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STATUTORY INSTRUMENTS

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**2008 No. 686**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - *12th March 2008*

*Coming into force* - - *2nd April 2008*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by section 14(1), (2), (3), (4), (6) and (7) and section 122(7) of the Wireless Telegraphy Act 2006<sup>(1)</sup> (“the 2006 Act”).

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the 2006 Act, published notice of their proposal in accordance with section 122(4)(b) of the 2006 Act and have considered the representations made to them before the time specified in that notice in accordance with section 122(4)(c) of the 2006 Act.

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2008 and shall come into force on 2nd April 2008.

(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

**Interpretation**

2. In these Regulations—

“applicant” means a body corporate making an application for a licence;

“associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;

“authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;

“the auction stage” has the meaning given in regulation 14(1);

“auction stage bid” means a primary bid or supplementary bid;

“bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;

“bidder group” means, in relation to an applicant or bidder—

- (a) that applicant or bidder;
- (b) each associate of that applicant or bidder; and
- (c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 2;

“compatible combination of bids” means any combination of valid auction stage bids—

- (a) where the combination includes at most one bid from each bidder;
- (b) where each lot is selected in no more than one bid; and
- (c) where any two bids within the combination have different choices of licence condition, the frequencies which are comprised within at least two lots which are not selected in any bid within the combination separate the lots selected in these two bids where the different licence conditions have been chosen;

“confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

“deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—

- (a) the time,
- (b) the date, or
- (c) the date, and the time on that date,

by which that requirement must be fulfilled by that person;

“electronic auction system” means the system established by OFCOM for bidders to participate in the award process;

“end of round time” has the meaning given in regulation 27(2);

“high power licence condition” means the licence condition which does not limit the maximum power of transmitters but limits the density of their deployment within a geographical area;

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“the last day for withdrawal” has the meaning given in regulation 9(1);

“licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at frequencies to be determined in accordance with the procedure set out in Part 4 or Part 5 of these Regulations;

“licence condition” means either the “high power licence condition” or the “low power licence condition”;

“lot” means a range of frequencies as set out in regulation 14(4);

“lot selection menu” shall be construed in accordance with regulation 11(1);

“low power licence condition” means the licence condition which limits the maximum power of transmitters but does not limit the density of their deployment within a geographical area;

“MHz” means megahertz;

“material interest” means, whether held directly or indirectly—

(a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006<sup>(2)</sup>) in—

(i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or

(ii) any share or shares in the case of which the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or

(b) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

“OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their internet website;

“pounds” means pounds sterling;

“primary bid” has the meaning given in regulation 15(1);

“primary bid form” has the meaning given in regulation 15(3);

“round price” means the price per lot determined in accordance with regulation 19;

“supplementary bid” has the meaning given in regulation 17(1);

“supplementary bids form” has the meaning given in regulation 17(3);

“valid primary bid” has the meaning given in regulation 24(1);

“valid auction stage bid” means a valid primary bid or a valid supplementary bid;

“valid supplementary bid” has the meaning given in regulation 25(1);

“winning auction stage bid” shall be construed in accordance with regulation 41(1);

“winning bidder” means a bidder who submitted a winning auction stage bid;

“winning combination of auction stage bids” shall be construed in accordance with regulation 41(2); and

“winning price” has the meaning given in regulation 43.

## PART 2

### APPLICATION STAGE

#### Applications for the grant of a licence

3. Applications for the grant of a licence shall only be made in accordance with the procedure set out in these Regulations.

#### Application

4.—(1) Only a body corporate may apply to OFCOM for a licence.

(2) A body corporate may only make one application.

(3) To apply for a licence, a body corporate must—

(a) on the day specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM a sealed envelope containing—

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(2) 2006 c.45.

- (i) a document containing the application information required by, and the warranty set out in, Schedule 1, completed in respect of the applicant and signed on its behalf by two authorised persons;
  - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its bidder group, a document in the form set out in Schedule 2 which has been—
    - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
    - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
  - (b) by the deadline specified by OFCOM, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of fifty thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website.

## 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 its associates; and
  - (b) the deadline by when each applicant must make a notification 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 respective 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 under paragraph (1), 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) and 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 in the notice under paragraph (1).
- (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 a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

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

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

6.—(1) An applicant or 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 regulations 7(2) and 49 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 document provided under regulation 4(3)(a)(i) which complies 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 a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a 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 or 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 who is so qualified and shall publish the names of all applicants who 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 ("the 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) Once an applicant withdraws its application, that applicant shall not be re-admitted to the award process.

