

## Offshore Electricity Transmission: Final Statement on the Competitive Tender Process

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### Overview:

We have worked with the Government to introduce a new regulatory regime for offshore electricity transmission. As part of this regime, offshore electricity transmission licences will be granted on a competitive basis. This competitive process will be run by Ofgem.

This document is our final statement on the design of the competitive tender process ahead of the first round of tenders commencing this summer. The legal framework for this process is provided in the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009. These are available on the Office of Public Sector Information website ([www.opsi.gov.uk](http://www.opsi.gov.uk)).

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## Context

Electricity generated from offshore renewable sources is expected to make an important contribution to achieving the UK's share of the EU's 2020 renewable targets. It is important that fit for purpose offshore electricity transmission networks are built to transmit the electricity generated from these sources to the onshore network and ultimately to consumers. It is also important that this infrastructure is developed in a timely and cost effective manner, achieving best value for current and future consumers.

The Government has decided that this is best achieved through the introduction of a new regulatory regime for offshore electricity transmission. As part of this regime, licences for this activity will be granted by means of a competitive tender process, run by Ofgem. We have worked with the Department of Energy and Climate Change (DECC)<sup>1</sup> to design and introduce this new regulatory regime and have consulted extensively on it over the last four years, culminating in a final statement<sup>2</sup> published earlier this month. The regime reached an important milestone recently (Go Active) whereby certain key sections of the Energy Act 2004 were commenced<sup>3</sup>.

We have also consulted extensively on the design of the competitive tender process, taking into account views from a range of stakeholders. This statement provides an overview of how we will run the first round of competitive tenders, commencing later this summer. It also sets out the next steps for running the process, including in respect of the detailed tender documentation that will support the process.

## Associated Documents

- Overview of Great Britain's Offshore Electricity Transmission Regulatory Regime - Joint DECC/Ofgem Statement, June 2009, Ofgem ref: 67/09
- Offshore Electricity Transmission: Consultation on Draft Model Sale and Purchase Agreement and Draft Data Room Guidelines for Transitional Tenders, May 2009, Ofgem ref: 46/09
- Government Response to Offshore Electricity Transmission – A Further Joint Ofgem/DECC Regulatory Policy Update, March 2009, Ofgem ref: 23/09

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<sup>1</sup> Formerly the Department for Business Enterprise and Regulatory Reform (BERR) and Department of Trade and Industry (DTI)

<sup>2</sup> Overview of Great Britain's Offshore Electricity Transmission Regulatory Regime - Joint DECC/Ofgem Statement, June 2009, Ofgem ref: 67/09

<sup>3</sup> Sections 90 and 91

- Offshore Electricity Transmission: Updated Proposals for the Competitive Tender Process, March 2009, Ofgem ref: 21/09
- Offshore Electricity Transmission – A Joint Ofgem/DECC Regulatory Policy Update, November 2008, Ofgem ref: 153/08
- Offshore Electricity Transmission - Competitive Tender Process, October 2008, Ofgem ref: 142/08
- Consultation Letter for Draft Tender regulations, July 2008, Ofgem ref: 108/08
- Offshore Electricity Transmission - A Joint Ofgem/BERR Regulatory Policy Update, June 2008, Ofgem ref: 84/08
- Offshore Electricity Transmission - Regulatory Policy Update, January 2008, Ofgem ref: 4/08
- Regulation of Offshore Electricity Transmission: Government Response to Offshore electricity Transmission - A Joint Ofgem/BERR Policy Statement, January 2008, BERR ref: URN 08/546
- Offshore Electricity Transmission - A Joint Ofgem/BERR Policy Statement, July 2007, Ofgem ref: 189/07
- Offshore Electricity Transmission - Second Scoping Document, March 2007, Ofgem ref: 58/07
- Regulation of Offshore Electricity Transmission: Government Response to the Joint DTI/Ofgem Consultation on Licensing Offshore Electricity Transmission, March 2007, BERR ref: URN 07/634
- Licensing Offshore Electricity Transmission - A Joint Ofgem/DTI Consultation, November 2006, Ofgem ref: 199/06
- Offshore Electricity Transmission - Scoping Document, April 2006, Ofgem ref: 60/06
- Regulation of Offshore Electricity Transmission - A Joint Consultation by DTI/Ofgem, July 2005, Ofgem ref: 178/05

These documents are available to download from the Offshore Transmission page on the Ofgem website, [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

## Table of Contents

<b>Executive Summary .....</b>	<b>4</b>
Background .....	4
Final Design of the Competitive Tender Process for the Transitional Regime .....	5
Design of the Tender Process for the Enduring Regime .....	6
Next steps .....	7
<b>1. Tender Process Design .....</b>	<b>8</b>
Introduction .....	8
Developer Pre-Conditions.....	8
Qualifying Project Pre-Conditions .....	9
Tender Entry Pre-Conditions .....	9
Competitive Tender Process for the Transitional Regime .....	10
Stages of the Tender Process .....	11
Pre-Qualification Stage - Key Attributes .....	11
Qualification to Tender Stage - Key Attributes .....	12
Invitation to Tender Stage - Key Attributes .....	13
Preferred Bidder through to Licence Grant.....	13
Terms of Transfer for the Transmission Assets.....	14
<b>2. Updated Policy Positions .....</b>	<b>15</b>
Introduction .....	15
Issues Regarding Pre-Tender Requirements .....	15
Independent Engineering Audit Report .....	15
Additional Tender Entry Pre-Condition .....	15
Services Offered by Developers .....	16
Issues Regarding the Tender Process.....	16
Supply Chain Exclusivity.....	16
Consortium Changes .....	16
Further Development of the Tender Process .....	17
Representations .....	17
Cancelling Tenders and Disqualification .....	17
Cost Recovery .....	18
<b>3. Next Steps and Tender Programme .....</b>	<b>21</b>
Next Steps .....	21
Notification of Tender Commencement .....	21
Qualifying Project and Tender Entry Pre-Conditions.....	21
Tender and Project Documentation .....	21
OFTO Special Licence Conditions .....	22
Tender Timetable.....	23
<b>Appendices .....</b>	<b>24</b>
<b>Appendix 1 – The Authority’s Powers and Duties .....</b>	<b>25</b>
<b>Appendix 2 - Glossary.....</b>	<b>27</b>
<b>Appendix 3 - Feedback Questionnaire .....</b>	<b>29</b>
<b>Appendix 4 - Summary of Responses to the March Document .....</b>	<b>30</b>

## Executive Summary

### Background

The Government has set ambitious targets for the deployment of renewable energy over the next decade. By 2020, 15 per cent of the UK's energy needs will come from renewable sources. It is expected that offshore renewable generation will make an important contribution to achieving these targets.

The successful deployment of offshore renewable generation on the scale will be reliant on a number of factors, including the timely delivery of fit for purpose offshore transmission infrastructure to enable electricity to be transported to consumers. It is important that this infrastructure is developed in a cost effective manner to achieve the best value for current and future consumers.

