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STATUTORY INSTRUMENTS

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**2012 No. 2817**

**The Wireless Telegraphy (Licence Award) Regulations 2012**

**PART 5**

**ACTIVITY RULES**

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

**112.** 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 114 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) any sum paid as a deposit under these Regulations shall be forfeited (together with any interest which has accrued on the deposit) by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded from the award process by OFCOM giving that applicant or bidder notice in writing.

**Bids made by an excluded bidder**

**113.—**(1) Where a bidder is excluded from the award process under regulation 112 during the principal stage, all of the principal stage bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning principal stage bids under regulation 67;
- (b) the base price payable by a winning bidder under regulation 68.

(2) Where a bidder is excluded from the award process under regulation 112 during the assignment stage, all of the assignment stage bids submitted by the bidder (including any bids which the bidder is deemed to have submitted under regulation 102) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning assignment stage bids under regulation 103, 104 or 105;
- (b) the additional price payable by a winning bidder under regulation 106.

**Events**

**114.—**(1) The events referred to in regulation 112, are the events in paragraph (2) and the events in paragraph (3).

(2) Events in relation to an applicant or a 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 7(3); or
    - (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.
- (3) The events in relation to a bidder (but not an applicant) are—
- (a) a change, after OFCOM has recorded that bidder's spectrum holdings under regulation 16, to the existing spectrum holdings of a bidder or, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) except insofar as the change is a divestment of a part of or the whole of the existing spectrum holdings; and
  - (b) any person which has existing spectrum holdings which was not at the time OFCOM recorded the bidder's spectrum holdings under regulation 16 a person referred to in regulation 4(3)(a)(iii) becoming such a person during the award process.