

Offshore Electricity Transmission: Updated Proposals for the Competitive Tender Process

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Annex 4 – Draft Tender Regulations

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Target audience: All with an interest in renewable energy and offshore electricity transmission.

Overview:

We are working together with the Government to introduce a new regulatory regime for offshore electricity transmission. A key part of the proposals for this regime is that offshore electricity transmission licences would be granted on the basis of a competitive tender process. The Government has decided that Ofgem should manage this process.

This document updates our proposals for managing this competitive tender process. We are also consulting for the final time on the draft regulations that would provide the legislative framework to enable this process.

This annex contains the draft Tender Regulations that would provide the legislative framework to enable this process.

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ELECTRICITY

**The Electricity (Competitive Tenders for Offshore
Transmission Licences) Regulations 2009**

Made

Coming into force

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The Gas and Electricity Markets Authority¹ ("the Authority") makes the following Regulations in exercise of the powers conferred on the Authority by sections 6C, 6D, 6E and 60 of the Electricity Act 1989² ("the 1989 Act").

Before making these Regulations the Authority obtained the approval of the Secretary of State in accordance with section 6C(4) of the 1989 Act.

PART 1

INTRODUCTORY

Citation, commencement and extent

1-(1) These Regulations may be cited as the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 and shall come into force on [].

¹ The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).

² 1989 c.29; section 92 of the Energy Act 2004 (c.20) inserted section 6C into the Electricity Act 1989 and section 44 of the Energy Act 2008 (c.32) inserted sections 6D and 6E into the Electricity Act 1989.

Interpretation

2-(1) In these Regulations-

"applicant" means any person who submits a pre-qualification questionnaire to the Authority;

"bidder group" means two or more persons acting together for the purposes of any submission to the Authority under these Regulations;

"data room" means a secure electronic store of information to be maintained by the Authority;

"developer" means any person falling within section 6D(2)(a) or 6D(4) of the 1989 Act;

"entry conditions" means the conditions specified in paragraph 1 of Schedule 2;

"preferred bidder" has the meaning given in paragraph 35 of Schedule 2A to the 1989 Act;

"qualifying applicant" means an applicant invited to submit a qualification to tender questionnaire in accordance with regulation 12;

"qualifying bidder" means a qualifying applicant invited to submit a tender under regulation 14;

"qualifying project" means in the Authority's opinion a project in which a developer has demonstrated the requirements in paragraph 1(1) or (2) of Schedule 1;

"reserve bidder" means a person identified as such by the Authority in accordance with the provisions of regulation 15(2);

"tender costs" has the meaning given in 6D(8) of the 1989 Act;

"transitional entry conditions" means the conditions specified in paragraph 2 of Schedule 2; and

"transmission assets" has the meaning given in paragraph 1(3) of Schedule 2A to the 1989 Act.

- (2) Any notice required to be given by the Authority under these Regulations shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

PART 2

VALUE OF ASSETS

- 3-(1)** Prior to commencing a transitional tender exercise where the construction of the transmission assets have not reached practical completion, the Authority shall estimate the costs that will be, or ought to be, incurred in connection with the development and construction of the transmission assets.

- (2) The estimate of the costs that will be, or ought to be, incurred in connection with the transmission assets in paragraph (1) shall be the Authority's best estimate of the costs

of developing and constructing the transmission assets based on the best information available at the time.

- (3) Where the Authority has undertaken an estimate under paragraph (1), it shall give notice to a developer to make a payment of an amount prescribed in the Authority's published cost recovery methodology.
- (4) In relation to the transmission assets that have been estimated by the Authority under paragraph (1), a developer shall give notice to the Authority twelve weeks prior to practical completion of construction of the transmission assets.
- (5) Further to paragraph (4), where a developer has reached practical completion of construction of the transmission assets, it shall request a completion notice from the coordination licence holder and notify the Authority once it has been issued with a completion notice.
- (6) Any assessment prior to or after a transitional tender exercise has commenced of the costs that have been, or ought to have been, incurred in connection with the transmission assets shall be the Authority's assessment of the costs of developing and constructing the transmission assets based on the information available at the time.
- (7) If requested by the Authority at any stage, a developer shall provide further information to enable the Authority to estimate or assess the value of the transmission assets.
- (8) Where a transitional tender exercise has been held and the Authority has assessed the value of the regulated assets, it shall give notice to a developer to make a payment of an amount prescribed in the Authority's published cost recovery methodology.