(4) Where an applicant withdraws its application in accordance with paragraph (2), 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 already been forfeited under regulation 49) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall follow the procedure set out in Part 4 of these Regulations.

(4) Where the number of bidders is more than one, OFCOM shall follow the procedure set out in Part 5 of these Regulations.

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

## PART 4

### PROCEDURE WHERE THERE IS ONLY ONE BIDDER

#### Lot selection menu

- 11.**—(1) Where there is only one bidder, OFCOM shall notify that bidder of—
- (a) a deadline by when the bidder must deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA a lot selection menu in the form set out in Schedule 3 completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
  - (b) a further deadline by when the bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).
- (2) The bidder must ensure that its lot selection satisfies the following conditions—
- (a) at least one lot is selected;
  - (b) a licence condition is specified which it wishes to have included in the licence for that selection of lots.
- (3) The licence fee shall be the total amount of the prices as specified by OFCOM on the lot selection menu for the lots selected by the bidder.
- (4) The sum which the bidder must pay to OFCOM shall be—
- (a) where the initial deposit has not been forfeited in accordance with regulation 49, a sum equal to the licence fee less the initial deposit; or
  - (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

#### Grant of licence

**12.**—(1) Where OFCOM have received from the bidder a completed lot selection menu in accordance with regulation 11(1)(a) and the required sum in accordance with regulation 11(1)(b), OFCOM shall grant the bidder a licence for the lots selected on that completed lot selection menu which includes the licence condition that matches the licence condition chosen by the bidder.

(2) Where OFCOM have not received from the bidder a completed lot selection menu in accordance with regulation 11(1)(a) or the required sum in accordance with regulation 11(1)(b), the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 49) be forfeited.

#### Completion of the award process

- 13.** After the grant of the licence, OFCOM shall complete the award process by—
- (a) publishing on their internet website the name of the bidder to which a licence has been granted, the details of the lots in respect of which the licence was granted, the licence condition applying to the licence and the licence fee paid; and

- (b) 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 49) but not any interest which has accrued on the deposits.

## PART 5

### PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

#### CHAPTER 1

##### Auction stage

##### **Auction stage**

14.—(1) Where there is more than one bidder, the process for the award of licences shall consist of the procedure set out in Chapters 2 to 5 of this Part (“the auction stage”).

(2) During the auction stage there shall be one or more rounds for the making of primary bids (“primary bid rounds”) and a further round for the making of supplementary bids (“supplementary bids round”).

(3) A bid made during the auction stage shall be a bid for a selection of lots.

(4) The lots available for selection are—

- (a) Lot LA - 1452.000 – 1453.816 MHz;
- (b) Lot LB - 1453.816 – 1455.528 MHz;
- (c) Lot LC - 1455.528 – 1457.240 MHz;
- (d) Lot LD - 1457.240 – 1458.952 MHz;
- (e) Lot LE - 1458.952 – 1460.664 MHz;
- (f) Lot LF - 1460.664 – 1462.376 MHz;
- (g) Lot LG - 1462.376 – 1464.088 MHz;
- (h) Lot LH - 1464.088 – 1465.800 MHz;
- (i) Lot LI - 1465.800 – 1467.512 MHz;
- (j) Lot LJ - 1467.512 – 1469.224 MHz;
- (k) Lot LK - 1469.224 – 1470.936 MHz;
- (l) Lot LL - 1470.936 – 1472.648 MHz;
- (m) Lot LM - 1472.648 – 1474.360 MHz;
- (n) Lot LN - 1474.360 – 1476.072 MHz;
- (o) Lot LO - 1476.072 – 1477.784 MHz;
- (p) Lot LP - 1477.784 – 1479.500 MHz; and
- (q) Lot LQ - 1479.500 – 1492.000 MHz.

#### CHAPTER 2

##### Structure of auction stage

##### **Primary bids**

15.—(1) A bid made during a primary bid round (“primary bid”) shall—



- (a) be a bid for a selection of lots at an amount in whole pounds which shall be the total amount of the round prices in that primary bid round for each lot included in the selection; and
  - (b) contain the choice of licence condition which the bidder wishes to have included in a licence for that selection of lots.
- (2) The round price means the price per lot determined in accordance with regulation 19.
- (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 the selection of lots it wishes to be included in a licence;
  - (b) specify the choice of licence condition which it wishes to have included in a licence for that selection of lots; and
  - (c) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices for each lot included in that selection of lots.
- (4) A bidder shall submit no more than one primary bid in a primary bid round.
- (5) The selection of lots specified 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 (6) 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).
- (6) 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 specified in that primary bid set out in Schedule 5.

