

Consultation

Draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024 for consultation

Publication date: 20 September 2024

Response deadline: 1 November 2024

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We are consulting on the draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024 (the “**Tender Regulations**”). The draft Tender Regulations set out the proposed competitive tender process for the granting of an onshore electricity transmission licence in respect of certain onshore electricity projects, including how the tender process will be administered by Ofgem as ‘the Authority’ and the National Energy Systems Operator (“**NESO**”)¹ as ‘the delivery body’.

We would like views from stakeholders on all aspects of the draft Tender Regulations. We particularly welcome responses from industry participants. We would also welcome responses from all other stakeholders and the public.

This document outlines the scope, purpose and questions related to the draft Tender Regulations and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside the decision to this consultation on our website at ofgem.gov.uk/consultations. If you want your response – in whole or in part – to be considered confidential, please mark your response as confidential and include your reasons why. Please clearly mark the parts of your response that you consider to be

¹ The current electricity transmission system operator, National Grid Electricity System Operator, will become a public body on 1 October 2024 and become known as the National Electricity System Operator (NESO), [Decision notice to establish National Energy System Operator \(NESO\) | Ofgem](#).

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confidential and the parts that are not. If possible, please put the confidential material in separate appendices to your response.

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1. Introduction

Section summary

This section provides background information relevant to the draft Tender Regulations, including why we are consulting and the objectives this consultation seeks to achieve.

Background

- 1.1. Competition in the delivery of onshore electricity transmission network reinforcements has an important role to play in driving innovative solutions and cost efficiencies while also providing opportunities for new investment in our onshore networks. It has the potential to play a key role in the efficient delivery of our decarbonisation and Net Zero targets at the lowest cost to consumers. 'Early competition for onshore transmission' is one of the objectives in our [2024-25 Forward Work Programme](#), and we consider the Tender Regulations, if approved by the Government, will be a key instrument for its achievement.
- 1.2. In our [RIIO-2: Framework Decision](#), we set out our ambition to introduce competition in onshore transmission where appropriate and provided that it delivers better value for consumers. In our [RIIO-2 Sector Specific Methodology Decision](#), we stated we would work with the National Grid Electricity System Operator ("ESO") towards developing an "early model" of competition, which refers to a competition that happens before detailed design work of onshore transmission solutions has been carried out (herein referred to as 'early competition').
- 1.3. The ESO's [Early Competition Plan](#) stated that new primary and secondary legislation will be required to run the tender process and allow for transmission licences to be awarded. Accordingly, the Energy Act 2023,² which received Royal Assent on 26 October 2023, made changes to the Electricity Act 1989 (the "Act") that enable the Authority to make regulations, subject to the approval of the Secretary of State, for facilitating competitive tendering in the design and delivery of onshore electricity projects. Projects must be a 'relevant electricity project' under the Act to be considered for a competitive tender exercise (see paragraph 1.6 below). There have also been additional developments, reflected in publications from the Government, Ofgem and the ESO, that have shaped the policy on introducing early competition in onshore electricity transmission.

² [Energy Act 2023](#) (legislation.gov.uk).