PART 3

QUALIFYING PROJECTS

Qualifying projects

- 4-(1) Where the Authority has received one or more requests in accordance with regulation 7, it shall determine a qualifying project in accordance with the requirements set out in paragraph 1(1) or (2) of Schedule 1.
- (2) Where the Authority has determined a qualifying project under paragraph (1), it shall notify a developer that a qualifying project is eligible to participate in a tender exercise.
- (3) Where the Authority determines that the requirements set out in paragraph 1(1) or (2) of Schedule 1 have not been demonstrated, it shall notify a developer and give reasons for its determination.
- (4) [Where a developer disagrees with the Authority's determination under paragraph (3) it may make representations to the Authority within seven days from receipt of a notice under paragraph (2).
- (5) The Authority shall consider any representations received from a developer under paragraph (4) and notify a developer of its determination.]

PART 4

ENTRY CONDITIONS

Entry conditions

- 5-(1) The Authority shall not commence a tender exercise other than a transitional tender exercise unless it considers that the conditions specified in paragraph 1 of Schedule 2 are satisfied no later than the date specified in a notice under regulation 7(2).
- (2) Where the requirement in paragraph 1(1)(a) of Schedule 1 is not satisfied by reason of the fact that the initial connection offer by the coordination licence holder has been referred to the Authority in accordance with the provisions under a transmission licence, the Authority shall commence a tender exercise where -
- (a) a developer has provided payment and security to meet the tender costs of the Authority in accordance with the Authority's published cost recovery methodology;
 - (b) the issue that has been referred to the Authority would not in its opinion have a material impact on the design of the changes required to the transmission system which are specified in the initial connection offer; and
 - (c) a developer has demonstrated the requirement under paragraph 1(1)(b) of Schedule 1 and the conditions in paragraph 1(1)(a) [and (b)] of Schedule 2 have been satisfied.

Transitional entry conditions

- 6 The Authority shall not commence a transitional tender exercise unless it considers that the conditions specified in paragraph 2 of Schedule 2 are satisfied no later than the date specified in a notice under regulation 7(2).

Request for appointment of offshore transmission licence holder

- 7-(1) A developer who wishes the Authority to publish a notice under regulation 9 shall make a request to that effect in writing to the Authority.
- (2) The Authority may publish a notice specifying a date by which the conditions in paragraph 1 or 2 of Schedule 2 [and such other conditions which in the Authority's opinion are necessary] must be satisfied.
- (3) A notice published under paragraph (2) may set out the type of information and documents that it will require in order to be satisfied that the conditions in paragraph 1 or 2 of Schedule 2 will be met.
- (4) The Authority may request such further clarification or documents necessary to satisfy itself that the conditions in paragraph 1 or 2 of Schedule 2 will be met.

Notification to developer

- 8-(1) Where the Authority considers that the conditions in paragraph 1 or 2 of Schedule 2 have been satisfied it shall -
- (a) send a developer a notice that a tender exercise in respect of that qualifying project shall commence on the date specified in accordance with regulation 9; and
 - (b) notify a developer of the amount of payment and security that it requires in accordance with the Authority's published cost recovery methodology.