#### **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 49) be forfeited.

#### **Supplementary bids**

- 17.—(1)** A bid made during the supplementary bids round (“supplementary bid”) shall—
- (a) be a bid for a selection of lots at an amount in whole pounds; and
  - (b) contain the choice of licence condition which the bidder wishes to have included in a licence for that selection of lots.
- (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 shall, on a form provided to the bidder by OFCOM (“supplementary bids form”)—
- (a) specify the selection of lots it wishes to be included in a licence;
  - (b) specify the choice of licence condition which it wishes to have included in a licence for that selection of lots; and
  - (c) specify an amount in whole pounds that it is willing to pay for the licence.
- (4) The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in a primary bid made by the bidder.
- (5) A bidder shall submit no more than two thousand supplementary bids in the supplementary bids round, subject to the restrictions set out in paragraphs (6) and (7).

(6) A bidder may not submit more than two supplementary bids for each particular selection of lots.

(7) Where a bidder submits two supplementary bids for a particular selection of lots, each of those supplementary bids must specify a different choice of licence condition.

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

### **Number of primary bid rounds**

**18.**—(1) Where the combination of all bids received in a primary bid round is a compatible combination of bids—

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

(2) Where the combination of all bids received in a primary bid round is not a compatible combination of bids, there shall be a further primary bid round unless OFCOM determine in accordance with paragraph (3) that there shall be no further primary bid rounds.

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

- (a) the determination of the winning combination of auction stage bids in accordance with regulation 41; or
- (b) the determination of the winning price payable by the winning bidder in accordance with regulation 43.

(4) Where OFCOM have made a determination under paragraph (2) there shall be a supplementary bids round.

### **Determination of round prices for primary round bids**

**19.**—(1) In the first primary bid round, the round price for each lot shall be the amount set out in Schedule 4.

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

(3) Where a further primary bid round occurs—

- (a) the round price for any lot where that lot was included in more than one bid in the previous primary bid round;
- (b) the round price for any lot where that lot was only included in one bid in the previous primary bid round where—
  - (i) one of the lots immediately adjacent to that lot was only included in one other bid; and
  - (ii) these two bids specified different choices of licence condition; and
- (c) the round price for any lot where that lot was only included in one bid in the previous primary bid round where—
  - (i) one of the lots immediately adjacent to that lot was not included in any bid;
  - (ii) the next immediately adjacent lot was only included in one other bid; and
  - (iii) these two bids specified different choices of licence condition;

shall be an amount that is higher than the amount that was the round price for that lot in the previous primary bid round, subject to the limitation in paragraph (4).

(4) In the circumstances described in paragraph (3), the amount of the round price for the lot shall not be more than twice the amount of the round price for that lot in the previous primary bid round.

(5) The amount of the round price for any lot not included in the circumstances described in paragraph (3), 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 fifty 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 49).

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

(4) Where the number that results from the calculation in paragraph (2) is not greater than nineteen, 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 either under paragraphs (2) to (4) or under paragraph (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 specified in that primary bid in accordance with Schedule 5.

(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 subsequent primary bid round shall be zero.

### **Additional deposit before 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 the 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 number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43;

if it is a primary bid which 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(4);
- (c) the primary bid complies with the restriction 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 auction stage bids under regulation 41; and
- (b) the winning price payable by a winning bidder under regulation 43;

if it is a supplementary bid which satisfies the conditions set out in paragraph (2) (“valid supplementary bid”).

(2) The conditions 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 satisfies the requirements set out in regulation 26;
- (c) the supplementary bid is submitted in accordance with the restriction set out in regulation 17(6); and
- (d) 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 the amount of a supplementary bid**

**26.**—(1) The amount of a supplementary bid must be not less than the total amount of the round prices in the first primary bid round for the selection of lots comprised in the supplementary bid

(2) Where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary bid and the licence condition chosen is the same in the primary bid and the supplementary bid, the amount of the supplementary bid must be greater than the amount of the highest primary bid made by the bidder for that selection of lots for which the licence condition chosen is the same as that in the supplementary bid.

(3) Where—

- (a) the bidder did not make a valid primary bid in the final primary bid round; or

- (b) the total number of eligibility points associated with the selection of lots comprised in the supplementary bid is greater than the total number of eligibility points associated with the selection of lots comprised in the valid primary bid made by the bidder in the final primary bid round,

the amount of the supplementary bid must not be greater than the amount determined in accordance with paragraph (4).

