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STATUTORY INSTRUMENTS

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**2020 No. 1199**

**The Wireless Telegraphy (Licence Award) Regulations 2020**

**PART 7**

**Negotiation period for the assignment of 3.6 GHz lots**

**CHAPTER 1**

**Adjacency agreements**

**Full adjacency agreement**

**82.** A full adjacency agreement is an agreement between all of the winning bidders for 3.6 GHz lots, in which they agree—

- (a) the particular numbered 3.6 GHz lots to be assigned to each winning bidder for 3.6 GHz lots (such that each winning bidder for 3.6 GHz lots is assigned a single block which contains a number of lots equal to the number of each such bidder's winning principal stage bids for 3.6 GHz lots); and
- (b) in a situation in which one (or more) of the 3.6 GHz lots which are available in the award process was not won by any bidder in the principal stage of the award, the particular numbered 3.6 GHz lots which are not to be assigned to any bidder (such that any such 3.6 GHz lots not won by any bidder in the principal stage of the award must form a single block).

**Partial adjacency agreement**

**83.** A partial adjacency agreement is an agreement between two or more winning bidders for 3.6 GHz lots (the "partial agreement parties"), but not all winning bidders for 3.6 GHz lots, in which the parties agree—

- (a) to be assigned blocks of 3.6 GHz lots which, when considered together with the 3.6 GHz lots to be assigned to the other partial agreement parties, form a single block (such that the quantity of 3.6 GHz lots contained in the block which is to be assigned to each partial agreement party is equal to the number of that bidder's winning principal stage bids for 3.6 GHz lots); and
- (b) without reference to particular numbered 3.6 GHz lots, which of the partial agreement parties will be assigned the lowest frequency block of 3.6 GHz lots, which party will be assigned the highest frequency block and the order of any parties to be assigned blocks in between the lowest and highest block.

## CHAPTER 2

### Procedure for the negotiation period

#### **Notice to bidders before the negotiation period**

**84.**—(1) Only a winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) shall have the opportunity to participate in the negotiation period.

(2) If there is more than one winning bidder for 3.6 GHz lots, after the deadline for paying the required assignment stage deposit under regulation 81 has passed, OFCOM shall notify each winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) that it has the opportunity to participate in a negotiation period, during which time it would have the opportunity (but is not required) to negotiate and agree—

- (a) a full adjacency agreement with all of the winning bidders for 3.6 GHz lots; or
- (b) a partial adjacency agreement with one or more of the other winning bidders for 3.6 GHz lots.

(3) In the notification OFCOM shall give a deadline by which each such winning bidder must respond to OFCOM confirming that it wishes to participate in the negotiation period if that is the case.

#### **Notice to OFCOM of bidders' desire to participate in the negotiation period**

**85.**—(1) After the deadline specified by OFCOM, if two or more winning bidders for 3.6 GHz lots have responded to OFCOM's notification and have indicated that they wish to participate in a negotiation period to pursue an adjacency agreement—

- (a) OFCOM shall notify each winning bidder for 3.6 GHz lots of—
  - (i) the names of each other winning bidder for 3.6 GHz lots which wishes to participate in the negotiation period;
  - (ii) the start day (and time on that day) of the first phase of the negotiation period, and the end day (and time on that day) of the first phase negotiation period;
  - (iii) if a second phase of the negotiation period were to take place (because no valid full adjacent agreement resulted from the first phase), the proposed start day and time on that day of the second phase, and the proposed end day (and time on that day) of the second phase of the negotiation period; and
  - (iv) the method for submission to OFCOM of any full adjacency agreement forms and any partial adjacency agreement forms;
- (b) each winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) may participate in the negotiation period to enter an adjacency agreement irrespective of whether or not that bidder indicated to OFCOM that it wished to participate; and
- (c) OFCOM shall publish on their website the days and times described in paragraph (a)(ii) and (iii).

(2) Where fewer than two winning bidders for 3.6 GHz lots have indicated to OFCOM that they wish to participate in a negotiation period, following receipt of notices, OFCOM shall—

- (a) notify each winning bidder for 3.6 GHz lots that there shall not be a negotiation period, and
- (b) proceed to determine the winning 3.6 GHz assignment stage bids in accordance with regulation 98.

## CHAPTER 3

### Valid full adjacency agreement and valid partial adjacency agreement

#### **Valid full adjacency agreement**

**86.**—(1) There is a valid full adjacency agreement if either the first situation in paragraph (2) or the second situation in paragraph (3) has occurred.

(2) The first situation is where—

- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
- (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the first phase of the negotiation period and in accordance with the prescribed method for submission.

(3) The second situation is where—

- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
- (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission.