The Government has decided that this is best achieved through the introduction of a new regulatory regime for offshore electricity transmission. As part of this regime, licences for this activity will be granted by means of a competitive tender process, run by Ofgem. We have worked with the Department of Energy and Climate Change (DECC) to design and introduce this new regulatory regime and have consulted extensively on it over the last four years, culminating in a final statement<sup>4</sup> published earlier this month. The regime reached an important milestone on 24 June (Go Active) whereby certain key sections of the Energy Act 2004 were commenced<sup>5</sup>.

We have also consulted extensively on the design of the competitive tender process, taking into account views from a range of stakeholders. This statement provides an overview of how we will run the first round of competitive tenders, commencing later this summer. It also sets out the next steps for running the process, including in respect of the detailed tender documentation that will support the process.

The legal framework for the competitive tender process is provided for in the new Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (the Regulations) that came into effect on 2 June. The Regulations provide the necessary powers to run the competitive process, set out the requirements that developers need to satisfy in order to qualify and enter a tender process, the process for bidders and the provisions for disqualification from, and cancellation of, tenders. We have consulted on two drafts of these regulations previously before we finalised the Regulations. The Regulations are available from the Office of Public Sector Information website [www.opsi.gov.uk](http://www.opsi.gov.uk).

The first round of tenders will be for those offshore transmission assets that have been or are being constructed by offshore developers, and where the developer

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<sup>4</sup> Overview of Great Britain's Offshore Electricity Transmission Regulatory Regime - Joint DECC/Ofgem Statement, June 2009, Ofgem ref: 67/09

<sup>5</sup> Sections 90 and 91

meets certain pre-conditions before the Go Live<sup>6</sup> date for the regime. These are termed transitional projects, where the assets will be transferred to an offshore transmission owner (OFTO) upon completion of construction. We propose to hold one further round of tenders under the transitional regime, which we expect to commence in summer 2010. Tenders for projects where the offshore transmission assets will be designed, financed and constructed by the OFTO (known as the enduring regime) are also expected to commence in summer 2010.

### **Final Design of the Competitive Tender Process for the Transitional Regime**

This statement provides an overview of the process we will follow for competitive tenders for the transitional regime, ahead of the first round commencing later this summer. Supporting documentation and rules for the process will be published in due course setting out the detailed requirements of participants.

We confirm that the design of the process is broadly the same as that set out in our updated proposals document published in March<sup>7</sup> (the March document). However, following feedback to our consultations and our own further analysis, we have made a small number of refinements which we consider enhance the process for all participants. In summary, the key features of the competitive tender process for the transitional regime are that:

- Developers need to satisfy a number of qualifying project pre-conditions and then separately satisfy a number of tender entry pre-conditions,
- Tenders will start from a common commencement date,
- Tenders will follow a number of distinct stages:
  - Pre-Qualification,
  - Qualification to Tender,
  - Invitation to Tender,
  - Best and Final Offer (optional),
  - Preferred Bidder, and
  - Successful Bidder to whom a licence would be granted.
- The tender process is structured to make it more accessible for new entrants to compete for OFTO licences,
- The tender process allows for interested parties to bid for multiple projects,

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<sup>6</sup> At Go Live, we expect the Secretary of State to commence sections 89 and 180 of the Energy act 2004

<sup>7</sup> Offshore Electricity Transmission: Updated Proposals for the Competitive Tender Process, March 2009, Ofgem ref: 21/09

- Ofgem's costs for running the tender process are recoverable from participants (both developers and bidders), and
- We have introduced business separation requirements for generator developers and National Grid Electricity Transmission (NGET) to ensure a fair competition can take place.

Following the conclusion of our consultation process, the key refinements we have made to the process since publication of the March document are that:

- We have decided not to introduce a new pre-condition requiring transitional project developers to confirm that they expect to complete construction of the assets within a set period after the expected licence grant,
- We have decided that developers will not have to provide an independent engineering audit report as part of the pre-conditions,
- We agree that developers should be able to offer services such as Operation and Maintenance to bidders on a non-exclusive basis,
- We have decided not to introduce a bar on supply chain exclusivity for bidders in the transitional regime. However, we will consider whether to introduce such restrictions for the enduring regime, and
- Taking into account stakeholder feedback, we have restructured the charges we will levy on bidders during the tender process.

Following the consultation process and the feedback we have received from stakeholders, we are confident that the design of this process will enable us to meet our key objectives, being:

- the delivery of fit for purpose transmission infrastructure to connect offshore generation;
- provision of certainty and best value to consumers through the competitive process; and
- attracting new entrants to the sector.

### **Design of the Tender Process for the Enduring Regime**

We have stated previously that the broad principles of the competitive tender process we have set out for the transitional regime will be adopted for tenders in the enduring regime. We confirm that this remains our intention. However, we recognise that whilst we have set out our proposed approach on a number of issues previously, such as the remuneration of efficient pre-construction costs incurred by developers, certain issues relating to tenders in the enduring regime remain to be addressed. Given this, we will be consulting further on these issues over the coming months.

### **Next steps**

The first tender process for the transitional regime will commence later this summer. Over the coming weeks, we will be publishing detailed tender documentation to support the tender process, including our Tender Rules, our Cost Recovery Methodology and the Pre-Qualification Document. We expect the process to last around 12 months, with OFTO licences granted next summer.

We will be holding a Bidder Day in late July where we will set out further detail about the tender process (such as requirements of response, how we will clarify any issues and interactions during the competitive process) and also the projects that will be tendered during the first round. Further detail about this Bidder Day will be provided over the coming weeks, but interested parties are asked to indicate their interest in attending by contacting us at [offshoretransmission@ofgem.gov.uk](mailto:offshoretransmission@ofgem.gov.uk).

## 1. Tender Process Design

### Chapter Summary

This section sets out the key principles for the competitive tender process we are adopting for the transitional regime. It also provides an overview of the key requirements developers need to satisfy to qualify as a transitional project and enter a tender round.

### Introduction

1.1. We have consulted for over 18 months on the design of the competitive tender process that we will use to identify offshore transmission owners (OFTOs). The final consultation for the tender process was the March document. In that document we set out updated proposals on how we would manage this competitive tender process and feedback was sought on a number of issues. We also consulted for the final time on the draft regulations that provide the legal framework for this process, as well as the supporting tender documentation. Since publication of the March document, the Regulations have been made and came into effect on 2 June 2009.

1.2. We will shortly be commencing the first round of tenders. This first round will be for those offshore transmission assets that have been or are being constructed by offshore developers, and where the developer meets certain pre-conditions before the Go Live date for the regime. These are termed transitional projects, where the assets will be transferred to an OFTO upon completion of construction. We propose to hold one further round of tenders under the transitional regime, which we expect to commence in summer 2010. Tenders for projects where the offshore transmission assets will be designed, financed and constructed by the OFTO (known as the enduring regime) are also expected to commence in summer 2010.

1.3. This section sets out an overview of the key features of the competitive tender process for the transitional regime. This includes the pre-conditions developers are required to satisfy, the stages we will follow once the tender process commences and the process for transferring assets between the developer and the OFTO. In reaching these positions we have taken account of stakeholder responses received during the consultation process.

### Developer Pre-Conditions

1.4. The Regulations require developers to satisfy a number of pre-conditions, firstly to establish if they are a qualifying project and secondly to establish eligibility to enter a tender round.

