

Chapter

Process

4

4 Process

4.1 Introduction

This ITA sets out the Commission's detailed requirements in respect of Bids to be submitted to run the Lottery. All Bids to run the Lottery should comply with the requirements in this ITA. Each Bidder should respond fully on all requirements contained in it. Each Bidder shall ensure that all the information that it provides, including any relevant supplementary information, is accurate.

Each Bid must contain the following:

- A Bid Submission Certificate;
- A Bid Submission Checklist;
- An executive summary;
- Responses to chapters 7 to 15 inclusive and 17 to 22 inclusive of this ITA;
- Relevant vetting forms as set out in chapter 7 of this ITA;
- The Restrictive Agreement Undertaking; and
- A copy of the Draft Licence.

The Commission is seeking to complete its evaluation of Bids by mid May 2007. The Commission will then select a Preferred Bidder with whom to finalise the Draft Licence in the light of any commitments made by it in its respective Bid and which are not already included in the Draft Licence. The Commission may also take the step of selecting a Reserve Bidder, with whom it would intend to finalise the Draft Licence in the event that finalisation of the Draft Licence is not achieved with the Preferred Bidder.

Once the Draft Licence has been agreed, the Commission will award the Licence. Bidders should note that:

- Award of the Licence will be subject to the Preferred Bidder securing any consents, clearances, permissions, approvals or other conditions that it may require from third parties. Each Bidder shall provide relevant details of any such conditionality, where appropriate, in its Bid.
- The Commission will expect each Bidder to co-operate with it fully in order to enable early confirmation of the decision to award the Licence.
- The Commission will enter into an Enabling Agreement with the Successful Bidder. The grant of the Licence will be dependent upon the fulfilment by the Successful Bidder of the conditions to be set out in the Enabling Agreement. These conditions will be based on the proposals set out in the Successful Bidder's Bid.

4.2 Timetable

Table 7. Competition timetable

Stage	Step	Date
Invitation to Apply	Issue of ITA	End June 2006
	Deadline for clarification requests	16 October 2006
Bid submission	Bids received by the Commission	15 December 2006
Evaluation	Evaluation process begins	18 December 2006
	Evaluation complete	Mid May 2007
Licence awarded	Licence finalised and awarded	Mid July 2007
Transition	Transition period	Mid July 2007 – January 2009
Start of Third Licence	Commencement of operations	1 February 2009

4.3 Further information on the Lottery opportunity

4.3.1 Data room

In order to enable each Bidder to evaluate fully the Lottery opportunity and to provide a level playing field, the Commission will make available further information on the Lottery. All information will be provided in a secure virtual data room, accessed via the Internet. Subject to certain exceptions, each Bidder will be able to download, print or save documents provided in the data room to assist it in compiling its Bid. A summary of the information provided in the data room is set out at Appendix D.

4.3.2 Accessing the data room

Since some of the information that the Commission wishes to provide is commercially sensitive and/or its wider public release may otherwise be harmful to the interests of the Lottery, each Bidder will be required to enter into a Bid Process Agreement prior to entering the data room. The terms of the Bid Process Agreement will be binding upon the Bidder, its consortium members and its advisers and representatives. It will set out, amongst other things, the restrictions that apply to the use and onward disclosure of any Confidential Information received. In addition, it requires each Bidder to return or destroy all copies of any Confidential Information at the Commission's request.

The Commission must be satisfied, in its absolute discretion, as to the identity and purpose of each Bidder that wishes to enter the data room. Each Bidder, member of its consortium or representatives and advisers will therefore be required to provide the Commission with such information as it may require to establish whether a party is a bona fide Bidder.

In accordance with the Bid Process Agreement, each Bidder must also provide a Bond of £100,000 to be payable on demand in the event that a Bidder, or any party covered under the terms of the agreement, does not comply with those terms. This must be in the form specified in the Bid Process Agreement, and must be provided by a bank licensed and located within the EEA and with a long-term credit rating of not less than A from Standard and Poor's Rating Services or a long-term credit rating of not less than A2 from Moody's Investor Services Limited. Where it is not practicable for a Bidder to obtain a Bond from a bank licensed and located within the EEA, the Bidder may obtain a Bond from a bank licensed and/or located elsewhere provided that the credit rating requirements specified above are met and that the Commission's prior written approval has been obtained. Subject to the provisions of the Bid Process Agreement, the Bond shall be valid until 31 December 2007 and will be returned on expiry. In the event that a Bidder decides not to submit a Bid, the Bid Process Agreement allows for the earlier return of the Bond, provided that certain conditions are fulfilled.

In addition, each individual that enters the data room will be required to sign a Virtual Data Room Visitor's Declaration, as set out in Schedule 2 to the Bid Process Agreement, binding it to the same relevant terms as set out in the Bid Process Agreement.

Each Bidder must submit two duly signed copies of the Bid Process Agreement to the Commission in substantially the same form set out on the Commission's website, along with the Bond and any additional material required to the contact provided in section 4.5.4. Each Bidder should nominate a point of contact for the Commission to arrange access to the data room.

Each Bidder should note that access to the data room is provided at the sole discretion of the Commission and may be withdrawn at the Commission's sole discretion at any time.

4.4 Registering interest

Interested parties are able to register their interest in the Competition with the Commission. Parties can do this:

- By e-mail at: competition@natlotcomm.gov.uk or
- In writing to: Sheila Van Lear, Competition Project Office, National Lottery Commission, 101 Wigmore Street, London W1U 1QU.

All parties who do so will be provided with notifications of further information and clarification. The Commission will keep the list confidential prior to the completion of the Competition process, subject to any statutory obligations that might require its disclosure.

4.5 Communications with the Commission

Each Bidder, and any parties promoting its Bid, are strictly limited to the forms of communication described in this section 4.5. Communications must only be directed to the contact set out below, except where specifically authorised by the Commission, or where parties are registering their interest as set out in 4.4. above.

4.5.1 Meetings with the Commission

Bidders may request to meet with the Commission in advance of submitting a Bid to discuss any issues arising from this ITA. They are encouraged to request such a meeting where the Bidder has issues relating to new or innovative proposals, or in respect of those specific issues highlighted in this ITA as being ones that a Bidder may wish to raise with the Commission. Where discussions relate to confidential or commercially sensitive information, for example, in the case of proprietary game proposals, the Bidder's request and the Commission's response will be kept confidential subject to the provisions set out in section 4.5.3 below.

Bidders should request meetings with the Commission through the clarification and further information process outlined in 4.5.2 below.

The Commission also reserves the right to make presentations, which would be made available to all Bidders.

4.5.2 Clarification and information requests

Further clarification or further information requests must only be made in writing to the contact named in 4.5.4 below. Should a Bidder wish to submit a request for information or clarification, it should use the Information and Clarification Request Form set out in Appendix H. Any clarification or information arising from such requests will be published under the competition section of the Commission's website, taking into account issues of confidentiality and commercial sensitivity as set out below.