PART 5

COMMENCEMENT DATE

Commencement date of tender exercises

- 9-(1) The Authority shall publish a notice specifying the date on which a tender exercise shall be commenced in a calendar year for any qualifying projects, other than a qualifying project specified in a notice under paragraph (2).
- (2) Where the Authority considers it appropriate, it may after consulting a developer, publish a notice specifying the date on which a tender exercise in respect of a particular qualifying project shall be commenced (which may be earlier or later than the date specified under paragraph (1)).
 - (3) Where the Authority has published a notice under either paragraph (1) or (2) and the Authority determines that it is impracticable for any reason to commence a tender exercise at that time, the Authority shall take reasonable steps to notify developers and applicants and may publish a notice under paragraph (2) specifying a revised date on which that tender exercise shall be commenced.

PART 6

PRE-QUALIFICATION STAGE

Pre-Qualification

- 10-(1) On the date specified in a notice under regulation 9 and provided the Authority has received payment and security from a developer in accordance with regulation 8(1)(b), the Authority may commence the pre-qualification stage in respect of one or more qualifying projects by publishing the qualification documentation which shall include the information in Schedule 3.
- (2) The Authority may decline to consider any pre-qualification questionnaire submitted by an applicant that does not comply in any material respect with the requirements specified under paragraph 1(1)(c) of Schedule 3.

Determination of qualifying applicants

- 11-(1) The Authority shall evaluate each completed and returned pre-qualification questionnaire received in accordance with the selection criteria set out in the qualification documentation with a view to determining which applicants shall become qualifying applicants.
- (2) The Authority shall notify each applicant of its determination under paragraph (1).

PART 7

QUALIFICATION TO TENDER STAGE

Qualification to tender

- 12-(1) The Authority shall invite qualifying applicants to submit a qualification to tender questionnaire in accordance with the requirements set out in the qualification documentation.
- (2) The Authority may decline to consider any qualification to tender questionnaire submitted by a qualifying applicant that does not comply in any material respect with the requirements specified under paragraph 1(1)(c) of Schedule 3.

Determination of qualifying bidders

- 13-(1) The Authority shall evaluate each completed and returned qualification to tender questionnaire received in accordance with the selection criteria set out in the qualification documentation with a view to determining which qualifying applicants shall become qualifying bidders.
- (2) The Authority shall notify each qualifying applicant of its determination under paragraph (1).

PART 8

INVITATION TO TENDER STAGE

Invitations to tender

- 14-(1) The Authority shall invite qualifying bidders to submit a tender for providing offshore transmission services for each qualifying project to which a tender exercise relates.
- (2) The Authority shall notify all qualifying bidders of a date by which they shall-
- (a) return a signed a confidentiality agreement governing access arrangements to the data room to the Authority; and
 - (b) make a payment to the Authority determined in accordance with the Authority's published cost recovery methodology.
- (3) Where a qualifying bidder has satisfied the requirements in paragraph (2), the Authority shall send to that qualifying bidder the invitation to tender documentation which shall include the information in Schedule 4.

- (4) The submission of a tender by a qualifying bidder shall be deemed an application for the grant of an offshore transmission licence.
- (5) The Authority may decline to consider a tender that does not comply in any material respect with the requirements specified under paragraph 1(1)(c) of Schedule 4.

PART 9

EVALUATION STAGE

Evaluation of tenders

- 15-(1) The Authority shall evaluate tenders for each qualifying project received in accordance with the evaluation criteria set out in the invitation to tender documentation with a view to determining a preferred bidder.
- (2) The Authority may evaluate tenders for each qualifying project received in accordance with the evaluation criteria set out in the invitation to tender documentation with a view to determining a reserve bidder.

Best and final offer

- 16-(1) Where the Authority considers that it is unable to determine a preferred bidder in accordance with regulation 15(1) it shall commence a best and final offer stage.
- (2) Upon evaluation of tenders under regulation 15(1), the Authority shall select qualifying bidders invited to participate in a best and final offer stage.
- (3) The Authority shall notify each qualifying bidder whether they have or have not been invited to participate in a best and final offer stage.
- (4) The Authority shall send to selected qualifying bidders the best and final offer documentation which shall include the information in Schedule 5.
- (5) Where the Authority has only received one tender, it may request that qualifying bidder to submit a best and final offer if in the Authority's opinion it would be appropriate to do so.
- (6) The Authority shall evaluate best and final offers in accordance with the evaluation criteria set out in the best and final offer documentation.
- (7) The Authority may decline to consider a best and final offer that does not comply in any material respect with the requirements specified under paragraph 1(1)(b) of Schedule 5.