### **Qualifying Project Pre-Conditions**

1.5. The Regulations set out the qualifying project pre-conditions for those projects that are seeking to be tendered under the transitional regime. Projects that do not meet these pre-conditions will be tendered under the enduring regime. The qualifying project pre-conditions that a developer must demonstrate for the transitional regime are that they have:

- a. entered into a bilateral agreement with National Grid Electricity Transmission Plc (NGET), or entered into an agreement or accepted an offer of an agreement, with the electricity distributor responsible for the distribution system to which the transmission assets are or are intended to be connected,
- b. obtained all necessary consents and property rights for the transmission assets to be constructed and maintained,
- c. completed construction of, or entered into all necessary contracts for the construction of the transmission assets, and
- d. secured financing to construct the transmission assets.

1.6. In instances where a developer fails to satisfy (b) and (c), the Regulations permit us to apply a degree of discretion to confirm the project as a qualifying project where we are satisfied that the developer will use its reasonable endeavours to meet certain requirements within a reasonable time period determined by us. We only expect to use this discretion in limited cases, and will apply the provisions on a case by case basis depending on the circumstances at the time.

1.7. We have been working closely with project developers over the last six months to understand their likely compliance with these qualifying project pre-conditions. Following this engagement, we will be writing to these developers shortly confirming the status of their projects together with our initial ex-ante estimate of the costs that they have incurred or will incur in the construction of the transmission assets, based on information available. Once we have confirmed this to developers, we will publish this information in a notice on our website.

### **Tender Entry Pre-Conditions**

1.8. Each project that we determine has met the qualifying project pre-conditions is then required to meet a number of tender entry pre-conditions before it is included in a tender round. As with the qualifying project pre-conditions, these are set out in the Regulations. The tender entry pre-conditions that a developer must demonstrate for the transitional regime are that they must:

- a. provide information to the Authority to enable it to issue an information memorandum and establish a data room,

- b. provide a written warranty to the Authority, in a form reasonably acceptable to it, that the information provided in respect of the above is to the best of the knowledge and belief of the developer, having made reasonable enquiries, true, accurate and complete in all material respects,
- c. complete the transfer agreement with all information available to the developer, and provide an undertaking in writing in respect of those transmission assets which have not reached completion under the terms of the transfer agreement, to complete the remaining parts of the transfer agreement as soon as reasonably practicable thereafter,
- d. provide an undertaking in writing to the Authority to transfer any property, rights or liabilities in or relating to the transmission assets to the successful bidder in respect of that transitional tender exercise, in accordance with the transfer agreement on payment of the transfer value, and
- e. comply with any other conditions as we may determine are necessary in relation to that particular transitional tender exercise.

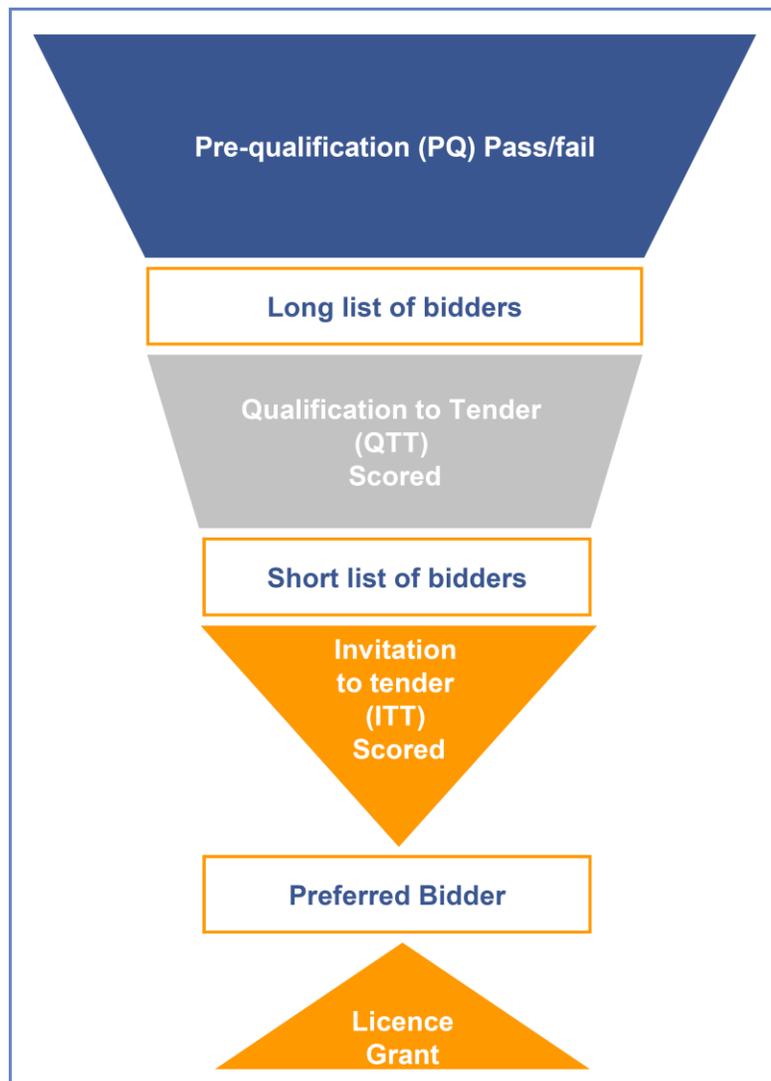
## **Competitive Tender Process for the Transitional Regime**

1.9. The design of the tender process for the transitional regime is broadly the same as that set out in the March document. However, following feedback to our consultations and our own further analysis, we have made some further refinements to the design of the tender process, which we consider enhances the process for all participants. These are set out in the following sub-section.

1.10. In summary, tenders will follow a number of distinct stages:

- Pre-Qualification (PQ),
- Qualification to Tender (QTT),
- Invitation to Tender (ITT),
- Best and Final Offer (BAFO) (optional),
- Preferred Bidder, and
- Successful Bidder to whom a licence would be granted.

1.11. These stages are designed to enable us to filter bidders in the process to a Successful Bidder to whom we would be willing to grant an OFTO licence. The following diagram illustrates this process. The Regulations provide the necessary legal framework for us to run the process in this way.



### **Stages of the Tender Process**

1.12. This section sets out a high level overview of the main stages of the tender process, focussing on the key attributes of each. The requirements of participants of at each stage of the process will be set out in the more detail in the relevant tender documentation, including inter alia the selection criteria, the detailed questions and requirements of response.

#### *Pre-Qualification Stage - Key Attributes*

1.13. The Pre-Qualification State (PQ) of the process is designed to enable applicants to demonstrate their track record against a number of criteria on a generic (i.e. non project specific) basis. The key attributes of this stage are:

- Applicants will have access to a generic teaser document and project specific Preliminary Information Memorandums (PIM), providing a general regime overview and project specific information respectively,
- One submission is required per applicant, irrespective of the number of projects they wish to be considered for. However, applicants must identify the specific projects they wish to bid in their submission,
- Assessment will be based on applicants' economic and financial standing, legal standing, and management and operational capability on a generic basis, and
- Assessment will be on a pass or fail basis.