- 1.4. Our March 2022 [Decision on early competition in onshore electricity transmission networks](#) confirmed our commitment to progress an early competition model based on our analysis that it will allow us to meet Net Zero targets at the lowest possible cost to consumers. Additionally, the decision stated that Ofgem would draft the relevant regulations giving effect to the early competition model.
- 1.5. Additional impetus for introducing early competition in onshore electricity transmission was given by the last government's Transmission Acceleration Action Plan (**TAAP**)³ which was published in November 2023. The TAAP outlined the last government's commitment to introduce competition as soon as is reasonably possible to potentially save consumers up to £1 billion by 2050 and encourage greater levels of inward investment into the energy networks. The TAAP also stated the ambition to identify the first eligible project(s) for competition in onshore electricity transmission by the end of 2024. Specifically, the TAAP mentions that a suitable project will, subject to the development of a suitable regulatory and commercial framework, be identified from a list of required investment projects published by the ESO in its "Beyond 2030"⁴ assessment. The new Government remains supportive of introducing competition into onshore transmission and the intention to identify the first project for competitive tendering from the Beyond 2030 report.
- 1.6. The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 (the "**Criteria Regulations**"), as drafted by the Department for Energy Security and Net Zero ("**DESNZ**"), specify the criteria a project must meet to be a 'relevant electricity project'. Criteria include that a project must be new, separable, capable of addressing a network need with reasonable certainty, and likely to deliver an anticipated benefit to consumers.⁵
- 1.7. We are now consulting on our proposed regulations for facilitating competitive tendering in the design and delivery of onshore electricity projects – the draft Tender Regulations. The draft Tender Regulations set out the proposed competitive tender process for the granting of an onshore electricity transmission licence to a relevant electricity project, including how the tender process will be administered by Ofgem as 'the Authority' and NESO as 'the delivery body'.

³ Department for Energy Security and Net Zero, [Transmission Acceleration Action Plan](#).

⁴ National Grid ESO, [Beyond 2030](#) (also referred to as the transitional Centralised Strategic Network Plan 2 (tCSNP2)).

⁵ See regulations 4-7, the [Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#) (legislation.gov.uk).

1.8. The proposed tender process is informed by the ESO's proposals from its February 2024 Early Competition Implementation – Update, and the draft Tender Regulations intend to reflect these proposals.⁶ There are still some elements of the early competition framework that are yet to be determined, and we intend to consult on our views on the commercial model later this Autumn. However, any subsequent revisions to specific details regarding the framework following our consultation on the commercial model are not expected to require changes to the draft Tender Regulations.

What are we consulting on

1.9. We are consulting on the draft Tender Regulations provided at Appendix 3 and the policy proposals that underpin the draft Tender Regulations, as discussed in sections 2 and 3 of this document.

1.10. In line with the Government consultation principles,⁷ and Ofgem's consultation policy,⁸ we are consulting on the draft Tender Regulations when they are still at a formative stage. We will consider all stakeholder views received in response to this consultation before we make our final decisions.

1.11. By way of this consultation document and the draft Tender Regulations, we intend to provide stakeholders with sufficient information to ensure that they understand the regulations and feel equipped to give informed responses.

1.12. We invite your feedback on all elements of the draft Tender Regulations and this consultation document itself.

Related publications

1.13. Other publications related to this consultation include:

- Ofgem, [Decision on early competition in onshore electricity transmission networks](#), March 2022
- Ofgem, [Decision on Early Competition in onshore electricity transmission networks: policy update](#), July 2024
- Department for Energy Security and Net Zero, [Transmission Acceleration Action Plan](#), November 2023
- Legislation.gov.uk, [Energy Act 2023](#), October 2023

⁶ [Early Competition Implementation – Update](#), February 2024.

⁷ Cabinet Office, [Consultation Principles: Guidance](#).

⁸ [About - Ofgem - Citizen Space](#).

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- Legislation.gov.uk, [Electricity Act 1989](#), July 1989
- Legislation.gov.uk, [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#), March 2024
- Electricity System Operator, [Early Competition Plan](#), April 2021
- Electricity System Operator, [Early Competition implementation \(ECI\) update](#), February 2024

Next steps

1.14. Following consideration of responses to this consultation, we will:

- Finalise the draft Tender Regulations, taking into account stakeholder views, and submit the Tender Regulations to the Secretary of State for approval
- Publish guidance on the onshore tender exercise process, established by the Tender Regulations, setting out the stages of the tender process and providing information intended to be useful to potential developers and bidders.
- Communicate further details on the Competitively Appointed Transmission Owner (“**CATO**”) licence to be granted to the Successful Bidder at the end of the onshore transmission tender exercise.

Consultation stages

1.15. The consultation will be open for six weeks until 1 November 2024. Responses will be reviewed and we expect to publish our final decisions later this year.