(4) The amount referred to in sub-paragraph (3) is the total amount of the round prices for the selection of lots comprised in the supplementary bid in the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the rules set out in regulation 15(5).

## CHAPTER 3

### Procedure for primary bid rounds

#### **Notice to be given to bidders before primary bid rounds and extensions to rounds**

- 27.—(1) Before the start of each primary bid round, OFCOM shall notify each bidder of—
- (a) the date on which, and the times on that date within which, subject to paragraph (2), bidders may make primary bids;
  - (b) in respect of each lot, the round price for the lot (determined in accordance with regulation 19); and
  - (c) the eligibility limit for that bidder for that primary bid round (determined in accordance with regulation 21 or 22 as the case may be).

(2) The time notified by OFCOM under paragraph (1)(a) as the end of the primary bid round (“end of round time”) may be treated by a bidder in respect of—

- (a) no more than two primary bid rounds; and
- (b) for each primary round in respect of which paragraph (3) applies to the bidder, a further primary bid round,

as that time extended by thirty minutes, and OFCOM shall treat the extended time as the end of round time for the purposes of paragraph (1)(a).

- (3) This paragraph applies to a bidder where—
- (a) in respect of a previous primary bid round, the bidder treated the end of round time for that round as extended by thirty minutes in accordance with paragraph (2);
  - (b) the bidder submitted its completed primary bid form for that primary bid round so that it was received by OFCOM by the end of round time so extended; and
  - (c) OFCOM have notified the bidder that they are satisfied that, in respect of that primary bid round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its primary bid form so that it was received by OFCOM by the end of round time without such an extension.

#### **Submission of primary bid form to OFCOM**

28.—(1) Except as provided for in regulation 29, the bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.

- (2) The completed primary bid form must be submitted to OFCOM by the end of round time.

### **Alternative method for submission of primary bid form**

**29.**—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a primary 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 primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the primary 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 primary bid form**

**30.**—(1) Where, due to the manner of completion, a primary bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the primary 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 primary 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 primary bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the primary bid form in its entirety shall be rejected by OFCOM and the primary bid submitted on the primary bid form shall not be taken into consideration for the purposes of determining—

- (a) the number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43.

### **Notification that primary bid not valid**

**31.** OFCOM shall notify a bidder which submits a primary bid that is not a valid primary bid of that fact and shall give the reasons why the bid is not a valid primary bid.

### **Release of information on primary bids in auction stage**

**32.** After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of—

- (a) the number of bids made in that round which selected each lot available for selection; and
- (b) the number of those bids which specified each choice of licence condition for each lot available for selection.

### **Additional deposit for primary bid rounds**

**33.**—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 15(3)(c) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) OFCOM may, having

regard to the desirability of securing an efficient outcome to 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 (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) is not less than the highest valid primary bid that the bidder made before OFCOM issued the notification 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 provisions set out in paragraph (3), OFCOM shall notify the bidder of that fact and for any primary bid rounds following notice being given under this paragraph the bidders eligibility limit shall be zero.

## CHAPTER 4

### Procedure for supplementary bids round and final auction stage deposit

#### **Notice to be given to bidders before supplementary bids round**

- 34.** Before the start of the supplementary bids round, OFCOM shall notify each bidder of —
- (a) the date on which, and the times on that date within which, subject to regulation 37, bidders may make supplementary bids; and
  - (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

#### **Submission of supplementary bids form to OFCOM**

**35.—**(1) Except as provided for in regulation 36, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 37, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 34(a).

#### **Alternative method for submission of supplementary bids form**

**36.—**(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours to submit a supplementary bids 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 supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids 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.

#### **Extension to supplementary bids round**

**37.—**(1) Where OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 34(a) and paragraph (2) applies, the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not have submitted its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

### **Incomplete or defective supplementary bids form**

**38.**—(1) Where, due to the manner of completion, a supplementary bids form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the supplementary bid or bids, 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 supplementary bid or bids.

(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 supplementary bids form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of auction stage bids under regulation 41; and
  - (ii) the price payable by a winning bidder under regulation 43;
- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
  - (i) the winning combination of auction stage bids under regulation 41; and
  - (ii) the price payable by a winning bidder under regulation 43.

### **Notification that supplementary bid not valid**

**39.** OFCOM shall notify a bidder which submits a supplementary bid that is not a valid supplementary bid of that fact and shall give the reasons why the bid is not a valid supplementary bid.

### **Final auction stage deposit**

**40.**—(1) By the deadline notified to bidders under regulation 34(b), each bidder must 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 so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 or 33 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 49) is not less than whichever is the greater of—

- (a) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 15(3)(c); and
- (b) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 17(3)(c).