1.14. The outcome of Pre-Qualification Stage will be a long list of qualifying applicants who are eligible to proceed to QTT stage.

*Qualification to Tender Stage - Key Attributes*

1.15. The Qualification to Tender Stage (QTT) of the process is designed to enable those long-listed qualifying applicants to submit their proposed approach against a number of criteria, on a per project basis. The key attributes of this stage are:

- Qualifying applicants will be provided with an Information Memorandum (IM) for each project providing detailed project information, covering information such as the design, construction and installation of the transmission assets, key contracts and a financial overview,
- Qualifying applicants will be required to re-confirm the specific projects for which they wish to be considered, by providing a separate QTT response for each project for which they wish to qualify,
- Qualifying applicants may change their consortia, subject to the newly formed consortium meeting the PQ selection criteria,
- Assessment will be based on qualifying applicants' proposed approach against a number of key criteria, including its financial offer, its financing strategy, its managerial and legal capability and its provisional operating plan,
- Assessment will be on a scored basis against the criteria, and
- All bids for each project will be assessed separately for each project regardless of the number of projects that an applicant is bidding for.

1.16. The outcome of QTT will be the identification of a shortlist of qualifying bidders for each project within a tender round. We anticipate that up to five qualifying bidders may be shortlisted.

*Invitation to Tender Stage - Key Attributes*

1.17. The Invitation to Tender Stage (ITT) is designed to enable the short-listed qualifying bidders to submit their detailed proposals against a number of criteria, including their required revenue stream for the project. The key attributes of this stage are:

- Qualifying bidders will be provided with access to a fully populated data room for the specific project(s) for which they have been shortlisted,
- Qualifying bidders will be invited to submit a detailed bid for each project for which they have been shortlisted,
- Assessment will be based on the qualifying bidders' responses against a number of detailed criteria, including their required revenue stream and their managerial, operation and legal capability,
- Assessment will be on a scored basis against the criteria,
- Where a qualifying bidder has been shortlisted for more than one project, they will be required to submit an ITT bid for each project individually but may also submit a variant bid for a combination of projects. However, any variant bid submitted must, at a minimum, identify the required revenue stream on a per project basis, and
- Where a qualifying bidder wishes to change its consortium, it must notify Ofgem, who will use its discretion to permit the change having regard to whether the change would be fair and equitable to all other qualifying bidders for that project.

1.18. The outcome of the ITT Stage will be the identification of the Preferred Bidder for each project. Where we consider it appropriate, we will run a Best and Final Offer Stage to identify the Preferred Bidder.

*Preferred Bidder through to Licence Grant*

1.19. Following the ITT or BAFO Stage, we will identify a preferred bidder (and possibly a reserve bidder) for each project in the tender round. The Regulations require that the preferred bidder meets certain outstanding conditions before being confirmed as the successful bidder. Following a standstill period (provided for in the Regulations), we would expect to grant an OFTO licence to the successful bidder in accordance with section 6 of the Electricity Act 1989.

1.20. In the unlikely event that a tender process, following repeated iterations, fails to identify a preferred bidder, we have taken powers in designing the regulatory regime to allow us to direct an existing Transmission Owner (TO) as an OFTO of Last Resort. However, we only propose to use these powers in certain limited circumstances. Further detail on this is set out in the joint documents published with DECC over recent months.

## **Terms of Transfer for the Transmission Assets**

1.21. We expect agreement to be reached on the transfer of assets between a developer and OFTO through commercially negotiated terms of transfer, contained within a Sale and Purchase Agreement (SPA). To assist this, we published in May a consultation letter (the May letter) with our draft model SPA, and received feedback from a number of interested parties. We are currently finalising our engagement with these parties, with a view to finalising the model SPA shortly.

1.22. As part of the tender entry conditions, developers are required to populate the model SPA with their project specific information. This document will be released to each shortlisted bidder at the ITT Stage via the data room, on a per project basis. This would include detailed descriptions of the transmission assets and the supporting contractual and commercial information (such as warranties and guarantees) that would also be transferred.

1.23. We set out in the May letter that we recognised the importance of negotiation around the terms of transfer, and that we would facilitate structured dialogue between bidders and the developer during the tender process. We confirm that the approach set out in the May letter will form the basis of how we will run this process. To re-cap, we will allow bidders the opportunity, prior to submitting their bids at ITT, to propose changes to the developer's SPA, based on their clarification requests on the SPA and the information available in the data room within a short period of time from the opening of the ITT Stage. Developers would then have an opportunity to consider their commercial response to the proposed changes, and consider any revisions to the SPA in the light of these. Based on any revisions to the SPA, we propose that we would re-issue the revised SPA to bidders and seek final ITT bids based on that document, with no further amendments permitted.

1.24. We expect that by adopting this approach, a developer and OFTO will reach a commercial agreement on the terms of transfer. However, where commercial negotiations fail, the Authority can, in certain circumstances, make a Property Scheme transferring property, rights and liabilities in accordance with powers set out in Schedule 2A to the Electricity Act 1989.

1.25. This is an overview only and we recommend stakeholders refer to the May letter for further information on our proposed approach. This will be set out in detail in the relevant supporting tender documentation.

## 2. Updated Policy Positions

### Chapter Summary

This section provides an overview of the refinements we have made to the design of the competitive tender process since we published the March document, to the extent they are not covered elsewhere in this statement.

Appendix 4 contains a full summary of the responses received to the March document.

### Introduction

2.1. The March document sets out updated proposals for the design on the competitive tender process for the transitional regime. This was the final consultation prior to the regime reaching the Go-Active date. In overview, we consulted on updated proposals in respect of the pre-tender requirements, the tender process and our cost recovery provisions. Following the consultation, we have updated our positions on a number of issues. To the extent not covered elsewhere in this document, this section provides an update on these issues. Appendix 4 contains a full summary of the responses received. Non-confidential responses are available on our website.

### Issues Regarding Pre-Tender Requirements

#### Independent Engineering Audit Report

2.2. We have previously proposed that the developer of a transitional project that is constructed prior to Go-Active or Go-Live would have to provide an independent engineering audit report to us. However, some respondents questioned the usefulness of the report, given that they would likely perform their own due diligence work. Others considered the report may have some use, provided that certain information was included.

2.3. In the light of the feedback and the overall development of the regime such as the requirement for developers to populate a model SPA, we have re-considered whether this requirement remains appropriate. On balance, we have decided that the provision of this report is no longer necessary. The Regulations have been amended to remove this requirement.

#### Additional Tender Entry Pre-Condition

2.4. We proposed in the March document to introduce a new tender entry pre-condition for developers to confirm that their project would be completed within a certain timeframe following the grant of an OFTO licence. Taking into account

responses to the consultation and on further consideration of the practicality of this requirement, we have decided not to introduce this as part of the regime.