How to respond

1.16. We want to hear from anyone interested in this consultation. Please send your response to OnshoreCompetitionsPolicy@ofgem.gov.uk.

1.17. We’ve asked for your feedback to the draft Tender Regulations. Please respond to our request for feedback as fully as you can.

1.18. We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, your data and confidentiality

1.19. You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose.

- 1.20. If you wish to respond to this consultation confidentially, you will need to mark your response as confidential and include your reasons. Mark clearly the parts of your response that are confidential and those that are not. If possible, please put confidential material in separate appendices to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.21. If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 2.
- 1.22. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your confidentiality rights.

General feedback

- 1.23. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:
1. Do you have any comments about the overall process of this consultation?
 2. Do you have any comments about its tone and content?
 3. Was it easy to read and understand? Or could it have been better written?
 4. Any further comments?
- 1.24. Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

- 1.25. You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit. [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

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Would you like to be kept up to date with *Consultation* name will appear here? subscribe to notifications:

Email*

Submit >

1.26. Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

2. Overview of the Tender Process as reflected in the draft Tender Regulations

Section summary

This section explains the proposed tender process set out in the draft Tender Regulations, the policy considerations underpinning the proposed tender process and the proposed roles and responsibilities of NESO as the delivery body and Ofgem as the Authority.

The onshore early competition tender process

- 2.1. The draft Tender Regulations set out a proposed competitive tender process for the granting of an onshore electricity transmission licence in respect of certain onshore electricity projects. The draft Tender Regulations have been drafted by Ofgem in conjunction with the ESO and DESNZ and draw on the proposed end-to-end early model competition tender process that has been developed by the ESO with Ofgem engagement and oversight, and that the ESO has previously consulted with stakeholders on.⁹
- 2.2. The end-to-end early model competition tender process proposed by ESO consists of the following steps:
 1. Qualifying projects
 2. Pre-tender
 3. Commence tender
 4. Pre-Qualification
 5. Invitation to Tender / licence application (parallel processes)
 6. Evaluation of tender¹⁰
 7. Best And Final Offer (optional)
 8. Preferred Bidder
 9. Successful Bidder
- 2.3. The draft Tender Regulations provide the proposed legal framework for this end-to-end competitive tender process.
- 2.4. A key part of the tender process is the onshore transmission tender exercise ("**tender exercise**"). The 'tender exercise' refers to the formal stages of the tender to determine a person who is to be granted an onshore transmission licence in respect of a qualifying project. For the purposes of the draft Tender Regulations,

⁹ Electricity System Operator, [Early Competition implementation \(ECI\) update](#), February 2024, Page 5.

¹⁰ Although we consider the evaluation of the tender to be a distinct step in the process, this activity is incorporated into the Invitation to Tender Stage in the draft Tender Regulations.

the tender exercise includes five tender stages,¹¹ beginning with a Pre-Qualification stage and finishing with a Preferred Bidder stage in which a Successful Bidder may be determined. The five proposed stages of a tender exercise are:¹²

- Pre-Qualification stage
- Invitation to Tender stage
- Best and Final Offer stage (optional)
- Delivery Body Functions Assessment stage
- Preferred Bidder stage

2.5. A high-level overview of the proposed tender process, as set out by the draft Tender Regulations, is as follows, with references to the relevant parts of the draft Tender Regulations:

Table 1: Overview of proposed early competition tender process

Tender process step	Roles and responsibilities	Draft Tender Regulations ref
Qualifying projects	<ul style="list-style-type: none"> • NESO must assess projects against the qualifying criteria set out in the Criteria Regulations and make recommendations to Ofgem on projects to tender • Ofgem decides whether a project is a “qualifying project” for the purposes of a tender exercise 	Part 4, Reg 6, Sch 1(1)
Pre-tender	<ul style="list-style-type: none"> • NESO must provide Ofgem with evidence a project meets the required entry conditions • NESO must prepare initial tender documentation (i.e., Pre-Qualification documents) • Ofgem must decide whether entry conditions are satisfied and whether to approve initial tender documentation • Ofgem and/or NESO may undertake preliminary market engagement 	Part 3, Regs 4 & 5 Part 4, Reg 6 (& Sch. 1); Part 4, Reg 7 (& Sch. 2)
Commence tender	<ul style="list-style-type: none"> • Subject to receiving notice from Ofgem that it is satisfied the entry conditions have been met, NESO must publish a notice of its intention to commence a tender exercise, specifying tender commencement date 	Part 5, Reg 8
Pre-Qualification	<ul style="list-style-type: none"> • Bidders must submit Pre-Qualification Questionnaire to NESO • NESO must determine which bidders are Qualifying Bidders to be invited to participate in the Invitation to Tender (ITT) 	Part 7, Reg 10
Invitation to Tender	<ul style="list-style-type: none"> • NESO must prepare ITT documents and submit to Ofgem for approval 	Part 8, Regs 12 & 13; Part 10, Reg 15(1)

¹¹ For clarity, the tender exercise is reflected as steps 4-9 of the ESO’s process set out at paragraph 2.2 of this paper.

¹² Regulation 9, draft Tender Regulations.

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	<ul style="list-style-type: none"> • If Ofgem approves ITT documents, NESO must issue these to all Qualifying Bidders and invite tender submissions • Qualifying Bidders may submit tender bids • Tender submission makes Qualifying Bidder eligible to apply for onshore transmission licence 	
Licence application	<ul style="list-style-type: none"> • Subject to submitting its tender, Qualifying Bidders may submit licence application to Ofgem (save that failure to submit a compliant application will be grounds for disqualification from the tender process) • Ofgem to carry out “interim review” of licence applications and notify NESO when complete • After NESO notifies that a Preferred Bidder is a Successful Bidder, Ofgem to decide whether to grant a licence to the Successful Bidder • Ofgem to communicate its decision of granting or not granting a licence to the Successful Bidder and NESO 	Part 16
Evaluation of tender	<ul style="list-style-type: none"> • NESO must evaluate tender submissions • NESO must issue “Delivery Body Functions Assessment Report” to Ofgem • Subject to notification from Ofgem that the interim review of licence applications is complete and after NESO has issued the Delivery Body Functions Assessment Report to Ofgem, NESO can determine ‘Provisional Preferred Bidder’ or whether to hold a “Best and Final Offer” (BAFO) stage • If NESO does not hold a BAFO stage, NESO may determine ‘Provisional Reserve Bidder’ 	Part 8, Reg 13; Part 8, Reg 13; Part 10, Reg 15
Best and Final Offer (optional)	<ul style="list-style-type: none"> • If NESO decides to hold a BAFO stage, NESO must determine which Qualifying Bidders are invited to participate in the BAFO stage and notify each bidder of this • NESO must prepare BAFO documents and submit to Ofgem for approval • If Ofgem approves BAFO documents, NESO must issue these to all selected Qualifying Bidders • Selected Qualifying Bidders may submit Best and Final Offer to NESO • NESO must evaluate offers and determine ‘Provisional Preferred Bidder’ • NESO may determine ‘Provisional Reserve Bidder’ 	Part 9, Reg 14
Preferred Bidder	<ul style="list-style-type: none"> • NESO must send provisional outcome letters¹³ to all bidders • Qualifying Bidders have a ten-working day ‘standstill’ period to respond to provisional outcome letter • NESO must determine ‘Preferred Bidder’ based on evaluation of tender submissions (or Best and Final Offers if BAFO stage run) and responses to the provisional outcome letter • NESO must publish a notice of who the Preferred Bidder is 	Part 11, Regs 16, 17 & 18

¹³ This is the notice given by NESO to each qualifying bidder of its decision on who is the Provisional Preferred Bidder / Reserve Bidder.