(2) Where a bidder does not satisfy the provisions set out in paragraph (1), OFCOM shall notify the bidder of that fact and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sums paid as a deposit under regulation 23, 33 or paragraph (1), which shall (where not already forfeited under regulation 49) be forfeited, and all of that bidder's



primary bids and supplementary bids shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41; and
- (b) the winning price payable by a winning bidder under regulation 43.

## CHAPTER 5

### Determination of winning auction stage bids and conclusion of auction stage

#### **Determination of the winning auction stage bids and the winning combination of auction stage bids**

**41.**—(1) The winning auction stage bids shall be those valid auction stage bids that comprise the winning combination of auction stage bids.

(2) Unless paragraph (3) applies, the winning combination of auction stage bids shall be the compatible combination of bids having the highest total value of amounts bid.

(3) Where there is more than one compatible combination of bids for which the total value is equal highest, the winning combination of auction stage bids shall be determined in accordance with the order of precedence set out in paragraph (4) or, where paragraph (5) applies, in accordance with that paragraph.

(4) The order of precedence shall be determined by the total number of eligibility points associated with each compatible combination of bids in accordance with paragraph (6) such that compatible combinations of bids to which a greater total number of eligibility points are associated prevail over compatible combinations of bids to which a lesser total number of eligibility points are associated.

(5) Where the same number of eligibility points is associated, in accordance with paragraph (6), with any two or more compatible combinations of bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those compatible combinations of bids to determine the winning combination of auction stage bids.

(6) The number of eligibility points associated with a compatible combination of bids shall be a number equal to the total of the eligibility points associated with each lot included in the selections of lots specified in the bids constituting that compatible combination of bids in accordance with Schedule 5.

#### **Unallocated lots**

**42.**—(1) Where the winning combination of auction stage bids results in some lots not being included in any winning auction stage bid (“unallocated lots”), OFCOM shall—

- (a) where there are only two adjoining unallocated lots situated immediately between lots selected in winning auction stage bids with different choices of licence condition, assign to the winning bidders for those winning auction stage bids the unallocated lot adjacent to the lot selected in their winning auction stage bid; and
- (b) in any other situation where there are unallocated lots, withhold those lots from being assigned.

(2) A winning bidder’s choice of licence condition does not apply to any unallocated lots assigned to it.

### **Determination of winning price of winning auction stage bids**

**43.** In respect of each winning auction stage bid, OFCOM shall determine an amount in accordance with Schedule 6 (“the winning price”) which shall be payable by the relevant winning bidder.<sup>(3)</sup>

### **Notification of results of auction stage**

**44.** Following determination of the winning combination of auction stage bids under regulation 41 and the determination of the winning price for each winning auction stage bid under regulation 43, OFCOM shall notify each bidder of—

- (a) the names of the winning bidders; and
- (b) in respect of each winning bidder—
  - (i) the lots comprised in its winning auction stage bid;
  - (ii) the licence condition which will be included in the licence for those lots;
  - (iii) any unallocated lots assigned to it under regulation 42(1)(a); and
  - (iv) the winning price for that winning auction stage bid.

## **CHAPTER 6**

### **Grant stage**

### **Determination of the licence fee**

**45.** The licence fee payable by a winning bidder shall be the amount equal to the winning price for that winning bidder’s winning auction stage bid determined by OFCOM under regulation 43.

### **Procedure where amount of winning bidder’s deposit is less than the licence fee**

**46.—(1)** Where the amount of a winning bidder’s deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) is an amount that is less than the amount of the winning bidder’s licence fee as determined in accordance with regulation 45—

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

(2) The sum which the winning bidder must pay to OFCOM shall be the difference between the amount of the winning bidder’s licence fee determined in accordance with regulation 43 and the amount of the winning bidder’s deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49).

(3) Where a winning bidder has satisfied the provisions set out in paragraph (1)(b), OFCOM shall grant that winning bidder a licence for the selection of lots contained in that winning bidder’s winning auction stage bid which includes the licence condition that matches the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that bidder under regulation 42(1)(a).

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(3) On 12th March 2008, OFCOM published notes on the determination of the licence fees payable by bidders in a document called ‘Notes on the determination of licence fees payable by bidders in relation to the award of the 1452MHz-1492MHz spectrum band: Schedule 6 to the Wireless Telegraphy (Licence Award) Regulations 2008’.

(4) Where a winning bidder does not satisfy the provisions set out in paragraph (1)(b), the winning bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sums paid as a deposit under regulations 23, 33 or 40, which shall (where not already forfeited under regulation 49) be forfeited.