Notification of preferred bidder and reserve bidder

- 17-(1) As soon as the Authority is satisfied that it will grant an offshore transmission licence to a preferred bidder if certain matters are resolved to the Authority's satisfaction, it shall publish a notice to that effect.
- (2) The notice must -

- (a) specify the name and address of a preferred bidder; and
 - (b) describe in general terms, those matters, how they are to be satisfied, and by what date.
- (3) The Authority shall notify a preferred bidder of any payment payable in accordance with the Authority's published cost recovery methodology.
- (4) Where-
- (a) the matters referred to in paragraph (1) are not resolved to the Authority's satisfaction; or
 - (b) a preferred bidder withdraws from a tender exercise,
- the Authority may withdraw a notice under paragraph (1) by publishing a notice to that effect.
- (5) Where the Authority has published a notice under paragraph (4), it may discontinue a tender exercise with a preferred bidder and determine to treat a reserve bidder (if one has been determined in accordance with regulation 15(2)) as a replacement preferred bidder.
- (6) The Authority shall notify each qualifying bidder that is not a preferred bidder or a reserve bidder.

PART 10

WITHDRAWAL OF A TENDER

Withdrawal of a tender

- 18** Where a qualifying bidder withdraws its tender for a qualifying project, that qualifying bidder shall not be re-admitted to a tender exercise for that qualifying project.

PART 11

CANCELLATION OF A QUALIFYING PROJECT FROM A TENDER EXERCISE

Cancellation

- 19-(1)** Where the Authority is satisfied that any of the events in Schedule 6 are occurring or have occurred in relation to a qualifying project, it may after giving seven days notice of its intention to cancel a qualifying project from a tender exercise and considering any representations which are duly made, cancel that qualifying project from a tender exercise and publish a notice of the cancellation.

- (2) Where the Authority cancels a qualifying project from a transitional tender exercise pursuant to paragraph (1) it may re-run a transitional tender exercise in respect of that qualifying project.
- (3) In the event that no preferred bidder is identified in a transitional tender exercise under paragraph (2), the Authority may re-run a further transitional tender exercise in respect of that qualifying project or determine that the transitional tender exercise has failed.
- (4) Where the Authority re-runs a transitional tender exercise in respect of a qualifying project, it shall do so in accordance with these Regulations.
- (5) Where the Authority determines that a transitional tender exercise has failed under paragraph (3), it shall not commence a further transitional tender exercise in respect of that qualifying project and may issue a direction to an existing transmission licensee pursuant to a standard condition of a transmission licence.
- (6) Where the Authority cancels a qualifying project from a tender exercise pursuant to paragraph (1), it may in certain circumstances repay wholly or in part a payment made by an applicant or qualifying bidder as appropriate in accordance with its published cost recovery methodology.

PART 12

DISQUALIFICATION FROM A TENDER EXERCISE

Disqualification

- 20-(1)** If in relation to an applicant, qualifying applicant or qualifying bidder, the Authority is satisfied that any of the events in Schedule 7 are occurring or have occurred and that the occurrence would materially affect the outcome of a tender exercise-
 - (a) any payment provided to the Authority in accordance with its published cost recovery methodology will be forfeited by, and not returned to, the applicant or qualifying bidder concerned; and
 - (b) an applicant, qualifying applicant or qualifying bidder may also be disqualified by the Authority from a tender exercise by the Authority giving notice to that applicant, qualifying applicant or qualifying bidder.
- (2) Where an applicant, qualifying applicant or qualifying bidder is disqualified from a tender exercise under paragraph 1(b), every document, information or tender submitted by that applicant, qualifying applicant or qualifying bidder to the Authority shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining a successful bidder.