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	<ul style="list-style-type: none"> • If applicable, NESO may determine Reserve Bidder and give notice to that bidder of its decision • NESO must issue notice to Preferred Bidder detailing what matters it must resolve before it can become the 'Successful Bidder' ("PB matters") 	
Successful Bidder	<ul style="list-style-type: none"> • If NESO satisfied that PB matters have been resolved, NESO must determine Preferred Bidder is to become Successful Bidder and publish notice to that effect 	Part 15, Reg 24

Qualifying projects

- 2.6. Before a project can be tendered, Ofgem must first be satisfied that it meets certain qualifying criteria for onshore competition. While we consider that the final decision on whether or not to tender a specific project should be made by Ofgem, we consider it appropriate that NESO leads the assessment of whether projects qualify for a tender exercise as this can be incorporated into its wider network planning role. NESO must assess potential projects against the Criteria Regulations, and make a recommendation to Ofgem on projects it considers qualify for a tender exercise.¹⁴ The Criteria Regulations specify the criteria a project must meet in order for a project to be considered for a tender exercise. Criteria include that the project must be new, separable, capable of addressing a network need with reasonable certainty, and likely to deliver an anticipated benefit to consumers.¹⁵
- 2.7. The assessments undertaken by NESO will comprise cost-benefit analysis ("**CBA**")¹⁶ to identify projects likely to deliver benefits to consumers and to confirm separability and network need. After completing these assessments, NESO will compile the information gathered and make a recommendation to Ofgem for approval on the project that should be tendered. Ofgem will evaluate this information and decide whether a project is a 'qualifying project' for a tender exercise.¹⁷ The draft Tender Regulations make provision for Ofgem to issue an 'information notice' if further information is required to make its decision.¹⁸
- 2.8. The flow chart below explains the way we envisage to arrive at a qualifying project for a tender exercise. It demonstrates, from a policy perspective, the process of project identification for early competition.

¹⁴ Regulation 6 and paragraph 1 of Schedule 1, draft Tender Regulations.

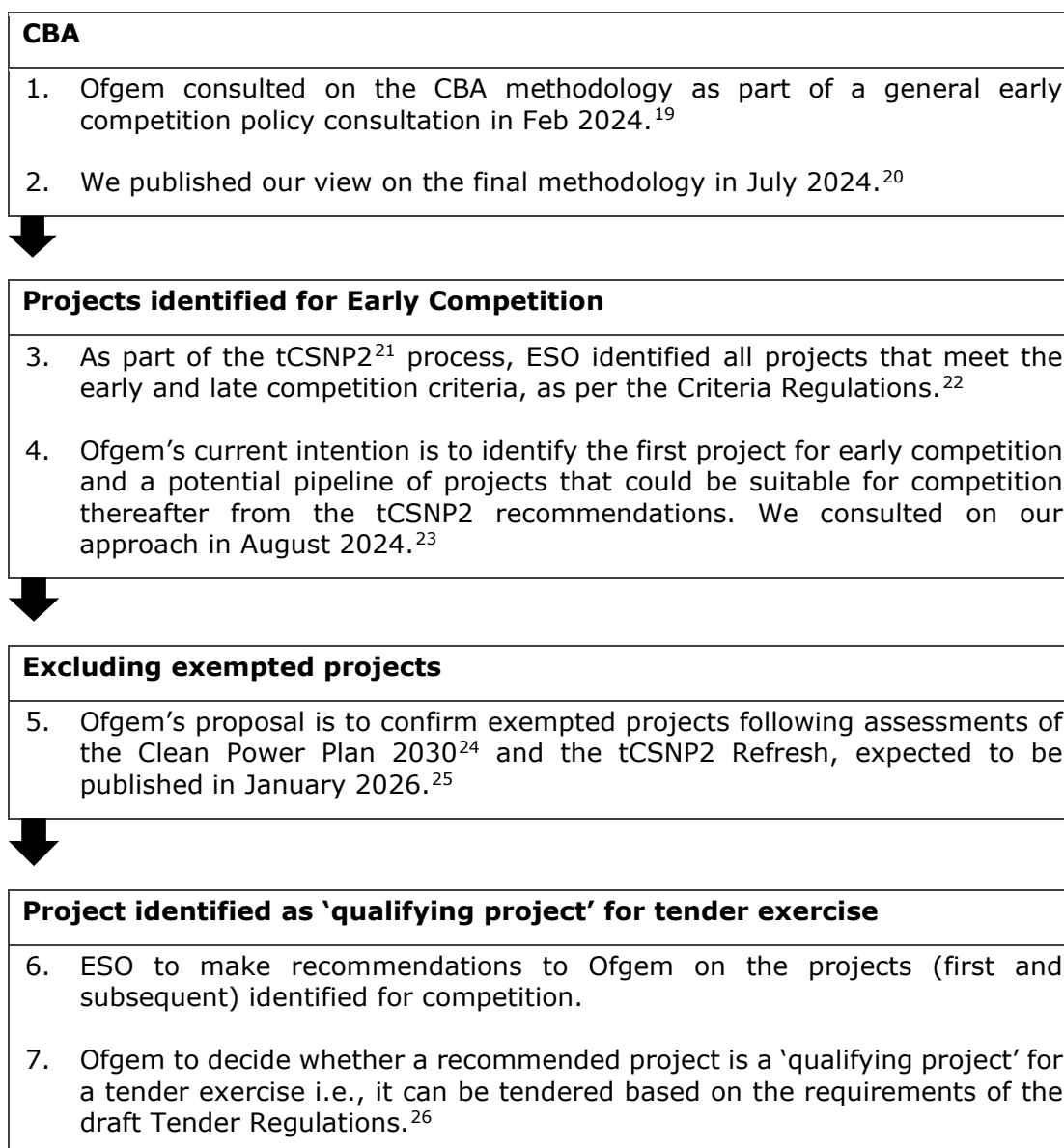
¹⁵ Regulations 4-7, the Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 (legislation.gov.uk).