4.5.3 Confidential or commercially sensitive information

Where a Bidder believes that the matter being raised is of a confidential or commercially sensitive nature, for example, it relates to proprietary proposals, the Bidder must clearly state this in its request. If the Commission, in its absolute discretion, considers that the request and/or its response should be properly regarded as confidential or commercially sensitive, then the request and its response shall be kept confidential subject to the requirements of the Freedom of Information Act 2000. In this way, the Commission intends that Bidders should be able to discuss proprietary proposals in advance of Bids being submitted to provide Bidders with greater clarity.

Bidders should note that the Commission may, however, be required to publish points of principle in order to ensure that Bidders are treated equally. Any views expressed by the Commission that it considers relate to points of principle will be made available on the Competition section of the Commission's website.

If the Commission, in its absolute discretion, considers that it would be unable to answer the request, or any part of the request on a confidential basis, the Commission shall notify the Bidder and seek confirmation that it is content for the Commission to publicly respond. The Commission will similarly notify Bidders in advance where it determines that, in discussing confidential or commercially sensitive proposals, general points of principle must be published. If the Bidder does not provide confirmation that it is willing for its request and the Commission's response to be published, the Commission will not be able to provide a response.

All requests will be acknowledged by the Commission as soon as practicable. The deadline for questions to the Commission is 5pm on 16 October 2006.

4.5.4 Address for communications with the Commission

All correspondence concerning the Competition must be directed as follows:

Mark Harris

Chief Executive
National Lottery Commission
101 Wigmore Street
London W1U 1QU

Email: competition@natlotcomm.gov.uk

Bidders may choose whether to communicate by email or hard copy correspondence (or both).

4.6 Further information

The Commission may, at any time, publish further information in connection with the Competition. This will be published under the Competition section of the Commission's website.

If, as a result of any requests for information or clarification pursuant to section 4.5.2 above, or any communication between the Commission and a Bidder in relation to a Bid or otherwise, the Commission is of the opinion that a clarification, amendment to the ITA or additional information is required to be issued to all Bidders, then the Commission shall be entitled to make any such clarification or amendment to the ITA at any time or release such additional information as it considers in its absolute discretion may be required.

4.7 Delivery of Bids

The delivery date for Bids will be Friday 15 December 2006. Details of the delivery address and times for delivery will be released on the Commission website no later than Friday 17 November. The delivery address will be in central London.

A Bidder may apply to the Commission in advance to arrange an alternative address for delivery of the Bid. Any Bidder wishing to do so must contact the Commission by Friday 24 November 2006 at the latest at the address set out in 4.5.4 above.

Notwithstanding that the Commission will specify times for delivery of Bids, the Commission may, in its absolute discretion, consider a Bid submitted outside of these times provided that:

- The Bid has been submitted in good faith;
- No unfair advantage is afforded to that Bidder; and
- No other Bidder is unfairly prejudiced.

4.8 Format of Bids

Each Bidder may submit only one Bid.

Each Bid should accord with the requirements set out in this ITA. The following requirements should also be noted:

- A master copy of the Bid shall be presented in an original A4 file or files, excluding fit and proper vetting forms. This master copy shall have the signature of two directors of the Bidder on a coversheet to each file. Proof of the directors' authority to sign on behalf of the Bidder shall be provided;
- The master copy shall include an executive summary of the Bid. It is each Bidder's responsibility to ensure that any such executive summary is consistent with its Bid. The Commission will assess the Bid, not the executive summary;
- Each Bidder shall provide seven numbered copies of the master copy. It is each Bidder's responsibility to ensure that all copies are the same as the original;

- The Bid shall also be provided on CD-ROM (4 copies). Files shall be provided in either Word or PDF format or, in the case of the financial information required in chapter 14, Excel spreadsheet format. Appropriate filenames shall be specified and cross references shall be provided to the printed or typed document;
- The Bid shall be printed in its entirety so that it can be read without any apparatus, except as provided below;
- Each Bidder is responsible for ensuring that information provided in electronic form is consistent with the information provided in the printed or typed Bid. In the event of a discrepancy in information between the CD-ROM and the printed version, the printed versions of Word and PDF documents will take precedence, whilst the electronic version of any Excel documents shall take precedence;
- The Bid shall be typed in English, with each page clearly numbered and chapters and sections suitably recorded in a contents table;
- The Bid shall provide responses in the same order as the requests for information in this ITA and shall include a copy of the Draft Licence (see section 4.8.1 below);
- All responses shall be cross-referenced to the relevant section of this ITA. Each Bidder is asked only to respond to the sections marked evidence required. However, they must take into account the considerations outlined in each relevant chapter;
- Responses to the evidence required for each chapter shall be provided in a separate file or files;
- Responses to each chapter should contain all the relevant information that the Bidder wishes to be assessed as against the requirements for that chapter. Cross-references to responses to other chapters should be avoided except where absolutely necessary to avoid substantial repetition;
- The master copy of the Bid, each copy thereof, CD-ROMs and the executive summary, together with all other contents of the Bid must be submitted in sealed packages or boxes. The first box must provide an index that enables the Commission to verify that the whole of the Bidder's submission has been received;
- Each Bidder shall provide an original signed copy and one other copy of the vetting forms required under chapter 7 in a separate file or files. These files should be submitted in a separate box to the remainder of each Bidder's submission. The box should be clearly marked 'Vetting forms'; and
- No faxed or emailed Bids will be accepted.

The submission of a Bid will be taken as acceptance of the terms of this ITA. It is the responsibility of the Bidder to ensure that the Bid submitted is complete.

4.8.1 Draft Licence

Each Bidder must submit with its Bid a copy of the Draft Licence. The Draft Licence contains a number of provisions that will be formulated with relation to the commitments outlined in the Preferred Bidder's Bid. These conditions are as follows:

- Condition 5.2 (Compliance with standards);
- Condition 5.3 (Compliance with standards);
- Condition 5.22 (Player access);
- Condition 7.52 (Third party review of Players' complaints);
- Condition 8.1 (Distributor Commission);
- Condition 8.4(d) (Distributor management);
- Condition 10.9 (Provision of facilities);
- Condition 12.1 (Arrangements with shareholders, other Connected Parties and debt providers);
- Condition 14.19 (Reporting requirements);
- Condition 14.22 (Audit requirements);
- Condition 15 (Contractors);
- Condition 19 (Security for Players' funds);
- Condition 19.4 (Security for Players' funds);
- Schedule 2 Part 1 (Games and facilities to be available in the first five weeks of the Licence);
- Schedule 4 Part 1 (Ancillary Activities that the Commission has consented to);
- Schedule 5 (The Ancillary Activity Payment);
- Schedule 6 (Third party review of Players' complaints);
- Schedule 8 (Primary and Secondary Contributions);
- Schedule 10 Part 1 (Minimum marketing expenditure); and
- Schedule 11 (Lost and stolen Scratchcard Lottery tickets).