PART 13

NOTIFICATION OF OFFSHORE TRANSMISSION LICENCE GRANT

Notification of successful bidder

- 21-(1)** As soon as the Authority determines to grant an offshore transmission licence to a successful bidder it shall publish a notice to that effect.
- (2) The notice shall specify the name and address of a successful bidder.

Enforcement of public procurement obligations and publication of grant

- 22-(1)** Subject to paragraph (6), the Authority shall as soon as possible after the determination has been made under regulation 21(1), notify all qualifying bidders of its determination in relation to a successful bidder.
- (2) A notice referred to in paragraph (1) shall include-
- (a) where practicable, the score obtained by-
 - (i) each qualifying bidder which is to receive a notice; and
 - (ii) the successful bidder, and
 - (b) the name of the successful bidder.
- (3) The Authority shall allow a period of at least ten days to elapse between the date of despatch of a notice referred to in paragraph (1) and the date on which the Authority proposes to grant an offshore transmission licence to a successful bidder
- (4) Subject to paragraph (6), if by midnight at the end of the second working day of the period referred to in paragraph (3), the Authority receives a request in writing from a qualifying bidder which was sent a notice under paragraph (1), for the reasons why that qualifying bidder was unsuccessful, the Authority shall inform that qualifying bidder of the characteristics and relative advantages of the successful tender.
- (5) The Authority shall give the information set out in paragraph (4) at least three working days before the end of the period referred to in paragraph (3), or where that is not possible, the period referred to in paragraph (3) shall be extended to allow at least three working days between the provision of the information set out in paragraph (4) and the date the Authority proposes to grant an offshore transmission licence to a successful bidder.
- (6) The Authority may withhold any information to be provided in accordance with paragraphs (1) or (4) where the disclosure of such information-
- (a) would impede law enforcement;
 - (b) would otherwise be contrary to the public interest;
 - (c) would prejudice the legitimate commercial interests of any qualifying bidder; or
 - (d) might prejudice fair competition between qualifying bidders.
- (7) Subject to any interim or final findings of any proceedings brought within the ten day period referred to in paragraph (3), the Authority shall determine whether or not to grant an offshore transmission licence to a successful bidder.

PART 14

PROPERTY SCHEMES

Property schemes

- 23** Where commercial negotiations to transfer the property, rights or liabilities from an asset owner or a developer to a successful bidder fail after a transitional tender exercise has been held, the Authority may make a property scheme in accordance with Schedule 2A of the 1989 Act.

PART 15

COST RECOVERY

Recovery of tender costs

- 24-(1)** In relation to each tender exercise, the Authority shall publish its methodology for calculating its tender costs.
- (2) The Authority shall recover its tender costs in relation to each tender exercise in accordance with its published cost recovery methodology.
- (3) The Authority shall notify to a developer in relation to any payment or security required under these Regulations-
- (a) the amount of the payment or the nature of the security;
 - (b) the date and time by which it is to be made or provided; and
 - (c) the manner in which it is to be made or provided.
- (4) The Authority shall notify to an applicant or qualifying bidder in relation to any payment required under these Regulations-
- (a) the amount of the payment;
 - (b) the date and time by which it is to be made; and
 - (c) the manner in which it is to be made.

PART 16

MISCELLANEOUS

Failure to make payments or provide security

- 25-(1)** Where a developer or person approved by the Authority with whom a developer has made arrangements fails to make any payment or provide security as required under regulation 8(1)(b), the Authority may require that payment or security within a further period specified by the Authority by notice to the developer, which shall not be later than the date specified in a notice under regulation 9.
- (2) Where a developer or person approved by the Authority with whom a developer has made arrangements fails to make a payment or provide security within a further

period specified under paragraph (1), the Authority may cancel a qualifying project from a tender exercise in accordance with regulation 19.