### **Services Offered by Developers**

2.5. In the March document we considered whether developers should be able to offer services such as Operations and Maintenance to all bidders as part of the tender process. Stakeholders generally felt this was a good idea provided that bidders would not be compelled to accept the offer. On balance, we have decided that we will allow developers to offer services such as this as well as others including insurance and additional warranties, and assets such as reactive power capability, but there will be no compulsion on bidders to accept these through their bids. We expect that these will be set out in the developer SPAs that will be available at the ITT Stage of the tender process.

## **Issues Regarding the Tender Process**

### **Supply Chain Exclusivity**

2.6. In the March document, we proposed to preclude the inclusion of supply chain in consortia on an exclusive basis. Stakeholders had mixed views on this proposal. After further analysis, we consider that rules on supply chain exclusivity would not be necessary for the transitional regime. A key reason for this decision is that transitional projects will be constructed by the developer, so most major contracts will already be in place when we run the tender process. However, we will retain the ability to determine such rules for the enduring regime, if appropriate.

### **Consortium Changes**

2.7. We proposed in the March document that where a consortium enters the competitive tender process, there would be rules around any changes to its membership. Specifically, we proposed that where a consortium changes between the PQ and QTT stages, the newly formed consortium would as a minimum be required to meet the PQ criteria again. Further, we proposed that changes to consortiums after the QTT stage would be considered on a case by case basis, having regard to the progress of the ITT stage and continued compliance with PQ and QTT criteria.

2.8. We have broadly adopted these proposals, with the exception that changes after the QTT stage of the process will be subject to Ofgem's discretion and in exercising this, we will consider whether the change is fair and equitable to all other participants in that tender process. This requirement has been included in the Regulations.

## **Further Development of the Tender Process**

2.9. We considered in the March document whether it would be appropriate to introduce any explicit measures to ensure that new entrants are encouraged into the tender process for OFTO licences. Whilst feedback was mixed on this issue, we will monitor the effectiveness of the process in attracting new entrants during the first round of tenders, reserving the right to make any adjustments we consider are necessary to achieve this over the longer term. We continue to believe that this will be very important in delivering benefits to consumers as well as offshore developers going forward, for example through pricing and supply chain innovation. Following on from this, we confirm we do not intend to introduce auction stages into the transitional regime tender process, but we may consider this further in future rounds in the enduring regime, if we consider that it has the potential to extract more competitive bids.

## **Representations**

2.10. We set out in the March document that we were considering our position further on the issue of building a mechanism for appeals or representations into the tender process. Taking into account feedback from stakeholders as well as considering best practice from other similar competitions, we have decided that it would be appropriate to build in a representations mechanism at two key points in the tender process, as set out below.

2.11. The first point of representation we have included is with respect to instances where we determine that a developer has not met the qualifying project pre-conditions as set out in the Regulations. In these instances, developers would have the right to make representations to the Authority within a specified timeframe after being notified of the decision. On the basis of these representations, the Authority would be required to re-consider its decision and decide whether it would amend its original determination.

2.12. The second point of representation we have included is once we have appointed a successful bidder for a project. At this point, we shall notify all qualifying bidders of our decision and within a specified timeframe we will consider any representations from unsuccessful bidders who request confirmation of why they were unsuccessful. In our reply, where applicable, we will set out the characteristics and relative advantages of the successful bidder subject to certain conditions.

2.13. Both of these points of representation are set out in the Regulations. In addition, in instances where we determine to cancel a project from a tender process, the Regulations also provide for the developer to make representations to us.

## **Cancelling Tenders and Disqualification**

2.14. We set out in the March document our proposals in respect of cancellation of a project from the tender process and disqualification. Stakeholders were generally supportive of our proposals, and we do not intend to substantively move from the

positions as set out previously. However, a key refinement we have made in respect of the disqualification provisions is to extend these, in certain prescribed circumstances, to developers as well as bidders. The Regulations set out these provisions.

## Cost Recovery

2.15. The Government has taken powers through the Energy Act 2008 to enable us to fully recover our costs incurred with running the competitive tender process. In summary, the powers set out in the Electricity Act 1989 enable us to:

- secure a financial commitment from the offshore developer to secure the Authority's potential liability for running a tender process,
- secure payments from participants in the process (i.e. the offshore developer and bidders) to cover the Authority's costs of running each tender process, and
- in respect of projects being tendered in the transitional regime, secure amounts from the owner of the regulated asset to cover costs incurred in relation to undertaking asset valuations.

2.16. We set out in the March document our estimate of the charges that would apply during the first round of the tender process to participants in the tender process, as per the table below:

**Table 2.1: Proposed Charging Schedule (from March document)**

Process Stage	Participant		
	Developer	Bidder	Successful Bidder
Application	£100,000 <sup>8</sup>	N/A	N/A
PQ Stage	N/A	£5,000 <sup>9</sup>	N/A
QTT Stage	N/A	N/A	N/A
ITT Stage	N/A	£35,000 <sup>10</sup>	N/A
Preferred Bidder	N/A	N/A	£150,000
Licence Grant	N/A	N/A	£250,000 <sup>11</sup>

2.17. We have refined our charging schedule in light of stakeholder feedback and further analysis. We now propose to reduce the exposure of bidders to our costs at the ITT stage, but recover a greater proportion of the tender costs from the

<sup>8</sup> This charge would be able to be recoverable by the developer as part of its transfer value.

<sup>9</sup> This is a flat charge and is not dependent on the number of projects the applicant signals its interest in.

<sup>10</sup> This is a charge per project bid for.

<sup>11</sup> This charge would be included within the base value for determining the ongoing revenue.

preferred bidder. This ensures that only committed players engage in the process without excluding potential entrants by making the process prohibitively expensive.

2.18. Our revised indicative charges are set out in the table below:

**Table 2.2: Updated Indicative Charging Schedule**

Process Stage	Participant		
	Developer	Bidder	Successful Bidder
Application	£100,000 <sup>12</sup>	N/A	N/A
PQQ	N/A	£5,000 <sup>13</sup>	N/A
QTT	N/A	N/A	N/A
ITT	N/A	Sliding scale fee <sup>14</sup>	N/A
Preferred bidder	N/A	£250,000	N/A
Licence Grant	N/A	N/A	£350,000 <sup>15</sup>

2.19. The sliding scale at the ITT stage works on a cost reflective basis. There would be a fixed charge of £10,000 per project bid for, plus a charge of £5,000 for each £50m band into which the project value falls. For example, to bid on a project with a value between £100m and £150m, the bidder would pay a charge of £10,000 plus 3 x £5,000. There is a maximum cap on fees at the ITT stage of £50,000 per tender round. Therefore, if a bidder bids for three projects, each with a value of between £100m and £150m, the total charge would be £50,000. An example of the charge's payable at the ITT stage for various project values is set out in the table below:

**Table 2.3: Example Charges**

Project Value (£m)	Fixed Charge (£)	Variable Charge (£)	Total Charge (£)
Nil to 49	£10,000	5,000	15,000
50 to 99	£10,000	10,000	20,000
100 to 149	£10,000	15,000	25,000
150 to 199	£10,000	20,000	30,000
200 to 249	£10,000	25,000	35,000
250 to 299	£10,000	30,000	40,000
>300	£10,000	35,000	45,000
350 to 400	£10,000	40,000	50,000

<sup>12</sup> This charge would be able to be recoverable by the developer as part of its final transfer value.