The Commission strongly discourages any Bidder from marking up conditions of the Draft Licence, other than those outlined above, when submitting its Bid.

Notwithstanding the Commission's position outlined above, if a Bidder wishes to amend a provision in the Draft Licence, it must:

- Submit alternative drafting to the relevant provisions of the Draft Licence;
- Submit an explanatory note outlining the scope and purpose of that drafting.

In presenting such information the Bidder must:

- Include a copy of any alternative drafting and explanatory notes within or as an appendix to the copy of the Draft Licence submitted with the Bid;
- Include a copy of any alternative drafting and explanatory notes within each relevant section of the Bidder's response to this ITA; and
- Include an index with the copy of the Draft Licence submitted with the Bid that clearly lists each amended provision and the location of its corresponding place in the Bidder's response to the ITA.

4.9 Acknowledgement of receipt

An acknowledgement will be issued as soon as practicable in respect of each Bid and any early submissions of fit and proper vetting forms. Materials submitted will not be returned.

4.10 Publication, disclosure and use of Bid information

Each Bidder is requested to refrain, so far as its Bid is concerned, from media contact, the issuing of press releases and the distribution of other promotional material and from the staging of promotional events connected with its Bid from the day after the closing date for submissions until the announcement of the Preferred Bidder.

In particular, the Commission considers that it would be helpful for each Bidder to avoid, after the closing date for submission of Bids, releasing previously undisclosed information about its Bid, and making negative comments about other Bids or Bidders. This is especially important because of the ongoing operation and regulation of the existing licence.

However, the Commission recognises that a Bidder may wish to correct misleading statements and factual inaccuracies about its Bid. It expects any statements about the Competition or its Bid to be consistent with maintaining the propriety expected of an organisation that could be charged with protecting the image and reputation of the Lottery.

Bidders are reminded that the Commission is the body charged by Parliament with the sole responsibility for granting the Licence to operate the Lottery. The Commission will follow a proper and rigorous process for evaluating the Bids in accordance with its statutory duties. It will not be influenced by media coverage or any outside pressures, including promotional activity such as advertising or any form of lobbying.

4.10.1 Publication of information by the Commission

Once Bids have been submitted, the Commission intends to announce the number of Bids that it has received. It also intends to announce the name of each Bidder and the Consortium leader. Each Bidder should indicate in its Bid Submission Checklist whether it wishes other Consortium Members to be named, and if so, how they should be referred to.

Each Bidder must specify the information in its Bid that it considers to be commercially sensitive. This information must be clearly distinguishable as such within the format of each Bid. Where information is identified as commercially sensitive, the period of that sensitivity must also be specified.

Each Bidder should note that the Commission is not bound to accept the Bidder's categorisation of information as commercially sensitive.

4.10.2 Commission's right to use commercially sensitive information

The Commission may use any information provided by a Bidder (including information designated as commercially sensitive) for the purpose of its evaluation of Bids, and is entitled to provide such information to its professional advisers in connection with that purpose.

4.11 Presentation of Bids

The Commission intends to invite all Bidders to make presentations to it. Further details of these presentations will be made available on the Commission's website in advance of Bids being submitted. The Commission may choose to have its advisers present. A Bidder would not be allowed to present new information that is additional to that already included in its Bid unless this were in response to a request from the Commission. A detailed brief for presentations will be provided beforehand.

In addition, the Commission may wish to visit lotteries or other operations where services are being provided by Bidders or their Consortium Members. Accordingly, each Bidder must specify three sites in its response to section 10.3.3 that the Commission might visit. In addition, the Commission may wish to visit operations other than those specified in response to 10.3.3 and for which a Consortium Member is responsible. The Commission may choose to have advisers present at any visits made.

4.12 The Commission's right to clarify during the evaluation of Bids

Each Bidder may be requested to provide additional information in writing on particular aspects of its Bid. The Commission reserves the right to seek such further particulars from any Bidder at the time and in the format of its choosing. The Commission will use the point of contact indicated in the Bidder's Bid Submission Checklist.

4.13 Modifications and amendments to Bids

No unsolicited additional material will be accepted from any Bidder after the final date for Bids and prior to finalisation of the Draft Licence unless the Commission is satisfied that:

- The material has been submitted in good faith;
- No unfair advantage is afforded to that Bidder; and
- No other Bidder is unfairly prejudiced.

The Commission may, in its absolute discretion, consider proposals for changes in Bids affecting the identity of suppliers if it is satisfied that such changes are capable of completion in sufficient time, would benefit the Lottery and would not lead to poorer performance in terms of the outcomes specified in this ITA.

The Commission reserves the right to grant a Bidder the opportunity to amend its Bid where the Commission considers that this will allow a deficiency in the Bid to be addressed. A deficiency includes any concern that, if not addressed, might prevent the Bid passing any Required Standard or meeting any other requirements set out in this ITA and Draft Licence. Where the Commission decides to grant an opportunity to address a deficiency in respect of any Required Standard, then all Bidders shall be given a similar opportunity to address any deficiency in respect of the Required Standard aspects of their Bids, if necessary. Where the Commission decides to grant an opportunity to address a deficiency in respect of areas other than Required Standards, then all Bidders shall be given a similar opportunity to address any deficiency in respect of those areas.

For the avoidance of doubt, no amendment, either upwards or downwards, may be made to a Bidder's Principal Forecast, retention rates and hence forecast contributions to good causes at any time after the Bid has been submitted.

4.14 Variant bids

Bidders may not propose variant bids. Variant bids are defined as Bids that detail materially different ways of meeting the requirements set out in this ITA, or which propose more than one Principal Forecast.

4.15 Form of Bidders and amendments to Bidders/Consortia

4.15.1 Structure of Bidders

Bidders should note that this ITA is drafted on the basis that participating entities are bodies corporate. If a participating entity is not a body corporate or is not incorporated at the time of bidding it must provide equivalent information to that sought in the ITA. The Commission recommends that any participating entities that are not bodies corporate discuss the matter with the Commission significantly in advance of submitting a Bid to ensure that they comply with the Commission's requirements. This ITA is also drafted on the basis that the Bidder is the intended Licensee. The evidence submitted in response to chapters 7 to 22 of this ITA should therefore relate to the intended Licensee, except where specifically noted.

The Licensee is required to be a single purpose entity in order to ensure as far as possible that the incentives of the operator and good causes are aligned, and that the Licensee focuses fully on the successful operation of the Lottery. The Licence will therefore only be awarded to a body whose Memorandum and Articles of Association, or equivalent, properly reflect this single purpose requirement. As a requirement of the Licence, the Commission must approve the contents and any changes to the Memorandum and Articles of Association of the Licensee, or any additional or equivalent documents.