#### **Valid partial adjacency agreement**

**87.** There is a valid partial adjacency agreement if—

- (a) two or more winning bidders for 3.6 GHz lots submitted a partial adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) each winning bidder which is indicated on the form as being a party to the agreement, submitted the form to OFCOM;
- (c) the content of the table on each partial adjacency agreement form (outlining the essential aspects of the partial adjacency agreement described in regulation 83) is the same on each form received;
- (d) each winning bidder which is indicated on the form as being a party to the agreement submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission; and
- (e) each winning bidder which is indicated on the form as being a party to the agreement who submitted the form to OFCOM has also made the additional required bids.

#### **Additional required bids in the case of a partial adjacency agreement**

**88.**—(1) The additional required bids referred to in regulation 87(e) are those described in paragraph (2).

(2) The bids to be made by the winning bidder are an additional 3.6 GHz assignment stage bid of zero pounds for every possible block of numbered 3.6 GHz lots in which the number of 3.6 GHz

lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.6 GHz lots.

(3) The additional required bids are made by completion of the partial agreement form and its submission to OFCOM.

#### **Consequence of additional required bids**

**89.** If there is a valid partial adjacency agreement, when OFCOM is determining the winning 3.6 GHz assignment stage bids under regulation 97—

- (a) each 3.6 GHz assignment stage bid already submitted by that bidder under regulation 78 or 79, if any, shall be deemed invalid; and
- (b) OFCOM must instead take into account the additional required bids as if they were the valid assignment stage bids made by the bidder concerned.

#### **Rejection of full adjacency agreement forms submitted to OFCOM at a time outside the first phase and second phase of the negotiation period**

**90.**—(1) If a full adjacency agreement form is submitted to OFCOM at a time other than during the permitted times described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted times are—

- (a) after the start time of the first phase of the negotiation period and before the first phase of the negotiation period has ended in accordance with regulation 95; and
- (b) after the start time and before the end time of the second phase of the negotiation period.

#### **Rejection of partial adjacency agreement forms submitted to OFCOM at a time outside the second phase of the negotiation period**

**91.**—(1) If a partial adjacency agreement form is submitted to OFCOM at a time other than during the permitted time described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted time is after the start time and before the end time of the second phase of the negotiation period.

#### **Only one valid adjacency agreement**

**92.** — Each winning bidder for 3.6 GHz lots may only be party to one valid adjacency agreement.

#### **First form delivered within a negotiation phase by a winning bidder for 3.6 GHz lots to be used by OFCOM**

**93.**—(1) If a winning bidder for 3.6 GHz lots submits more than one full adjacency agreement form to OFCOM during the first phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determination under regulations 86 and 95 as to whether or not there is a valid full adjacency agreement.

(2) If a winning bidder for 3.6 GHz lots submits more than one adjacency agreement form (whether a partial adjacency agreement form or a full adjacency agreement form) to OFCOM during the second phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determinations under regulations 86 and 87 as to whether or not there is a valid full adjacency agreement or a valid partial adjacency agreement.

### **Incomplete or defective adjacency agreement forms**

**94.**—(1) Where, due to the manner of completion, an adjacency agreement form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the content and the essential aspects of the agreement, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to the making of adjacency agreements.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, OFCOM will consider whether there is a valid full adjacency agreement or a valid partial adjacency agreement (as the case may be) under regulations 86 or 87 taking account of the form on that basis.

(3) Where the bidder does not give such confirmation, the adjacency agreement form and the agreement it purports to describe in its entirety shall be rejected by OFCOM.

### **The end of the first phase of the negotiation period**

**95.**—(1) The first phase of the negotiation period shall end on the earlier of—

- (a) the time notified by OFCOM under regulation 85(1)(a)(ii) as being the end of the first phase; or
- (b) the receipt by OFCOM (after the commencement of the first phase) of a full adjacency agreement form from each winning bidder for 3.6 GHz lots.

(2) After the end of the first phase of the negotiation period OFCOM shall determine if there is a valid full adjacency agreement.

(3) If OFCOM determines that there is a valid full adjacency agreement there shall not be a second phase of the negotiation period and OFCOM shall notify all of the winning bidders of that fact.

(4) If OFCOM determines that there is not a valid full adjacency agreement there shall be a second phase of the negotiation period and OFCOM shall—

- (a) notify all of the winning bidders of that fact;
- (b) notify the winning bidders for 3.6 GHz lots of the reason why it has made that determination; and
- (c) publish on OFCOM's website and notify the winning bidders for 3.6 GHz lots of the start day and time on that day of the second phase, and the end day (and time on that day) of the second phase of the negotiation period (which may be the same or different from proposed the days and times notified under regulation 85(1)(a)(iii)).