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

47.—(1) Where the amount of winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33 or 40, but not including any sum forfeited under regulation 49) is greater than or equal to the amount of the winning bidder's licence fee determined in accordance with regulation 45, OFCOM shall—

- (a) grant the winning bidder a licence for the selection of lots contained in that bidder's winning auction stage bid which includes the licence condition that matches the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that winning bidder under regulation 42(1)(a); 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 a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) and the amount of the winning bidder's licence fee determined in accordance with regulation 45, but not any interest which has accrued on the deposit.

#### **Completion of the award process**

48. OFCOM shall complete the award process by—

- (a) publishing on their internet website details of all valid auction stage bids made by each bidder, the names of the persons to whom licences were granted, the selection of lots included in those licences, the licence conditions included in those licences and the details of the licence fees paid; and
- (b) refunding to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders, the initial deposits and any sums paid as a deposit under regulations 23, 33 or 40 (where such deposits have not been forfeited under regulation 16, 40(2) or 49), but not any interest which has accrued on the deposits.

## **PART 6**

### **ACTIVITY RULES**

#### **Forfeit of deposit and exclusion from award process**

49. If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 51 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulations 23, 33, or 40 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

### **Bids made by an excluded bidder**

**50.**—(1) Where a bidder is excluded from the award process under regulation 49(b) during the auction stage, all of the primary bids and supplementary bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41;
- (b) the winning price payable by a winning bidder under regulation 43.

### **Events**

**51.** The events referred to in regulation 49, in relation to an applicant or bidder, are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding (or attempting to collude) with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or 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 that applicant's or bidder's bidder group;
  - (iii) to a provider of finance for the purpose of raising finance for a bid; or
  - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group receiving or 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;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and 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;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group; and
- (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of—
  - (i) a person ceasing to be a member of that bidder group;
  - (ii) a person joining that bidder group under the procedure in regulation 6(3); and
  - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

## PART 7

### MISCELLANEOUS

#### **General power of exclusion**

**52.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

**53.** If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel which are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM —

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA; or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their internet website.

#### **Changes to timing or location**

**54.—(1)** Subject to regulations 55 and 56, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations, to be delivered at the place specified or by the deadline specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations, to be completed by the deadline specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify the applicants or bidders (as the case may be) that—

- (a) delivery must be made on a different day or within different times on that day or at a different place; or
- (b) the action must be completed on a different day or by a different deadline.

#### **Changes to round times and use of electronic auction system**

**55.—(1)** Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all reasonable steps to notify bidders of an alternative method of participating in the auction and any requirements relating to the use of passwords and authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the auction for the purposes notified to them under paragraph (3).

### **Rerunning rounds**

**56.**—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect).

(2) Where this paragraph applies, OFCOM shall—

- (a) take all reasonable steps to notify bidders of its determination under paragraph (1);
- (b) disregard the bids made in that round; and
- (c) resume the award procedure from the end of the previous round of the auction (or, if there was no previous round, from the start of the first primary bid round).

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 of these Regulations because of technical failure (or an event or circumstance with similar effect).

(4) Where this paragraph applies, OFCOM shall determine whether it is necessary in order to secure a fair and efficient outcome—

- (a) to disregard the bids made in one or more rounds; and
- (b) to resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to resume the award process from the start of the first primary bid round.

(5) Where paragraph (4) applies, OFCOM shall take all reasonable steps to notify bidders of its determination under that paragraph.

### **Refunds**

**57.** OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations.

*Philip Rutnam*  
Partner, Spectrum Policy  
For and by authority of the Office of  
Communications

12th March 2008

## SCHEDULE 1

Regulation 4(3)(a)(i)

### APPLICATION FORM AND WARRANTY

#### **1. Details of the applicant**

Provide the following details for the applicant—

Applicant's full name

Registered number of company

Registered office of company

Applicant's contact address (if different to registered office)

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

#### **2. Authorised persons**

Provide details of the name and position in the applicant of at least three and no more than five persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

#### **3. Directors or members**

Provide the name and job title of each of the directors or members of the managing body of the applicant.

#### **4. Bidder group**

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) Regulations 2008 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 2 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

#### **5. Qualification to bid**

In relation to the determination by the Office of Communications ("OFCOM") under regulation 7 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether 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 and provide a description of any such collusion;
- (d) state whether 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 and provide a description of any such actions;

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

- (e) state whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed confidential information, whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure—
  - (i) was to a member of the applicant's bidder group; or
  - (ii) was to OFCOM;
- (f) state whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (g) state whether 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 provide a description of the services concerned; and
- (h) state whether (and provide a description of any circumstances in which) any person who is a member or a director or employee of a member of the applicant's bidder group and 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.