Bidders may also propose a range of financial structures. The Commission would expect all Bidders, including those with not-for-profit status, to retain sufficient reserves during the Licence Period to provide them with financial stability, or to make alternative provision to achieve this.

The Commission welcomes Bidders and Consortium Members that may be based outside the United Kingdom. Subject to the requirements set out in this ITA, the Commission will also consider Bids that include proposals to base operations outside the United Kingdom. In such cases, a Bidder will need to demonstrate to the Commission's satisfaction that it is able to be efficiently and effectively regulated. Bidders should note that the Licensee must have an office physically located in the UK staffed by personnel appropriately authorised to act on behalf of the Bidder. The Commission strongly recommends that any Bidder seeking to base operations outside the United Kingdom consult with it as soon as possible and significantly in advance of submitting a Bid.

4.15.2 Participation in more than one Consortium

The Commission will allow parties to participate in more than one Consortium if they wish to do so, provided that there is no collusion and measures are put in place to ensure that this is the case. If parties choose to participate in more than one Consortium, they should not be capable of exercising control or significant influence over more than one Bidder.

In practice, this means that parties may not be part of more than one Bid Group (see figure 1 below). A Bid Group comprises the Bidder, the Bidder's Significant Shareholders, and in relation to those Significant Shareholders, their Controlling Parties. Controlling Parties shall include any Controlling Parties to Controlling Parties, and so on up to the ultimate parent company. More detailed definitions of the above terms are provided at Appendix A. In addition, no Bidder may have common directors or officers within its own Bid Group and within that of another Bidder's Bid Group.

The Commission may, in its absolute discretion, on receipt of prior notice together with appropriate assurances and implementation of safeguards, permit such participation.

With regard to providers of debt finance, the Commission does not expect the same debt providers to be providing finance to more than one Consortium. In the event that this is the case, Bidders should discuss this with the Commission in advance of submitting a Bid.

In addition, the Commission would not expect the same advisers to be advising two Consortia. In the event that this is the case, Bidders should discuss this with the Commission in advance of submitting a Bid.

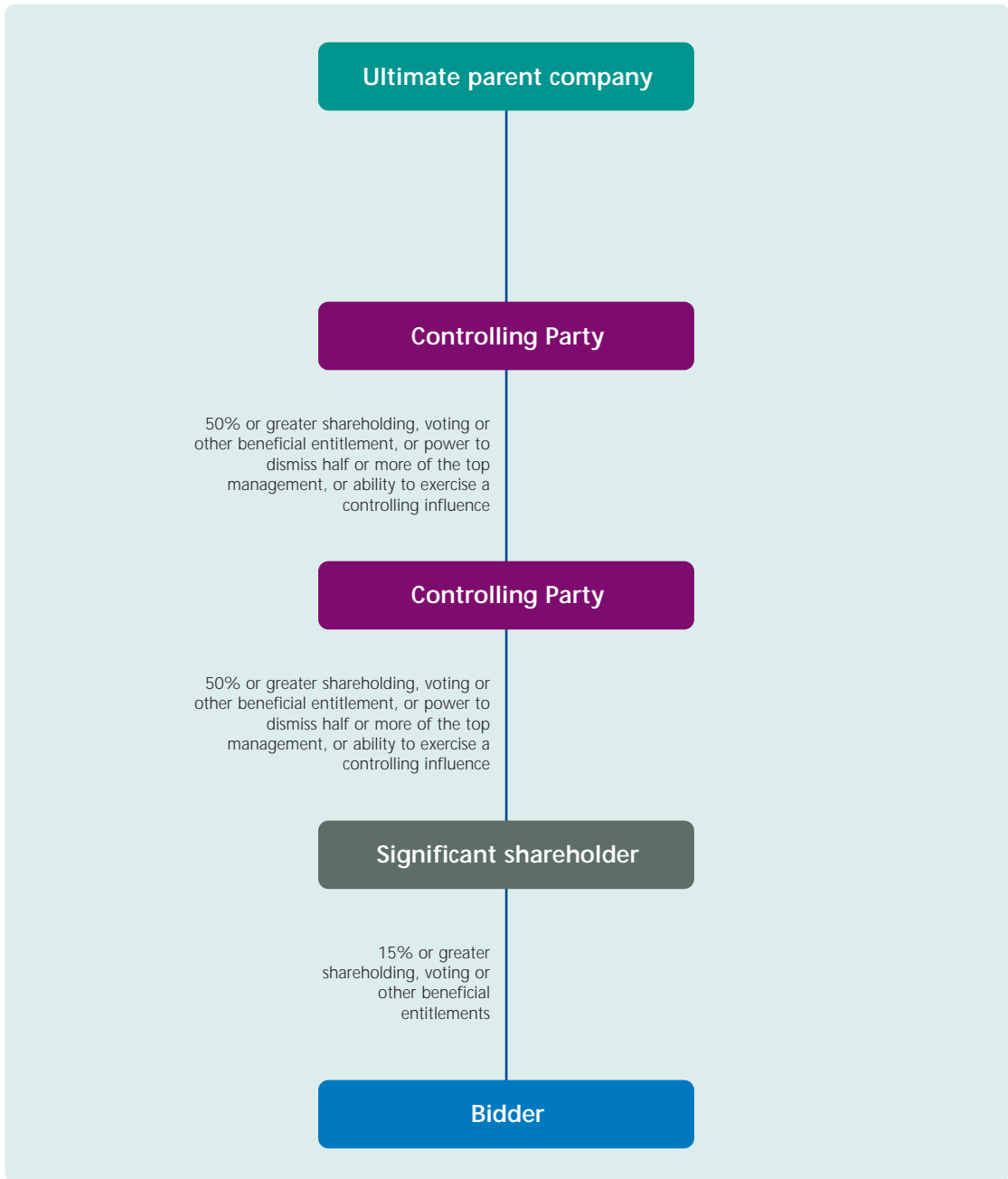
Parties that wish to participate in, provide finance for, or advise more than one Consortium must ensure that where they hold confidential information in respect of those Consortia, there must be adequate safeguards put in place to protect that confidential information. Where a party chooses to participate in more than one Consortium, evidence must be provided to the Commission by either the Bidder or the party concerned directly to satisfy the Commission that this is the case.

Parties who intend to participate in more than one Consortium, but who may be deemed to form part of more than one Bid Group, are encouraged to discuss their plans as soon as possible, and before submission of Bids, with the Commission.

Notwithstanding the above, the exercise of control or significant influence over more than one Bidder shall include any arrangement which, in the Commission's opinion, constitutes, or is intended to constitute, the exercise of control or significant influence over more than one Bidder, for example, by a supplier by virtue of its functional role within a Consortium.