<sup>13</sup> This is a flat charge and is not dependent on the number of projects the applicant signals its interest in.

<sup>14</sup> We propose that this is capped to a maximum of £50k per tender round, with project fees based on project value.

<sup>15</sup> This charge would be included within the base value for determining the ongoing revenue.

2.20. We continue to require financial security from the developer for £500,000, which we propose to draw down if the developer withdraws from the process or causes the tender process to fail. In addition, developers will continue to be required to pay charges to cover our costs of undertaking the cost assessment process and for participating in tenders.

2.21. We will publish our cost recovery methodology prior to commencing the tender process.

## 3. Next Steps and Tender Programme

### Chapter Summary

This chapter sets out the next steps we will be following in respect of running the first round of competitive tenders. It also provides an overview of the tender programme that will be followed over the coming months.

### Next Steps

3.1. This statement closes our consultation process for the design of the competitive tender process for the transitional regime. However, whilst the development of the process is now at an end, we will be commencing tenders shortly. As such, this section sets out an overview of the next steps we will be following with respect to the regime.

#### Notification of Tender Commencement

3.2. We will shortly be publishing a notice of our intention to commence the first round of competitive tenders in the Official Journal of the European Union and other relevant publications. We propose to commence the first tender process later this summer.

#### Qualifying Project and Tender Entry Pre-Conditions

3.3. We shall be writing shortly to all project developers confirming their status in accordance with the qualifying project pre-conditions set out in the Regulations. As part of this letter, we shall also be setting out the tender entry pre-conditions that they will be required to meet before they are confirmed as entering into a tender round.

#### Tender and Project Documentation

3.4. We are currently finalising a suite of documentation to support the competitive tender process. In particular, over the coming weeks we will be publishing:

- Tender Rules - this document will set out the rules that apply to the overall tender process for developers and bidders. We expect to publish this document in advance of the tender process commencing.
- Model Sale and Purchase Agreement (SPA) - we will be requesting developers to populate the model SPA with their project specific information, and these documents will be available to bidders at the ITT Stage. We will also make the model SPA available to bidders during the tender process, for information.

- Cost Recovery Methodology (CRM) - the CRM will set out our approach to recovering our tender costs, as well as the schedule of charges for each stage of the process. We expect to publish this document alongside the Tender Rules.
- Pre-Qualification Document (PQD) - the PQD will set out the detailed rules and requirements for the PQ Stage of the tender process, including the selection criteria and questions we will be using to assess applicants. It will be available via our electronic tendering portal from the date we commence tenders.
- Preliminary Information Memorandum (PIM) - the PIM will set out project specific information to the market, and will be available at the PQ Stage. We will release one PIM per project. This document will be populated with information provided by developers.
- Qualification to Tender Document (QTD) - the QTD will set out the detailed rules and requirements for the QTT stage of the tender process, including the selection criteria and questions we will be using to assess qualifying applicants. It will also include the Confidentiality Agreement that we will require participants to enter into prior to obtaining the Information Memorandum (see below). A draft of this document will be available from the date we commence tenders, with the final version released to long-listed applicants at the QTT Stage.
- Information Memorandum (IM) - each IM will provide more detailed information about the project, such as with respect to the design, construction and installation of the transmission assets, any decommissioning requirements, key contracts and a financial overview. IMs will be released to all qualifying applicants at the QTT Stage, subject to them entering into the Confidentiality Agreement.

3.5. Invitation to Tender documents will be available on a per project basis to those bidders that are shortlisted for each project when the ITT Stage commences. Detailed information about the projects will be available in a data room, which will be available in respect of each project.

### **OFTO Special Licence Conditions**

3.6. The OFTO Special Licence Conditions are an important element of the offshore electricity transmission regime. They define some of the key commercial elements of the regulatory contract, determine project specific rights and obligations as well as implementing the regulatory policy framework. In particular, they will set out:

- the geographical extent of the transmission licence, with respect to defined projects,
- the revenue entitlement and obligations of the licence holder providing transmission services under its licence, and
- the framework of performance obligations and incentives

3.7. As part of our final regulatory policy consultation (published in March 2009), we consulted upon our first draft of the model special conditions for OFTOs. The aim was to set out how we intended to capture the regulatory policy proposals set out in the final policy consultation and seek views. We are currently refining the model form special licence conditions in the light of the consultation responses and the final policy conclusions that were published on 5 June. We expect that an updated version of the draft legal text will be published around the time the tender process commences. These will be further developed into project specific draft special licence conditions and made available to bidders as part of the tender process.

## Tender Timetable

3.8. We set out below the key dates for the tender process. A more detailed timetable will be set out in the relevant tender documentation referred to above, so this should not be considered as anything other than a guide. However, we consider it should aid participants in their planning for the first round of tenders.

<b>Late July 2009</b>	First round of tenders commence (transitional regime only)  PIMs available  PQ commencement (4 weeks for responses)
<b>September 2009</b>	IMs available  Qualifying applicant long list announced  QTT commencement (4 weeks for responses)
<b>December 2009</b>	Bidder short list announced
<b>January 2010</b>	ITT commencement  Data rooms open
<b>Spring 2010</b>	Preferred Bidders identified
<b>Summer 2010</b>	Licences granted to Successful Bidders  Second round of tenders commence (final round for the transitional regime and any enduring projects)

3.9. We will be holding a Bidder Day in late July where we will set out further detail about the tender process (such as requirements of response, how we will clarify any issues and interactions during the competitive process) and also the projects that will be tendered during the first round. Further detail about this Bidder Day will be provided over the coming weeks, but interested parties are asked to indicate their interest in attending by contacting us at [offshoretransmission@ofgem.gov.uk](mailto:offshoretransmission@ofgem.gov.uk).

## Appendices

### Index

<b>Appendix</b>	<b>Name of Appendix</b>	<b>Page Number</b>
1	Authority's Powers and Duties	25
2	Glossary	27
3	Feedback Questionnaire	29
4	Summary of responses to the March document	30

## Appendix 1 – The Authority’s Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002, the Energy Act 2004 and the Energy Act 2008, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts<sup>16</sup>.

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly<sup>17</sup>.

1.4. The Authority’s principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them<sup>18</sup>;
- the need to contribute to the achievement of sustainable development; and

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<sup>16</sup> entitled “Gas Supply” and “Electricity Supply” respectively.

<sup>17</sup> However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

<sup>18</sup> under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas<sup>19</sup>.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed<sup>20</sup> under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- any guidance about its contributions towards the attainment of any social or environmental policies issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation<sup>21</sup> and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

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<sup>19</sup> The Authority may have regard to other descriptions of consumers.

<sup>20</sup> or persons authorised by exemptions to carry on any activity.

