
STATUTORY INSTRUMENTS

2012 No. 2414

The Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012

PART 7

Proposal stage

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10.—(1) Subject to paragraph (2), the competent authority must issue the proposal documentation, which must include the information specified in Schedule 2, to each qualifying bidder.

(2) In respect of a tender exercise to which regulation 9(5) applies, the obligation in paragraph (1) to issue documentation to qualifying bidders does not apply in respect of a qualifying bidder who has not submitted a signed confidentiality agreement in accordance with the notice issued under that regulation.

(3) The competent authority must invite all qualifying bidders to whom the proposal documentation has been issued in accordance with this regulation to submit a proposal for providing a smart meter communication service in accordance with the requirements set out in the proposal documentation.

(4) The submission of a proposal by a qualifying bidder is an application for the grant of a gas smart meter communication licence and an electricity smart meter communication licence to that qualifying bidder where that qualifying bidder becomes the successful applicant in accordance with these Regulations.

(5) Where a qualifying bidder fails to submit a signed confidentiality agreement in accordance with the notice given in accordance with regulation 9(5), the competent authority may disqualify that qualifying bidder from that tender exercise where—

- (a) the competent authority gives that qualifying bidder a notice requiring it to submit the signed confidentiality agreement by a date specified in the notice, such date being not more than ten days from the date on which the notice is given; and
- (b) that qualifying bidder does not so submit the signed confidentiality agreement.

Proposal stage: first tender exercise

11.—(1) This regulation applies to a tender exercise in respect of the grant of the first electricity smart meter communication licence and the first gas smart meter communication licence to be granted after these Regulations come into force.

(2) The competent authority may give a notice providing further regulated business information, including—

- (a) information which modifies or supplements any information provided in the proposal documentation or in a previous notice given under this paragraph; or

- (b) an instruction to disregard any information provided in the proposal documentation or in a previous notice given under this paragraph.
- (3) A notice under paragraph (2) may be given—
 - (a) after the competent authority has issued the proposal documentation; and
 - (b) prior to—
 - (i) the date and time specified in the proposal documentation for the submission of proposals to the competent authority; or
 - (ii) where a notice has previously been given under paragraph (2) and in accordance with paragraph (7) the date and time for submission of proposals to the competent authority has been modified, the modified date and time.
- (4) The competent authority must give a notice under paragraph (2) where it determines that—
 - (a) the matters contained in the regulated business information provided in the proposal documentation have materially changed—
 - (i) since the issue of that documentation; and
 - (ii) during the period in which a notice under paragraph (2) may be given; and
 - (b) that the giving of the notice is necessary in order to ensure that the evaluation of proposals under regulation 12 is fair and equitable to all qualified bidders.
- (5) Subject to paragraph (10), a notice given under paragraph (2) in accordance with paragraph (4) must contain revised regulated business information reflecting the matters which have changed.
- (6) Where the competent authority intends to give a notice under paragraph (2), it must determine whether it is necessary in the circumstances to modify the date and time specified in the proposal documentation for the submission of proposals to the competent authority (or such time as modified by a previous notice under paragraph (2)).
- (7) Where the competent authority determines in accordance with paragraph (6) that it is necessary to make a modification, it must specify a new date and time for the submission of proposals to the competent authority in the notice given under paragraph (2).
- (8) The new date and time specified in accordance with paragraph (7) must not be earlier than—
 - (a) the date and time specified in the proposal documentation; or
 - (b) where that date and time has been previously modified on one or more occasions in accordance with paragraph (7), the date and time specified in the most recent modification.
- (9) A qualifying bidder who has submitted a proposal prior to the giving by the competent authority of a notice under paragraph (2) may submit a modified proposal in accordance with—
 - (a) the date and time requirements specified in the proposal documentation (or where applicable such date and time requirements as modified in accordance with paragraph (7)); and
 - (b) any other requirements specified in the proposal documentation.
- (10) The competent authority may withhold any information which it would be required to provide in accordance with paragraph (5) where the competent authority determines that the disclosure of such information—
 - (a) would be contrary to law; or
 - (b) would prejudice the legitimate commercial interests of any person (except where that person is a qualifying bidder) and that person has not given their consent to it being disclosed.

Determination of preferred applicants at the proposal stage

12.—(1) The competent authority must evaluate each completed proposal submitted to it by a qualifying bidder in accordance with the proposal evaluation criteria set out in the proposal documentation, in order to determine, subject to paragraph (3), which qualifying bidder is to become the preferred applicant.

(2) The competent authority may decline to consider a proposal submitted to it by a qualifying bidder where the competent authority determines that the submitted proposal does not comply in any material respect with the requirements specified in the proposal documentation.

(3) The competent authority may hold a best and final offer stage in accordance with Part 8 of these Regulations to determine the preferred applicant where it considers—

- (a) that it is unable to determine the preferred applicant in accordance with paragraph (1); or
- (b) that it is otherwise necessary or appropriate in the circumstances.

(4) Where no best and final offer stage is to be held, the competent authority may evaluate each completed proposal submitted to it by a qualifying bidder in accordance with the proposal evaluation criteria set out in the proposal documentation, in order to determine which qualifying bidder is to become a reserve applicant.

(5) The competent authority may determine that up to two qualifying bidders become reserve applicants in accordance with paragraph (4).

(6) Where the competent authority determine that two qualifying bidders become reserve applicants in accordance with paragraph (5), it must, in accordance with the evaluation criteria set out in the proposal documentation, determine a first reserve applicant and a second reserve applicant.