Bidders should note that the participation rules set out here apply to both the intended Licensee and to the Bidder where they are not the same entity.

Figure 1. Definition of a Bid Group



If a bidder or member of a consortium has entered into any agreement of a kind referred to at (a)-(f) above:

- (i) at a time before the publication of this document; or
- (ii) where circumstances subsequently changed in such a way as to render an agreement entered into prior to publication of this document an agreement of a kind referred to in (a)-(f) above;

that bidder or member of a consortium must disclose the existence of the agreement to the Commission and provide details of the relevant restriction contained in the agreement.”

Accordingly, the Bid Process Agreement contains the relevant undertakings in respect of restrictive agreements.

4.18 Validity period of a Bid

Each Bid and the information contained therein is irrevocable and must remain valid for a minimum of 12 months from the date it is submitted. Each Bidder shall indicate the maximum validity period over and above 12 months, which it is prepared to accept, without adjustment to its Bid.

Chapter

Handover

5

5 Handover

5.1 Introduction

This chapter provides information on a number of key issues that will be relevant in the event that a Bidder other than the Current Operator wins the Competition. The Commission makes no assumption as to the identity of the next Licensee.

Each Bidder will need to take into account the obligations described here, and the provisions of the current licence, when preparing its Bid. In particular, each Bidder will need to be able to show how their Transition arrangements and proposals in respect of the ongoing operations of the Lottery deal with these issues.

This chapter is structured as follows:

- Section 5.2 sets out the current licence condition that determines the Current Operator's obligations to co-operate;
- Section 5.3 sets out obligations in relation to payment of prizes outstanding from the current licence period;
- Section 5.4 sets out further Handover issues relating to the Successful Bidder and the Current Operator;
- Section 5.5 sets out issues concerning intellectual property; and
- Section 5.6 sets out further detail in respect of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

5.2 Scope of co-operation with Current Operator

The Current Operator is obliged, under its existing licence, to co-operate with the Successful Bidder. In the two years preceding the expiry of the present licence, the Current Operator is obliged, as and when required by the Commission, to assist and co-operate with the Successful Bidder in the establishment of facilities necessary for the operation of the Lottery. Any costs incurred by the Current Operator in doing so will be shared with the Successful Bidder under mutually agreed term or, failing that, by arbitration.

In the context of the information set out in this ITA and its Bid Proposals, each Bidder is asked to provide information on the specific areas where it envisages requiring co-operation from the Current Operator if it were to be successful. Each Bidder's response should be provided under section 22.2. The Commission will use this response for information purposes only and not for the purposes of evaluating a Bid. The Commission intends to work with the Successful Bidder and the Current Operator to ensure that suitable practical arrangements are put in place as between the parties to facilitate a smooth Handover where applicable.

5.3 Payment of outstanding prizes

5.3.1 Requirements on the Licensee in connection to payment of prizes relating to the current licence period

The Licensee will be required to make arrangements to pay unpaid prizes in respect of constituent lotteries promoted by the Current Operator for which the claim period would not have expired prior to the end of the current licence (please see Condition 36 (3) of the current licence).

In connection with this, the Licensee will be required to:

- Receive and validate claims for prizes won before the termination of the current licence but claimed after its termination;
- Ensure that claims from the current licence are validated with at least the same level of security as those won after the start of the Licence;

- Make payment of those prizes in accordance with any new performance standards agreed as part of the Licence; and
- Publicise winning draw game numbers relating to the final six months prior to the commencement of the Licence, so long as any relevant claim periods remain outstanding.

In order to achieve this, the Licensee, during the Handover period, should expect to receive the following from the Current Operator:

- Any relevant prize winners' data files for conversion to the Successful Bidder's format;
- Relevant transaction data; and
- Sample transaction data and live transaction data prior to commencement of the Licence.

The Current Operator is obliged under the current licence to make payment of reasonable costs to the Licensee to cover the commission paid to retailers, the software costs associated with converting winners' files from an industry standard format to the Successful Bidder's own format and legal costs associated with the transfer of the relevant prizes into the prize security arrangements established under the Licence and other professional costs charged in respect of such transfer.

The Commission has received confirmation from the Current Operator that the existing provider of prize validation software GTECH is willing to licence the GGUARD and EPOS Secure PC prize validation software that the Current Operator presently uses to validate high-tier prize claims. This would be for a period of 180 days plus an additional eight weeks from commencement of the Licence. Finalisation of the terms of such a licence would be subject to arrangements to be made as between GTECH and the Licensee.

5.4 Further Handover issues

In addition to the obligations set out above in respect of the payment of prizes, the Commission is keen to ensure a smooth Handover and optimise service continuity. This section sets out some further considerations for Bidders:

- The Licensee is strongly encouraged, but not required, to continue the UK's participation in the EuroMillions game. Where the Licensee does not intend to continue such participation, it should set out under its response to the game plan requirements the reasons for not wishing to continue. The Current Operator has agreed in principle to transfer its shares in EuroMillions to the Licensee for a price equivalent to the Current Operator's share of the net asset value of SLE³⁸. The Successful Bidder will be expected to meet the costs of the share transfer. Bidders should note that a Licensee who wishes to take over the UK's place in EuroMillions will be required to meet certain entry criteria. Further detail is provided in Appendix I;
- The Current Operator has agreed to make available details of all the then current players' e-wallet and subscription details before the start of the Licence in order to allow the Licensee to set up the relevant accounts and assist service continuity. Bidders should note that such details may only be used for the purposes of assisting service continuity rather than for marketing purposes, in accordance with the provisions of the data protection legislation;
- The Current Operator offers an embedded EPOS service to allow players to buy tickets for repeated games/numbers. Currently, one major UK supermarket chain (Tesco³⁹) has adopted this service. The solution includes an EPOS program embedded in each till which communicates with the Current Operator's central gaming systems and with the retailer's till software via an Application Programming Interface (API). In terms of intellectual property, GTECH owns the embedded EPOS program and the communications protocols it uses with the central gaming system; the Current Operator owns the API between the embedded EPOS program and the retailer's till software.

³⁸ Net asset value for these purposes will be defined as the net assets of SLE attributable to the Current Operator's shares, net assets being the assets of SLE less the amount of the provisions and debts, as shown on the audited balance sheet of SLE as at the date of transfer. Details of the Current Operator's shareholding in SLE are available in its annual report and financial statements, whilst the financial accounts of SLE are also publicly available.

³⁹ Bid Note 4, on the Commission's website, lists a number of retailers (including Tesco) who have confirmed that they would be prepared, in principle, to work with any Consortium as a distributor of Lottery products and to meet with potential Consortia to discuss any specific issues that affect that Consortium's Bid, such as sales through retailer checkouts.