## 6. Other information

Provide a brief description of the substance of—

- (a) agreements (if any) relating to the management of the applicant; and
- (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its bidder group or its directors or officers.

## 7. Warranty

Provide the following warranty as part of you application—

“[[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that—

- (a) the persons authorised in section 2 of the applicant's application have read and understood the Wireless Telegraphy (Licence Award) Regulations 2008 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant, true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 49 and 51 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.”



SCHEDULE 2

Regulation 4(3)(a)(ii)

DOCUMENT FOR MEMBER OF APPLICANT'S  
BIDDER GROUP WHO IS NOT AN ASSOCIATE

[Insert name of applicant or bidder] (the "applicant/bidder") wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder's bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2008 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 7(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant's bidder group. Regulations 49 and 51 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

**1. Applicant/bidder**

In relation to regulations 7(2), 49 and 51 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications ("OFCOM") that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in bidder group who is not an associate] is not a member of any other applicant's or bidder's bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in bidder group who is not an associate] has ever—

- (a) been or becomes a member of any other applicant's or bidder's bidder group;
- (b) been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

**2. [Insert name of person to be included in bidder group who is not an associate]**

[Insert name of person to be included in bidder group who is not an associate] represents and warrants to OFCOM that it—

- (a) consents to be a member of the applicant/bidder's bidder group;
- (b) is not a member of any other applicant's or bidder's bidder group; and
- (c) is aware of the provisions in regulations 49 and 51 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder if it ever has—

- (d) been or becomes a member of any other applicant's or bidder's bidder group;
- (e) been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (f) obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

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SCHEDULE 3

Regulation 11(1)(a)

LOT SELECTION MENU WHERE THERE IS ONLY ONE BIDDER

Bidder's full name:

Bidder's address:

Telephone number:

Fax number:

E-mail address:

<i>Lot</i>	<i>Frequency Range</i>	<i>Price</i>	<i>Selection</i>
LA	1452.000-1453.816	£50,000	
LB	1453.816-1455.528	£50,000	
LC	1455.528-1457.240	£50,000	
LD	1457.240-1458.952	£50,000	
LE	1458.952-1460.664	£50,000	
LF	1460.664-1462.376	£50,000	
LG	1462.376-1464.088	£50,000	
LH	1464.088-1465.800	£50,000	
LI	1465.800-1467.512	£50,000	
LJ	1467.512-1469.224	£50,000	
LK	1469.224-1470.936	£50,000	
LL	1470.936-1472.648	£50,000	
LM	1472.648-1474.360	£50,000	
LN	1474.360-1476.072	£50,000	
LO	1476.072-1477.784	£50,000	
LP	1477.784-1479.500	£50,000	
LQ	1479.500-1492.000	£150,000	

**Licence Condition Choice**

(Please choose one licence condition only in the table below)

High Power licence condition	
Low Power licence condition	

SCHEDULE 4

Regulation 19(1)

ROUND PRICE IN THE FIRST PRIMARY BID ROUND

In the first primary bid round, the round price for a lot of a description mentioned in an entry in Column (1) is the price shown in the corresponding entry in Column (2).

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<i>Column (1)</i>	<i>Column (2)</i>
<i>Lot</i>	<i>Price in the first primary bid round</i>
LA	£50,000
LB	£50,000
LC	£50,000
LD	£50,000
LE	£50,000
LF	£50,000
LG	£50,000
LH	£50,000
LI	£50,000
LJ	£50,000
LK	£50,000
LL	£50,000
LM	£50,000
LN	£50,000
LO	£50,000
LP	£50,000
LQ	£150,000

SCHEDULE 5

Regulations 15(6), 22(3) and 41(6)

ELIGIBILITY POINTS ASSOCIATED WITH LOTS

The number of eligibility points associated with a lot of a description mentioned in an entry in Column (1) is the number of points shown in the corresponding entry in Column (2).

<i>Column (1)</i>	<i>Column (2)</i>
<i>Lot</i>	<i>Number of eligibility points</i>
LA	1
LB	1
LC	1
LD	1
LE	1
LF	1
LG	1
LH	1
LI	1

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<i>Column (1)</i>	<i>Column (2)</i>
<i>Lot</i>	<i>Number of eligibility points</i>
LJ	1
LK	1
LL	1
LM	1
LN	1
LO	1
LP	1
LQ	3

SCHEDULE 6

Regulation 43

DETERMINATION OF WINNING PRICE

*Winning price*

1.—(1) In determining the winning price for each winning auction stage bid, OFCOM shall impose the requirements set out in paragraphs 2 to 5.