<sup>21</sup> Council Regulation (EC) 1/2003

## Appendix 2 - Glossary

### **A**

#### Authority

Gas and Electricity Markets Authority

### **B**

#### BaFO

Best and Final Offer

#### BERR

Department for Business Enterprise and Regulatory Reform

### **D**

#### DECC

Department of Energy and Climate Change

### **G**

#### GW

Gigawatt

### **I**

#### ITT

Invitation to Tender

### **K**

#### kV

Kilo Volt

### **N**

#### NGET

National Grid Electricity Transmission plc

### **O**

Offshore Electricity Transmission:  
Final Statement on the Competitive Tender Process

26 June 2009

[Ofgem](#)

Office of Gas and Electricity Markets

[OFTO](#)

Offshore Transmission Owner

[O&M](#)

Operations and Maintenance

**P**

[PQ](#)

Pre Qualification

**Q**

[QTT](#)

Qualification to Tender

**S**

[SPA](#)

Sale and Purchase Agreement (as contained in the Terms in Transfer)

**T**

[TO](#)

Transmission Owner

[TOCA](#)

Transmission Owner Construction Agreement

## Appendix 3 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

**Andrew MacFaul**

Consultation Co-ordinator

Ofgem

9 Millbank

London

SW1P 3GE

[andrew.macfaul@ofgem.gov.uk](mailto:andrew.macfaul@ofgem.gov.uk)

## Appendix 4 - Summary of Responses to the March Document

1.1. This Appendix sets out our summary of responses received to the March document. We have taken into account these responses in finalising our positions for the design of the competitive tender process.

1.2. All non-confidential responses received are available on our website.

### **Overall General Comments**

1.3. Most respondents were supportive of the overall intent of the regime, the principal of seeking to introduce competition in the provision of offshore transmission and our overall approach to the tender process.

1.4. Members of the offshore generation community were keen to stress that their priority was to ensure that an effective OFTO was in place as soon as possible or in accordance with their project timescales. Some respondents also sought clarity around whether projects could qualify for the transitional regime if they did not strictly meet the pre-entry criteria for the second round of transitional projects. Some stakeholders wanted to know whether there was any possibility of a third round of transitional tenders being undertaken by Ofgem.

1.5. Although other stakeholders did not raise the possibility of a third round of transitional project tenders, they expressed concern that having to wait for the enduring regime tenders to be run could take considerable time and cause delays to planned projects.

1.6. Some stakeholders had reservations about whether, given the greater complexity involved in the proposed enduring regime, the envisaged 12 month tender process was realistic. In the event that a longer process is required, this could potentially delay development and utilisation of offshore generation assets further.

1.7. There were differences of opinion among stakeholders on whether we should preclude the inclusion of supply chain in consortia on an exclusive basis. Those who objected to preclusion considered permissibility to be necessary to ensure that ancillary services will be performed with adequate frequency and quality. They felt that including supply chain partners in consortia would enable them to plan their manufacturing capacity and optimise technical solutions in a timely manner. However, some respondents felt that preclusion of exclusive supply provisions will be necessary to prevent incumbents from restricting competition and foreclosing new market entrants.

1.8. Certain parties also questioned whether affiliates of offshore generation companies should be allowed to submit bids to become OFTOs, on the grounds that

an integrated firm may be able to accrue certain advantages in respect of pricing and risk management, which independent OFTOs would be disadvantaged by.

1.9. Finally, there were differences in opinion on whether or not certain unbundling requirements should be stipulated by Ofgem prior to the commencement of the tender process. Some stakeholders called for developers to be excluded from the tender process altogether whilst others called for detailed guidance from Ofgem as to what would be permissible under the provisions of the 3rd package.

#### **Chapter 4: Pre-Tender Requirements for Projects**

*We welcome feedback from stakeholders on all of the issues raised in this chapter). In particular, responses are requested on:*

*- Our proposal to separate the pre-conditions in the transitional regime.*

1.10. Those stakeholders who responded specifically to this question were mostly in favour of separating the preconditions, with no one clearly opposed.

*- The scope and level of detail an engineering audit report should contain.*

1.11. Respondents had mixed views on the usefulness of the engineering audit report, and consequently the appropriate scope and level of detail it should have. Proponents of the idea felt that it would make a valuable contribution to the bidding process, and wanted the report to contain a detailed list of the offshore transmission infrastructure's technical specifications and the assets' present condition. One stakeholder suggested that the report ought to be of sufficient detail to be of use in a project finance environment, and potentially as a basis for discussions with insurers. Another respondent suggested that the report should specifically seek to provide information which could not easily be acquired through due diligence work.

1.12. However, some concern was expressed that further clarity was needed surrounding how projects at different stages of development would be assessed. One stakeholder felt that, for finished projects, it would be reasonable for a simplified document containing such things as maintenance plans, records and monthly technical reports to be provided to bidders. A concern was also expressed about whether bidders would be able to legally rely on the information.

1.13. Some stakeholders had concerns about whether a thorough engineering audit report could feasibly be conducted given the proposed timetable for the tender process.

1.14. In general, it was felt that bidders should still be able to conduct their own due diligence work, with some respondents even arguing that due diligence would make the report itself unnecessary or of only marginal value.

*- The scope for an additional pre-condition requiring developers to confirm their expectation that their projects should be completed within a reasonably short period after licence grant.*

1.15. The majority of stakeholders responding to this question considered that it was unworkable to require developers to commit to a binding completion date, and a number were unclear about what the implications of failing to meet such a date would be if the requirement was introduced. Stakeholders were generally more receptive to developers being required to provide an indicative completion time, but it was felt that weather conditions, supply chain risks and the economic situation meant that a binding date was unreasonable. Alternatives to the proposed precondition varied, with one stakeholder saying that OFTOs themselves could price such a risk into their bids. A few stakeholders suggested that Ofgem ought to manage this risk through some form of adjustment to the OFTO revenue stream.

*- Our proposal to separate the pre-conditions in the enduring regime.*

1.16. This question attracted only a limited number of responses. Those who did respond were generally supportive of the measure.

*The proposal to develop a model Sale and Purchase Agreement for developers to populate and agree with Ofgem prior to a tender commencing.*

1.17. All respondents to this question agreed that the SPA was a sensible approach in principle, on the grounds that it was likely to save time and streamline the tender process. However, a majority of respondents said that it would be necessary for any such model agreement to be sufficiently flexible to accommodate the anticipated bespoke characteristics of particular tenders. With this in mind, some respondents said that it would be difficult to give further support to the idea until Ofgem produced a more detailed model SPA for stakeholder consumption.

1.18. Some respondents specifically stated that the SPA should permit developers to offer OFTOs ancillary services (such as O&M). The nature of this provision varies among respondents, with some parties arguing for full competition in, and non-discriminatory access to, all ancillary services.

## **Chapter 5: Tender Process for the Transitional Regime**

*We welcome feedback from stakeholders on all of the issues raised in this chapter. In particular, responses are requested on:*

*- Our updated proposals on the pre-qualification stage of the tender process.*

1.19. Those who responded specifically to this question were almost all supportive of the principle of pre-qualification. It was felt that this information would increase the credibility of prospective OFTOs in later stages of the tender process, which is an important criterion for generators. One stakeholder expressed reservations about whether the limited information in the pre-qualification stage would allow Ofgem to make meaningful judgement on the credibility of bidders. A few stakeholders took the opportunity to express their more general view about the need for Ofgem to take due account of non-price factors when evaluating tenders.