- The Commission would encourage Bidders to continue this service, but recognises that the exact solution will depend on commercial negotiations and acceptability of the technology proposed;
- The Current Operator has confirmed in principle that it is willing to transfer relevant data in order to support continuity of the current Tesco EPOS National Lottery FastPay cards during Handover should the Licensee wish to continue such services;
 - The current licence gives the Licensee the option of taking the Current Operator's existing base of terminals for a minimum price of £10 million. The existing terminals are standalone and not PC compatible. Bidders are strongly encouraged to refer to the technology requirements in chapter 12 when considering whether or not to take the existing terminals;
 - The current licence allows the Current Operator the option of specifying assets and contracts that it might make available to a Licensee once the Preferred Bidder has been appointed. The Current Operator has no obligation to provide information for the purposes of the Competition on what those assets and contracts might be or to confirm whether such assets and contracts will be made available. The Commission has discussed the option of providing such information with the Current Operator, who has confirmed that at present it does not wish to make such information available. The Commission therefore expects Bidders to submit Bids on the basis that there is no transfer of assets or contracts and that they will be putting in place their own, separate Lottery operations for the start of operations at commencement of the Licence. However, there is nothing that precludes a Bidder from seeking to agree terms with the Current Operator for transfer of assets or contracts at any stage in the process. For the avoidance of doubt, this could include any item of the technology operation, including scratchcard stock. The Commission strongly recommends that Bidders refer to the requirement set out in this ITA if they wish to undertake such negotiations. In the event that any agreements are concluded prior to Bid submission, the Commission will require sufficient evidence to be certain that such agreements provide a sound basis for any proposals, and that any such proposals comply with the terms of this ITA;
 - Within two months of termination of the current licence, the Current Operator is obliged to remove all signage, equipment and information pertaining to the Lottery from all retail outlets in operation during the current licence;
 - Unless otherwise agreed, scratchcards in use during the current licence are not permitted to be sold after termination of the current licence;
 - The Current Operator will settle financial accounts with its retailers including commission due on all prizes won during the current licence;
 - The Current Operator will remain responsible for all pre-termination disputes, including claims where the ticket has been lost. Any such pre-termination disputes (including, but not limited to, disputes with retailers and players) are the Current Operator's responsibility, irrespective of whether the dispute is raised before or after the termination date of the current licence; and
 - It is intended that there will be no incremental (i.e. annuity-style prizes where a cash sum is paid on a regular periodic basis) or non-cash prizes unclaimed at the commencement of the Licence.

Bidders should note that, notwithstanding the above, obligations and responsibilities may be transferred to a Successful Bidder who is not the Current Operator. However, the terms and conditions of such a transfer would be subject to any commercial arrangements as agreed between the two parties.

5.5 Intellectual property

This section explains briefly the intellectual property that will be made available to the Licensee for the purposes of operating the Lottery.

The Commission already owns many of the core intellectual property rights the Current Operator uses in the course of operating the Lottery. This intellectual property includes certain UK registered trademarks and applications, domain names, and copyright. Detail about this intellectual property is contained in the data room. The Commission will be exercising, and will continue to exercise, its rights under the current licence to acquire further intellectual property.

The Commission frequently reviews new intellectual property which is regularly created for use in operating the Lottery. The current Section 5 licence gives the Commission the ability to either require the Current Operator to transfer ownership to the Commission (where the intellectual property is owned by the Current Operator) or to use its endeavours to obtain a transfer from a third party owner of the intellectual property. Details of intellectual property that is the subject of discussion with the Current Operator are contained in the data room.

This is a continuing process, and so by the time of commencement of the Licence the Commission is likely to own further intellectual property for use in the course of operating the Lottery.

This transfer of intellectual property does not extend to the situation where the Current Operator has entered into a licence with a third party. This primarily relates to software licences and the use of licensed properties e.g. game or film designs or themes.

5.5.1 2012 Olympic and Paralympic Games – Intellectual property and branding

Bidders should be aware that any use of Olympic and Paralympic branding would need to be in accordance with a licence, guidelines and approval procedures to be agreed with LOCOG (London Organising Committee of the Olympic Games). LOCOG will also implement the guidelines and co-ordinate any approvals required from the IOC (International Olympic Committee), the IPC (International Paralympic Committee), the British Olympic Association and the British Paralympic Association. An interim trademark licence has been agreed by LOCOG with the Current Operator that allows the branding of individual games, but no long-term licence has been agreed at time of writing.

It is the Commission's guidance that Bidders should assume reasonable use of London 2012 intellectual property within their game plans, including the use of the London 2012 emblem and other sporting iconography that are in accordance with the Olympic ideals and spirit.

5.5.2 EuroMillions intellectual property

The intellectual property for EuroMillions is held by SLE, which is the limited liability company established in Belgium to provide common services necessary to the operation of the game (i.e. operating and administering the draw).

Each lottery operator in the EuroMillions consortium is required to enter into licence agreements with SLE that will allow that operator to use certain types of EuroMillions trademarks and copyright in certain aspects of the draw show in its respective country. If the Current Operator ceases to participate in the EuroMillions game, then it ceases to be entitled to use this IP. A new participant will need to enter into a licence agreement with SLE to use this EuroMillions intellectual property.

Operators may use certain EuroMillions logos, trademarks and designs to create new intellectual property by combining it with that operator's own trademarks or designs for the purposes of marketing EuroMillions in their territory. Any new intellectual property created by the Current Operator in this manner is registered in the Commission's name and is owned by the Commission. The Commission may assign or transfer this intellectual property to a successor licensee.

5.6 TUPE and treatment of redundancy costs

5.6.1 Introduction

In the United Kingdom a change in the ownership of a business or a change in service provider may attract the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Irrespective of the consideration set out here, all Bidders, including overseas Bidders, will need to form their own view as to whether TUPE will apply to the award of the Licence.

The purpose of TUPE is to protect the rights of employees in circumstances where an undertaking is transferred. If TUPE applies, then on day one of operation of the Licence, any of the Current Operator's staff to which TUPE applies will automatically become employed by the Licensee (in the event that the Licensee is not the Current Operator). In this situation, the Licensee may need to make redundancies in connection with this transfer of staff and, if this is the case, the Commission is aware that these redundancy costs could be material. In addition, depending on the staffing implications of the requirements set out in this ITA, the Current Operator may also need to make redundancies if it were to become the Licensee.

If TUPE applies to the award of the third licence, Bidders must comply with the information and consultation obligations set out in TUPE in relation to staff affected by the operation of TUPE.

5.6.2 Treatment of redundancy costs arising as a result of taking up the Licence

Each Bidder must submit the proposals it deems most appropriate in terms of meeting the requirements of the ITA. However, all Bidders (including the Current Operator) should disregard any Redundancy Costs that would arise from taking up the Licence when submitting their responses. The most economically advantageous Bid that meets the requirements set out in this ITA will then be chosen. The Commission will ignore any proposed Redundancy Costs in the evaluation of Bids.