(2) Where a winning price so determined includes a fraction of a pound, the winning price shall be that price rounded up to the nearest pound.

*First requirement*

2. The winning price for each winning auction stage bid shall be—
- (a) no less than the total of the round prices in the first primary bid round for the selection of lots comprised in that winning auction stage bid; and
  - (b) no greater than the amount of that winning auction stage bid.

*Second requirement*

3.—(1) Taking the winning prices for the winning auction stage bids together, the winning prices shall be such that if—

- (a) the amount bid by each winning bidder for the selection of lots and the licence condition chosen comprised in its winning auction stage bid had been the winning price rather than the amount of its winning auction stage bid (“reduced winning auction stage bid”); and
- (b) the amount bid by each winning bidder in respect of each other valid auction stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning auction stage bid and the winning price for that winning auction stage bid;

the combination of the reduced winning auction stage bids submitted by the winning bidders would have been the compatible combination of bids or one of the compatible combination of bids (as the case may be) having the highest total value of amounts bid.

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(2) The bids mentioned in sub-paragraphs (1)(a) and (b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid auction stage bids for the purposes of this paragraph.

*Third requirement*

4. Taking the winning prices for the winning auction stage bids together, the total of the winning prices shall be no greater than the total of any other prices for the winning auction stage bids that satisfy the requirements set out in paragraphs 2 and 3.

*Fourth requirement*

5.—(1) Taking the winning prices for the winning auction stage bids together, the opportunity cost variance of those winning prices calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance of any other prices for the winning auction stage bids that satisfy the requirements set out in paragraphs 2 to 4 calculated in accordance with sub-paragraph (2).

(2) The opportunity cost variance (“*OCV*”) of the prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV = \sum (p - c)^2$$

where—

“*p*” means the price for a winning auction stage bid; and

“*c*” means the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning auction stage bid.

(3) The formula is—

$$c = u - t + b$$

where—

“*u*” means the amount calculated in accordance with sub-paragraph (4);

“*t*” means the total amount of the winning auction stage bids; and

“*b*” means the amount of the winning auction stage bid for which *P* is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of auction stage bids or one of the valid combinations of auction stage bids (as the case may be) having the highest total value of amounts bid, where the auction stage bids to be included in the valid combination of auction stage bids do not include any of the auction stage bids made by the winning bidder that submitted the winning auction stage bid for which *P* is the price.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency between 1452 MHz to 1492 MHz.

To apply, a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. An initial deposit of fifty thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 7(2)). OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 7(3). Under regulation 8, OFCOM will publish the names of all applicants qualified to bid on their internet website.

OFCOM will follow the procedure in Part 4 of these Regulations where there is only one bidder, or the procedure in Part 5 of these Regulations where there is more than one bidder.

Under Part 4, where there is only one bidder OFCOM will give the bidder a notice, setting out the deadline by when the completed lot selection menu must be provided to OFCOM and the deadline by when the bidder must transfer to OFCOM the balance of the licence fee (regulation 11).

Under Part 5, the process for the award of licences will consist of two stages.

The first stage, called the auction stage, is the procedure set out in Chapters 2 to 5 of Part 5. During the auction stage there will be an auction with at least two rounds during which bidders will be able to make bids for a selection of lots (a term defined in regulation 2). OFCOM will determine the winning bids in accordance with regulation 41, and will determine the price payable in respect of each winning bid in accordance with regulation 43 and Schedule 6.

The second stage, called the grant stage, is the procedure set out in Chapter 6 of Part 5. OFCOM will grant licences to winning bidders and refund any sums due to winning bidders under regulation 47(1)(b).

If in relation to an applicant which is qualified to bid or a bidder OFCOM are satisfied that certain events are occurring or have occurred and that the occurrence would materially affect the outcome of the award process, the applicant or bidder concerned will forfeit sums on deposit held by OFCOM and may be excluded from the award process (regulation 49).

A full regulatory impact assessment of the effect these Regulations will have on the cost to business has been prepared. Copies of the impact assessment and copies of the publication referred to on page 19 of these Regulations are available to the public from the OFCOM library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA, telephone 020 7981 3000 or on the OFCOM internet website at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the impact assessment have also been placed in the libraries of both Houses of Parliament.