- (3) Where a developer or person approved by the Authority with whom a developer has made arrangements fails to make a payment or provide security after a tender exercise is commenced, the Authority may cancel a qualifying project from a tender exercise in accordance with regulation 19 if that failure is not remedied within a period not exceeding ten days specified by the Authority by notice to the developer.
- (4) Where an applicant or qualifying bidder fails to make any payment as required under these Regulations, the Authority may exclude that applicant or qualifying bidder from a tender exercise if that failure is not remedied within a period not exceeding ten days specified by the Authority by notice to the applicant or qualifying bidder.

Enquiries to the Authority

- 26-(1) An applicant, qualifying applicant or qualifying bidder wishing to participate in a tender exercise may apply to the Authority for a decision as to the effect of any restriction or requirement under these Regulations.
- (2) Where an applicant, qualifying applicant or qualifying bidder makes an application under paragraph (1), the Authority may charge that applicant, qualifying applicant or qualifying bidder a fee prescribed in the Authority's published cost recovery methodology for any decision given in response to it.

Bidder groups [regulation under review]

- 27-(1) Any rules published by the Authority under these Regulations for the purposes of selecting qualifying applicants from a pool of applicants, qualifying bidders from a pool of qualifying applicants, evaluating tenders and determining preferred, reserve and successful bidders shall include provisions as to whether changes to bidder groups are to be permitted at any stage of a tender exercise.
- (2) Any rules governing changes to bidder groups will specify what is and what is not permissible and how the Authority will assess proposed changes.
- (3) Any changes to bidder groups will be subject further to the Authority's discretion to determine whether or not to allow a change would be fair and equitable to all other applicants, qualifying applicants and qualifying bidders in accordance with the Authority's principal objective.
- (4) [Rules for bidder groups shall include provisions about having no exclusive agreements with suppliers at the ITT stage]

Changes to delivery of documents or actions

- 28-(1) Paragraph (2) applies where the Authority determines that it is impracticable for any reason-
 - (a) for any document or notice which is to be delivered or published under these Regulations to be delivered or published by the time, date or in the manner specified under these Regulations; or

- (b) for any action which is required to be undertaken in accordance with these Regulations, to be completed by the time, date or in the manner specified.
- (2) Where this paragraph applies, the Authority shall take reasonable steps to notify a developer, applicant, qualifying applicant or qualifying bidder (as the case may be) that-
 - (a) delivery or publication shall be made by a different time or date or in a different manner; or
 - (b) the action shall be completed by a different time or date or in a different manner.

Disapplication of certain provisions

- 29-(1) Subject to paragraph (2), the provisions of sections 6A and 6B of the 1989 Act and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2008 (and any regulations replacing or amending them) shall be dispensed with in relation to applications for offshore transmission licences and no applications for offshore transmission licences shall be considered by the Authority unless made under and in accordance with these Regulations.
- (2) Nothing contained in these Regulations shall in any way affect the Authority's powers to modify the terms included in a transmission licence so as to extend or restrict the area within which the holder may participate in the transmission of electricity.