Any Redundancy Costs reasonably, necessarily and properly incurred in the first year of the Licence which are a result of taking up the Licence will be recoverable by the Licensee through an adjustment to the retention rate. The Licensee will be required to provide such evidence as the Commission requires that those Redundancy Costs have been reasonably, necessarily and properly incurred, and that the Licensee has attempted to minimise those costs. This assessment will be carried out by an independent expert and will be binding on both the Commission and the Licensee.

5.6.3 Implications for Bidders

- Bidders must set out in their Bids whether they are of the view that TUPE will apply to the grant of the Licence and must set out the basis for their stated view. This should be provided in response to section 22.4;
- Given the approach set out above, the Commission does not propose to provide Bidders with information relating to the workforce of the Current Operator at this stage of the Competition;
- During the Transition Period, the Successful Bidder will be expected to refine its organisational structure and plans for the Licence Period and to consider the issue of any potential Redundancy Costs;
- During the Transition Period, the Commission will appoint an independent expert to adjudicate on the matters set out below. The role of the independent expert will be one of adjudicator not negotiator. So long as the independent expert is satisfied that the relevant criteria have been met, adjustment will be made to the retention rate to allow recovery of the designated Redundancy Costs;
- Once the Licence has commenced, the Licensee will be obliged to provide full details of any staff made redundant and demonstrate to the independent expert's satisfaction that those redundancies are necessarily, reasonably and properly incurred as a result of taking up the Licence; and
- Provided that the Licensee satisfies the independent expert that it:
 - has complied in full with its legal obligations relating to any redundancy exercise undertaken in the first year of the Licence; and
 - has taken appropriate steps to minimise any Redundancy Costs associated with any such redundancy exercise, the Commission will allow for an adjustment in the retention rate to take account of such of those Redundancy Costs as have, in the view of the independent expert, been reasonably, necessarily and properly incurred by the Licensee as a result of taking up the Licence;
- The Successful Bidder/Licensee will be required to permit the independent expert to conduct interviews with its staff and will provide the independent expert with such information as it requires in order that it can make the assessments set out in this section 5.6.3.

Evaluation

Chapter

6

6 Evaluation

6.1 Evaluation of Bids

The evaluation of Bids will be based on the Commission's statutory duties. The Commission will evaluate a number of specific elements, which can be grouped into two parts, as follows:

- Required Standards, which each Bid will be required to meet; and
- Returns to good causes, which will be the basis of comparison between Bids.

It is the Commissioners who have the responsibility for appointing the Licensee. The decision as to which Bidder to award the Licence to, on the basis of this evaluation, will therefore be that of the Commissioners.

In order to assist the Commissioners in deciding which Bidder should be awarded the Licence, specific teams, comprising relevant personnel from within the Commission and supported by its advisers as appropriate, will be appointed. Those teams will provide analysis on particular elements of Bids.

Commissioners will decide, based on their evaluation of Bids, which Bidder, if any, they will designate as the Preferred Bidder and enter into discussions with in order to finalise the Draft Licence. At this stage, the Commission may also designate a Reserve Bidder, with whom it may choose to finalise the Licence in the event that discussions with the Preferred Bidder do not result in award of the Licence.

Figure 2 provides an overview of the evaluation process. Bidders should note that the diagram is a simplification of the proposed process and as a consequence does not necessarily show all relevant interactions nor represent the order of each specific element. The Commission reserves the right to make amendments to this process.

6.2 Required Standards

These elements of the evaluation will focus on a Bidder's ability to satisfy the Commission that it meets the Required Standards in respect of the following areas:

- Propriety (Propriety – chapter 7);
- Player protection (Player protection – chapter 8);
- Management of transition risks (Transition – chapter 9);
- Overall ability of management and capacity of organisational structure (Organisation – chapter 10);
- Financial soundness (Financial soundness – chapter 11);
- Security, capacity, resilience and integrity of the technology design, its implementation and operation, and its suitability as a basis for a modern lottery (Technology – chapter 12); and
- Operational risk management (Operational risk management – chapter 13).

Each Bidder's ability to meet a Required Standard will be assessed separately from the evaluation of its ability to generate returns to good causes. In addition, Required Standards will not be used as differentiators between Bids.

Each Bidder should note that whilst Required Standards are assessed separately from the evaluation of returns to good causes, each Bidder's ability to satisfy a particular Required Standard may depend upon the analysis undertaken in other areas. For example, the assessment of each Bidder's ability to meet the Required Standard for financial soundness will depend, in part, upon the scenario analysis undertaken on the business plan provided in response to chapter 14 of this ITA.

A description of the Required Standards, the criteria against which each Bidder will be evaluated, and the evidence it needs to provide to support the evaluation are described in the chapters indicated.

Each Bidder should ensure that its response to each chapter is provided in a separate volume or volumes, and that all the information that each Bidder wishes the Commission to take into account is contained within those respective volume(s), without the need for cross referencing except where absolutely necessary to avoid substantial repetition.

6.3 Returns to good causes

The Commission will be making an assessment of each Bidder's expected returns to good causes. It is this assessment that will, provided the Commission's Required Standards outlined in chapters 7 to 13 are satisfied, determine the Bidder that will be awarded the Licence.

The assessment of each Bidder's ability to make primary contributions to good causes will be the key aspect of this part of the evaluation. It will draw on the responses to all areas of the returns to good causes evaluation. In order to make an informed assessment, the Commission requires each Bidder to submit sufficient evidence to enable it to understand the key drivers of these contributions, including information on the:

- Business Plan (chapter 14);
- Contributions to good causes (chapter 15);
- Marketing plan (chapter 17);
- Game plan (chapter 18);
- Player access plan (chapter 19);
- Marketing communications plan (chapter 20); and
- Marketing resource and sales plan (chapter 21).

Although not expressly tested under a separate chapter, the Commission is aware that certain aspects of the technology proposed may have an impact on, or be specific to, Bidders' proposals, and may therefore impact on the level of returns to good causes. This aspect of the returns to good causes evaluation is tested in a number of places within chapters 17 to 21.

Each Bidder's financial projections will be adjusted to take into account the Commission's assessment of its deliverability based on its robustness and the risks associated with its deliverability. Primary contributions will be calculated for a range of turnover projections and other sensitivity tests, and the expected present value of contributions calculated for each Bidder based on an assessment of the likely probabilities of different scenarios occurring.

Whilst important, this part of the analysis will not itself determine the outcome. The Commission will also test the relative strengths and weaknesses between each Bidder in order to inform an overall view as to which particular Bidder is likely to generate the highest returns to good causes.

The level of secondary contributions to good causes, if any, will also be calculated based on a similar range of projections of the turnover likely to be generated by each Bidder (and also its costs).