¹⁶ [Decision on policy updates to Early Competition in onshore electricity transmission networks \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consultation/decision-on-policy-updates-to-early-competition-in-onshore-electricity-transmission-networks) Chapter 4.

¹⁷ Regulation 6, draft Tender Regulations.

¹⁸ Regulations 6(4), draft Tender Regulations.

Table 2: Process to identify a project(s) for early competition



Pre-tender

2.9. Pre-tender activities relate to the actions Ofgem and NESO will be required to undertake ahead of commencing a tender exercise. The pre-tender activities are

¹⁹ [Consultation on Policy Updates to Early Competition in Onshore Electricity Transmission Networks](#), (ofgem.gov.uk), pages 37-44.

²⁰ [Decision on Policy Updates to Early Competition in Onshore Electricity Transmission Networks](#), (ofgem.gov.uk), pages 25-31.

²¹ The [transitional Centralised Strategic Network Plan 2](#), also known as the ‘Beyond 2030 report’

²² [Competition in Electricity Transmission](#), pages 6-8.

²³ [Proposed regulatory funding and approval framework for onshore transitional Centralised Strategic Network Plan 2 projects | Ofgem](#) chapter 6

²⁴ [Developing a plan for clean power by 2030 | ESO \(nationalgrideso.com\)](#)

²⁵ [Consultation on the proposed regulatory funding and approval framework for onshore transitional Centralised Strategic Network Plan 2 projects](#), paragraph 6.13.

²⁶ Regulation 6 and Schedule 1, draft Tender Regulations.

intended to ensure that NESO has provided Ofgem evidence that 'entry conditions' (the conditions a qualifying project must meet for the commencement of an onshore tender exercise and continue to meet to remain the subject of a tender exercise post commencement)²⁷ have been fulfilled and that initial tender documentation (Pre-Qualification Questionnaire (PQQ), see below) is correctly prepared.²⁸ If Ofgem is satisfied that the entry conditions have been met and approves the initial tender documentation it will inform NESO who will subsequently continue progressing the tender.