SCHEDULE 1 Regulation 4

QUALIFYING PROJECTS

- 1(1) Where a successful bidder will be required to construct or install the transmission assets, a developer shall demonstrate to the satisfaction of the Authority that it has within any time period notified by the Authority to a developer-
 - (a) entered into a bilateral connection agreement with the coordination licence holder in accordance with the arrangements for connection and use of the system; and
 - (b) entered into an agreement for lease with the Crown Estate Commissioners³ and provided evidence of such agreement for lease to the Authority.
- (2) Where a developer will construct or install the transmission assets, it shall demonstrate to the satisfaction of the Authority that it has within any time period notified by the Authority to a developer-
 - (a) entered into a bilateral connection agreement with the coordination licence holder in accordance with the arrangements for connection and use of the system or an agreement with the electricity distributor responsible for the distribution system of which the transmission assets are or are intended to be connected;
 - (b) obtained all necessary property rights and environmental and planning consents;
 - (c) completed construction of, or entered into, all necessary contracts for the construction of the transmission assets;
 - (d) secured financing to the satisfaction of the Authority to construct the transmission assets; and
 - (e) provided to the Authority its financial model and any other data to enable the estimate of the total efficient costs required to develop and construct the transmission assets.
- (3) The Authority may require a developer to provide such information as it considers necessary to make its assessment as to satisfaction of the requirements in paragraph 1 (1) or (2).
- (4) The Authority may allow a project to be a qualifying project under paragraph 1(2) notwithstanding the fact that a developer may not have been able to demonstrate that it has met the requirements in paragraph 1(2) either fully or at all, provided that the Authority is satisfied that a developer shall use its best endeavours to meet the requirements or resolve any other matters identified by the Authority in this regard within any time period notified by the Authority to a developer.

SCHEDULE 2 Regulations 5 and 6

³ The Crown Estate Commissioners are a body corporate under section 1(1) of the Crown Estate Act 1961 (c.55).

ENTRY CONDITIONS

- 1(1) A developer shall demonstrate to the satisfaction of the Authority that it has-
- (a) provided information to the satisfaction of the Authority to enable the Authority to establish a data room and provided a written warranty to qualifying bidders and a copy of the warranty to the Authority that the information in the data room is to the best of the knowledge and belief of the developer, true, accurate and complete in all material respects; and
 - (b) [complied with such other conditions in connection with a tender exercise as the Authority may specify in a notice under regulation 7(2)].

TRANSITIONAL ENTRY CONDITIONS

- 2(1) A developer shall demonstrate to the satisfaction of the Authority that it has -
- (a) provided information to the satisfaction of the Authority to enable the Authority to establish a data room and provided a written warranty to qualifying bidders and a copy of the warranty to the Authority that the information in the data room is to the best of the knowledge and belief of the developer, true, accurate and complete in all material respects;
 - (b) where a developer is the asset owner, provided an undertaking in writing to transfer the transmission assets to a successful bidder on payment of a sum determined in accordance with regulation 3 and where a developer is not the asset owner, obtained and provided an undertaking in writing from the asset owner to transfer the transmission assets to a successful bidder on payment of a sum determined in accordance with regulation 3;
 - (c) where a qualifying project which has met the requirements under paragraph 1(2) of Schedule 1 has been constructed or installed, provided to the Authority an independent engineer's audit report that the transmission assets are fit for purpose; and
 - (d) [complied with such other conditions in connection with a tender exercise as the Authority may specify in a notice under regulation 7(2)].

SCHEDULE 3 Regulations 10 and 12

QUALIFICATION

- 1(1) The information in the qualification documentation in respect of a tender exercise may include-
- (a) rules of the tender exercise for the pre-qualification and qualification to tender stages;
 - (b) instructions that will apply to the pre-qualification questionnaire and qualification to tender questionnaire;
 - (c) the date, time and manner in which any completed pre-qualification questionnaire or qualification to tender questionnaire and any payment

determined in accordance with the Authority's published cost recovery methodology shall be submitted to the Authority;

- (d) the selection criteria to be applied by the Authority in evaluating any completed and returned pre-qualification questionnaire or qualification to tender questionnaire;
- (e) details about the location and generation capacity of each qualifying project subject to a tender exercise;
- (f) in respect of a transitional tender exercise, an estimate or assessment of the value of the transmission assets of each qualifying project; and
- (g) [any other such information as the Authority may determine is necessary].

SCHEDULE 4 Regulation 14

INVITATION TO TENDER

- 1(1) The information in the invitation to tender documentation in respect of a tender exercise may include-
- (a) rules of the tender exercise for the invitation to tender stage;
 - (b) instructions as to the information required by the Authority to submit a tender;
 - (c) the time, date and manner in which tenders shall be submitted to the Authority;
 - (d) the evaluation criteria to be applied by the Authority in evaluating tenders; and
 - (e) [any other such information as the Authority may determine is necessary].