Where there is a change to the underlying cost structure that arises as a result of clarification or amendment of a Bid, the Commission will take this into account when assessing the financial soundness and realism of that Bid, and when adjusting the Bidder's business plan forecasts.

6.4 Ancillary Activities

The Commission is keen to encourage innovative ideas and methods to increase revenues through Ancillary Activities, and to share those increases as appropriate between the good causes and the Licensee. Once the Successful Bidder has been appointed, the Commission will consider the Bidder's proposals to implement such activities accordingly.

The Draft Licence provides a formal definition of Ancillary Activities, but in summary it refers to any activity that generates income derived from the use of Lottery assets or from Lottery-related activities other than that derived from ticket sales. The definition captures activities such as:

- Broadcasting rights;
- Use of Lottery terminals, for purposes not related to the sale of Lottery tickets; or
- Advertising revenues, for example through the Lottery website.

The ability of the Licensee to undertake such activities will require Commission approval. This is because the Commission needs to ensure that:

- The activities being undertaken are consistent with the Commission's statutory duties;
- Sufficient safeguards are put in place to protect the core Lottery business and brand; and
- Any exercise of the Commission's discretion to give consent would be lawful, including having regard to competition law considerations.

Subject to these constraints, the Commission would expect to give consent where it was satisfied that a fair return can be achieved for the good causes in making such use of the Lottery infrastructure.

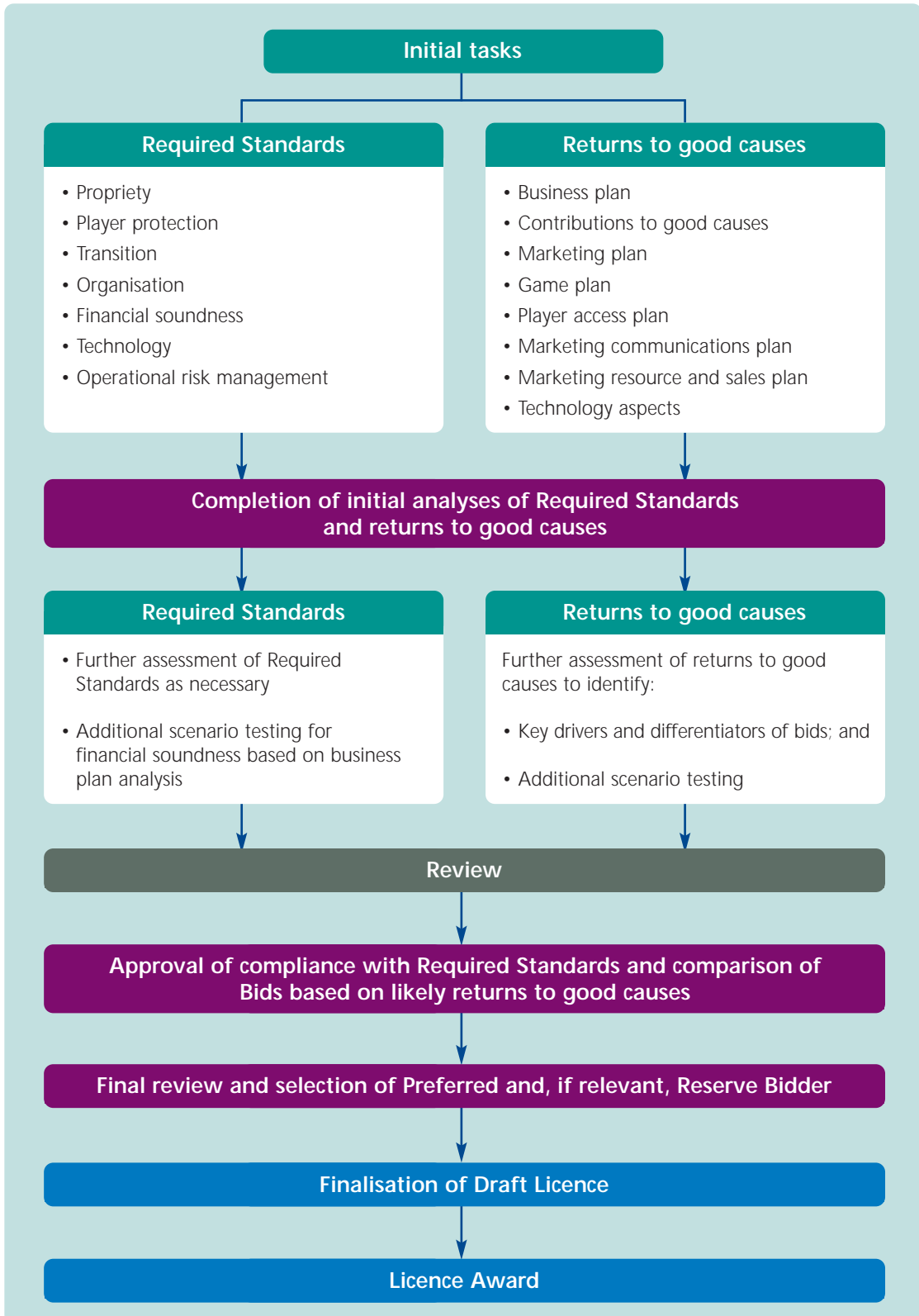
Bidders should note, however, that for the purposes of the Competition and evaluating Bids, they must not include any Ancillary Activities in the business plan projections. This means that the direct contributions or direct financial effects (e.g. revenues, costs, capital expenditure) of such activities must not be shown. Where Ancillary Activities are shown, they will be ignored for the purposes of the evaluation. In this way, the Commission intends to focus the financial evaluation on the contributions to good causes driven by core Lottery-related sales.

However, Bidders may, if they wish, incorporate the following financial effects within their business plans:

- In addition to cost reductions that a Bidder might be able to negotiate through the course of ordinary business, it may also include rate reductions or other cost efficiencies that result from services being provided by, for example, a shareholder supplier. Where necessary the Commission will have regard to the financial soundness of the providers of those services; or
- Although the direct effects on the financial statements of Ancillary Activities must be excluded for the purposes of the evaluation, where a Bidder takes the view that it may be able to generate revenues through Ancillary Activities, then it may reduce its retention rate accordingly to contribute the benefit, or a suitable proportion thereof, to the good causes. If a Bidder chooses to reduce its retention rate in such a way, the Bidder should be clear that its Bid must still be financially sound and meet the other requirements of this ITA after the effects of the reduction in retention rates has been taken into account. Bidders should note that there is no guarantee that such activities will be licensed.

Bidders may discuss any proposals relating to Ancillary Activities with the Commission in advance of submitting a Bid.

Figure 2. Evaluation process



Note: At the appropriate time, the Commission may consider asking Bidders to make presentations to the Commission. In addition, the Commission may consider conducting site visits.