*- Our proposals for the financial and non-financial criteria we are proposing for the PQ, QTT and ITT stages of the competition.*

1.20. Stakeholders had a number of comments on this issue. Some suggested that Ofgem's proposal to conduct a pass/fail assessment of financial standing at the QTT stage (based on a bidder's turnover against their appetite for projects in the tender round) may act as a barrier to new market entrants.

1.21. Stakeholders had mixed views on the relative weightings (60:40) placed on the financial and non-financial criteria by Ofgem. Some were concerned that insufficient emphasis was currently being placed on quality, experience and expertise, whilst others argued that, by placing too great an emphasis on experience, new market entrants would find it difficult to win tenders, even if they proposed to procure appropriate technical services from the market as part of their bids.

1.22. A number of comments were made on the proposed net assets test. These generally revolved around how net assets would be calculated where bidders choose to use a special purpose vehicle in the tender process. Clarification was sought as to whether in such an instance, the assets of the parent company would be considered by Ofgem. Clarification was also wanted surrounding the treatment of net assets when consortia are being assessed by Ofgem. Stakeholders wished to know whether the total assets of members of a consortium, the assets of the principal respondent, or some other basket of assets would be considered by Ofgem under this test.

1.23. In general, respondents expressed a wish for all financial and non-financial criteria to be stipulated as clearly as possible. Some stakeholders did however note that some flexibility in the process would be required, in order to deal with material changes a prospective OFTO makes to its bid during the tender process. One stakeholder cited an example of a revision to the internal rate of return on a project following due diligence, which exposed higher than anticipated project risk, and wished to know what the implications of such a change would be for a bidder.

*- Our proposals on dealing with changes to consortiums within a tender process.*

1.24. All stakeholders supported the principle of allowing some flexibility regarding changes to consortia. Views on the extent of permissible changes were more diverse. A significant number of respondents supported the proposed arrangements, but some argued for greater flexibility than is being proposed. One suggested that changes to consortia at the ITT stage should be considered by Ofgem on a case-by-case basis, whilst another argued that changes to consortia throughout a project's life are conceivable, and Ofgem should thus do all it can to accommodate such changes.

*- Our updated proposals for dealing with bidder dialogue and clarifications within a tender process.*

1.25. Stakeholders who commented on these proposals accepted the importance of dialogue between the developer and prospective OFTOs, although there was a range of views on the extent of this dialogue. One respondent advocated a process

whereby at the ITT stage, bidders would be allowed to raise a list of issues that were having significant impact on their ability to price their bids.

1.26. Some concern was expressed that, if bidder-developer dialogue was allowed to be carried out unfettered, there would be a risk that generators with affiliated OFTO bidders may accrue an advantage in the process over their unaffiliated counterparts. However, other respondents were concerned that the proposals seem to prevent direct dialogue between bidders and developers. One respondent suggested that the tender process ought to contain opportunities for tri-partite talks between bidders, developers and Ofgem, and others stressed that dialogue between developers and bidders would be essential.

*- Our updated tender documentation contained in Annexes 1-3 (NB, this refers to annexes from our March consultation).*

1.27. Comments on this question were limited. One stakeholder was concerned about the lack of definition contained in the draft template ITT document in respect of non-financial criteria.

1.28. Another stakeholder was unclear about how they could comply with Ofgem's proposed requirement for bidders to submit a separate "bankable model" so that Ofgem can assess the financial viability of their bid (as referred to in Annex 3 of the consultation).

*- Our initial thoughts on further developments for the tender process going forward.*

1.29. Stakeholders generally felt that it would be prudent to review the tender process after a round of transitional projects has been put out to tender, rather than speculate about what may happen further forward. It was felt that this empirical experience could form a useful basis for reviewing the regime, and making any amendments to it accordingly.

1.30. Some respondents expressed concern about Ofgem's proposal to bundle projects that failed to attract sufficient market interest during a tender round. These respondents suggested that bundling a 'bad' and a 'good' project together may have the perverse effect of causing the 'good' project to be shunned by the market because of its attachment to the 'bad' one, rather than making the 'bad' project commercially attractive, as intended.

## **Chapter 6: Tender Process for the Enduring Regime**

1.31. Stakeholders' main priority in respect of the enduring regime was expressed as ensuring that every effort is made to make the challenging targets for offshore wind energy achievable. This means ensuring that as much time as possible is available for completing the process in a satisfactory manner, and perhaps considering a longer tender period to allow for what are likely to be more numerous and complicated bids to be evaluated.

1.32. Two respondents noted possible difficulties surrounding the acceleration of the supply chain, especially when variant bids and multiple scenarios for future offshore

transmission networks are likely to make gauging the full scale of the required supply chain response difficult. At the very least, these respondents wanted to ensure that suppliers would be engaged early, and suggested that there may be problems in respect of maintaining open ended supply chain arrangements in the tender process.

1.33. Another stakeholder pointed out that, if more strategic network arrangements than point-to-point grid connections were wanted for the enduring regime, an early appointment of an OFTO would allow time to conduct the necessary transmission network planning and negotiations to deliver this.

1.34. In general, stakeholders were supportive of the principle of a more coordinated approach to network development for the enduring regime, with one advocating tenders for exclusive rights to develop networks for Round 3 zones rather than tenders for individual OFTO projects connecting specific generation assets.

1.35. One stakeholder expressed concern about who would underwrite the costs for developing transmission assets other than those specifically required for a generation project. Another said that it would be necessary to permit certain contingency margins in bid prices to mitigate the greater risks potential OFTOs will be exposed to under the enduring regime.

## **Chapter 7: Other Tender Process Issues**

*We welcome feedback from stakeholders on all of the issues raised in this chapter . In particular, responses are requested on:*

### *- Our proposals on disqualifying bidders*

1.36. Although most stakeholders did not make specific comment on this, those that did were generally supportive of Ofgem's proposals. Each respondent also had an additional comment to make on disqualification in addition to giving their general support to what had been proposed.

1.37. In seeking to understand what might be viewed by Ofgem as behaviour that could lead to bidder disqualification, one stakeholder sought further clarity as to what was meant by 'canvassing' a developer. Another stakeholder added further comment on two points related to disqualification. The first was a request for clarification on whether a developer request (coupled with a relevant reason) could trigger an Authority consideration of a bidder disqualification. The second was an opinion that if a bidder withheld important information from relevant parties during the tender process, this should be grounds for disqualification. Finally a third respondent said that further detail on the bidder financial requirements needed by a parent company to satisfy the Authority would be welcome.

### *- Our proposals for the instances where we would cancel a tender process.*

1.38. Only a limited number of stakeholders responded specifically to these proposals. Those that did were generally supportive, although two stakeholders expressed a view that it ought to be possible for bidders to recover some of their

costs in the event of a cancellation of a process, particularly if this was caused by a developer.

1.39. Another respondent expressed a wish for greater clarity as to what contingency arrangements would be adopted in the event of a tender process calculation.

*- Our proposed cost recovery methodology and indicative charges.*

1.40. This proposal attracted only a small number of responses. No respondent cited the amounts payable as being unreasonable. One respondent expressed a preference for payments to be made for each tender round at the time of its conduct.