
STATUTORY INSTRUMENTS

2012 No. 2414

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

PART 9

Preferred applicant stage

Notification of preferred applicant and reserve applicant

17.—(1) As soon as reasonably practicable after the competent authority has determined the preferred applicant in accordance with regulation 12(1) or 16(1), it must give notice to the preferred applicant to that effect.

(2) A notice given under paragraph (1) must include—

- (a) the details of the matters to be resolved by the preferred applicant to the competent authority's satisfaction as specified in paragraph (3), before that preferred applicant becomes the successful applicant in accordance with regulation 18(1); and
- (b) a description of how those matters must be satisfied and by what date.

(3) The matters referred to in paragraph (2)(a) may include—

- (a) that the preferred applicant has established any arrangements to provide a smart meter communication service; and
- (b) any other matters,

which the competent authority determines must be established prior to the grant of the electricity smart meter communication licence and the gas smart meter communication licence.

(4) As soon as reasonably practicable after the competent authority has determined a reserve applicant in accordance with regulation 12(4) or 16(2), it must give notice of that fact to that reserve applicant, and where the competent authority has determined a first reserve applicant and a second reserve applicant, it must give notice to each reserve applicant as to whether that reserve applicant is the first reserve applicant or the second reserve applicant.

(5) A notice under paragraph (4) must—

- (a) specify the name and address of the preferred applicant; and
- (b) describe, in general terms, the matters to be resolved by the preferred applicant to the competent authority's satisfaction as specified in accordance with paragraph (3), before that preferred applicant becomes the successful applicant in accordance with regulation 18(1).

(6) The competent authority must give notice to any other qualifying bidder of the fact that it is not a preferred applicant or a reserve applicant, as applicable.

(7) Where—

- (a) the matters referred to in the notice given under paragraph (1) are not resolved by the preferred applicant in accordance with that notice to the competent authority's satisfaction;

- (b) the preferred applicant withdraws from the tender exercise in accordance with regulation 20; or
- (c) the preferred applicant is disqualified from the tender exercise in accordance with regulation 22,

the competent authority may withdraw the notice given under paragraph (1) by giving a further notice to that effect.

(8) Where the competent authority has given a further notice under paragraph (7), it must discontinue the tender exercise with the preferred applicant and, where a reserve applicant has been determined in accordance with regulation 12(4) or 16(2), may determine to treat—

- (a) the reserve applicant, where only one has been appointed; or
- (b) the first reserve applicant, where more than one has been appointed,

as if that reserve applicant were the preferred applicant.

(9) In circumstances where the competent authority determines to treat a reserve applicant as if it were the preferred applicant paragraphs (1) to (3) and (7) apply with references in those paragraphs (and in regulations 18 and 20) to the preferred applicant applying to such a reserve applicant.

(10) Paragraphs (11) and (12) apply where—

- (a) two reserve applicants have been appointed; and
- (b) in accordance with paragraph (8)(b), the first reserve applicant is being treated as if it were the preferred applicant.

(11) The competent authority must give the second reserve applicant a notice—

- (a) informing the second reserve applicant that the first reserve applicant is being treated as if it were the preferred applicant; and
- (b) including in that notice the information detailed in paragraph (5) in relation to the treatment of the first reserve applicant as if it were the preferred applicant.

(12) Where the competent authority gives a further notice in accordance with paragraph (7) to the first reserve applicant who is being treated as if it is the preferred applicant, it must discontinue the tender exercise with the first reserve applicant and may determine to treat the second reserve applicant as if that reserve applicant were the preferred applicant.