SCHEDULE 5 Regulation 16

BEST AND FINAL OFFER

- 1(1) The information in the best and final offer documentation in respect of a tender exercise may include-
- (a) instructions as to the information required by the Authority to submit a best and final offer;
 - (b) the time, date and manner in which best and final offers and any payment determined in accordance with the Authority's published cost recovery methodology shall be submitted to the Authority;
 - (c) the evaluation criteria to be applied by the Authority in evaluating best and final offers; and
 - (d) [any other such information as the Authority may determine is necessary].

SCHEDULE 6 Regulation 19

EVENTS OF CANCELLATION

- 1(1) The events referred to in regulation 19 are-
- (a) the Authority does not receive any completed pre-qualification questionnaires pursuant to regulation 10;
 - (b) the Authority does not receive any completed qualification to tender questionnaires pursuant to regulation 12;
 - (c) the Authority determines there are no qualifying applicants or qualifying bidders in respect of a qualifying project;
 - (d) the Authority does not receive any tenders pursuant to regulation 14;
 - (e) a preferred bidder withdraws from a tender exercise and the Authority has not determined a reserve bidder;
 - (f) a reserve bidder withdraws from a tender exercise after a preferred bidder has withdrawn from a tender exercise;
 - (g) the matters referred to in regulation 17(1) are not satisfied by a preferred bidder;
 - (h) a developer or person approved by the Authority with whom a developer has made arrangements fails to make a payment or provide security under regulation 25(2) or (3) or withdraws such payment or security;
 - (i) a developer does not agree the variation to the bilateral connection agreement with the coordination licence holder;
 - (j) a developer terminates its bilateral connection agreement with the coordination licence holder;
 - (k) a developer withdraws a qualifying project from a tender exercise for any reason; or
 - (l) the Authority determines that it would not be appropriate to grant an offshore transmission licence to any qualifying bidder.

SCHEDULE 7 Regulation 20

EVENTS OF DISQUALIFICATION

- 1(1) The events referred to in regulation 20, in relation to an applicant, qualifying applicant or qualifying bidder are-
- (a) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of the Authority, the coordination licence holder or a developer who is subject to a tender exercise (or any related party of these) for doing any actions or omissions;
 - (b) doing anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916;
 - (c) canvassing the Authority, the coordination licence holder or a developer who is subject to a tender exercise (or any related party of these);

- (d) contacting any officer of the Authority, the coordination licence holder or a developer who is subject to a tender exercise outside of the rules of the tender exercise as specified in these Regulations and the tender documentation. This includes, but is not limited to, contact for the purposes of discussing the possible transfer of such officer to the employment of the applicant, qualifying applicant, qualifying bidder or bidder group for the purpose of the tender in question;
- (e) fixing or adjusting the amount of its tender by or in accordance with any agreement or arrangement with any other applicant, qualifying applicant, qualifying bidder or bidder group;
- (f) entering into any agreement or arrangement with any other applicant, qualifying applicant, qualifying bidder or bidder group that it shall refrain from submitting a tender or as to the amount of the tender submitted;
- (g) causing or inducing any person to enter into such an agreement or to inform the applicant, qualifying applicant, qualifying bidder or bidder group of the amount of any rival tender;
- (h) communicating to any person other than the Authority the amount of its proposed tender, except where this disclosure is made in confidence in order to obtain quotations necessary for the preparation of a tender;
- (i) submitting information to the Authority as part of its tender which is false or misleading;
- (j) where the bidding entity is a bidder group, any change to the bidder group other than has been approved by the Authority or any breach of bidder group rules;
- (k) breaching a licence condition of any existing licence granted by the Authority; and
- (l) engaging in any anti-competitive behaviour.