

Procedure where amount of winning bidder's deposit is less than the licence fee

32.—(1) Where the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) is an amount that is less than the amount of the licence fee calculated in accordance with regulation 30—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b); and
- (b) the winning bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the winning bidder, a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the licence fee calculated in accordance with regulation 30 and the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36).

(3) Where the winning bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the winning bidder the licence.

(4) Where the winning bidder has not satisfied the requirement set out in paragraph (1)(b), that bidder—

- (a) shall not be entitled to the grant of the licence under these Regulations; and
- (b) shall not receive a refund of its initial deposit and any sum paid as a deposit under regulation 29, which shall (where not already forfeited under regulation 36) be forfeited.

Procedure where amount of winning bidder's deposit is greater than or equal to the licence fee

33.—(1) Where the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) is greater than or equal to the amount of the licence fee calculated in accordance with regulation 30, OFCOM shall—

- (a) grant the winning bidder the licence; and
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to the winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 29, but not including any sum forfeited under regulation 36) and the amount of the licence fee calculated in accordance with regulation 30, but not any interest which has accrued on the deposit.

Licences not awarded

34.—(1) Where OFCOM do not grant the licence to the winning bidder because that bidder has failed to make payment in accordance with regulation 32(1)(b), OFCOM shall select the appropriate bidder (from among the remaining bidders) which should next be offered the licence in accordance with the order of precedence set out in paragraph (3) and OFCOM shall follow paragraphs (5) and (6) of regulation 30 but having regard only to valid bids made by the remaining bidders to determine the licence fee and the procedures in regulation 31 and either regulation 32 or 33 (as the case may be) in order to receive payment of the licence fee and grant the licence.

(2) Should that bidder fail to make payment, OFCOM shall follow the same procedure to offer the licence to the next bidder in the order of precedence until the licence is awarded or the list of remaining bidders is exhausted.

(3) The order of precedence amongst the list of remaining bidders shall be determined by the amount of the highest valid bid made by each of those bidders such that higher amounts shall prevail over lower amounts and, where the highest valid bids of any two or more bidders are for equal amounts, OFCOM shall employ a method of random selection to determine the precedence among those bidders.

Completion of the award process

35. After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website details of all valid bids made by each bidder, the name of the person to whom the licence was granted, and the amount of the licence fee paid; and
- (b) refunding to—
 - (i) applicants which were not qualified or which withdrew in accordance with regulation 9; and
 - (ii) bidders which were not the winning bidder;

the initial deposit and any sum paid as a deposit under regulation 29 (where such deposits have not been forfeited under regulation 36) but not any interest which has accrued on the deposits.