2.10. Before deciding to commence a tender, it may be necessary for Ofgem and/or NESO to engage with the market. The purpose of preliminary market engagement is to allow for early engagement with industry in respect of a potential project that could be put forward to tender. This engagement is intended to assist in, amongst other things, preparing tender documentation, identifying potential bidders and shaping the approach to the tender exercise'.

2.11. We consider it important that no parties receive any kind of unfair advantage or disadvantage through participation in any preliminary market engagement and also that the engagement is carried out openly and transparently. As such, the draft Tender Regulations stipulate that, in carrying out preliminary market engagement, steps must be taken by tender parties to ensure fair competition,²⁹ and that NESO must either publish a 'preliminary market engagement notice' detailing the timing and scope of that engagement or provide reasons for not publishing such a notice in the 'intention to commence notice' (see section below).³⁰

Commence tender

2.12. After a project is determined to be a 'qualifying project' (as per regulation 6 of the draft Tender Regulations) and Ofgem is satisfied that the entry conditions are met in respect of that qualifying project (as per regulation 7 of the draft Tender Regulations), we propose that NESO must publish a notice of its intention to commence a tender exercise specifying the date on which it is intended to commence (referred to as an 'intention to commence notice'). Before publishing an intention to commence notice, we propose Ofgem and NESO must prepare their

²⁷ Regulation 7, Schedule 2 and Schedule 8, draft Tender Regulations

²⁸ Regulation 10(a), draft Tender Regulations.

²⁹ Regulation 4(3)(a) and 4(3)(b), draft Tender Regulations.

³⁰ Regulation 5(1)-(2), draft Tender Regulations.

own conflicts assessment in relation to the tender exercise to ensure a fair and transparent tender process.³¹

Pre-Qualification (first stage of the tender exercise)

- 2.13. Once NESO publishes its intention to commence notice in respect of a qualifying project, the tender exercise can formally begin.
- 2.14. The first formal stage of the tender exercise is the Pre-Qualification (“**PQ**”) stage. The purpose of this stage is to ensure that potential bidders are suitable to enter the proposed tender exercise.
- 2.15. Our current view is that the information required to determine whether bidders are suitable should be obtained by NESO through a Pre-Qualification questionnaire which has been approved beforehand by Ofgem.³² Ofgem also intends to determine on a case-by-case basis whether Qualifying Bidders should have the cost of their bids reimbursed (or capped) and the draft Tender Regulations make provision for this.³³
- 2.16. The PQ stage will assess bidders’ capability to deliver in respect of a qualifying project. We propose that bidders who pass this stage will need to sign a confidentiality agreement before proceeding.³⁴ The Pre-Qualification assessment will be made in accordance with the evaluation criteria set out in the Pre-Qualification documentation.
- 2.17. The proposed outcome of the Pre-Qualification assessment is that NESO will determine which bidders will become “Qualifying Bidders” to be invited to participate in the ‘Invitation to Tender’ (“**ITT**”) stage of the tender exercise. NESO must notify all bidders of its decision and provide reasons for its decision.

Invitation to Tender / Licence application (parallel processes)

- 2.18. The ITT stage will invite Qualifying Bidders to submit bids into the tender with a view to ultimately identifying a ‘Preferred Bidder’ at the Preferred Bidder stage who, if they become the ‘Successful Bidder’, will be the bidder who will progress the qualifying project, subject to being granted a licence by Ofgem. We need to ensure that bidders are genuine and there is no perverse incentive to withdraw from the process, and therefore, we are proposing that the draft Tender Regulations make provision for Ofgem to receive payments from Qualifying Bidders to recover the

³¹ Regulation 39(1), draft Tender Regulations.

³² Regulation 10(1), draft Tender Regulations.

³³ Regulation 10(1)(b), draft Tender Regulations.

³⁴ Regulation 10(1)(c)-(d), draft Tender Regulations.

cost of running the tender incurred by NESO and Ofgem³⁵ and also to cover any current or future liability bidders may have in respect of NESO or Ofgem's tender costs.³⁶

- 2.19. During this stage, NESO will prepare the ITT documentation which, amongst other things, will set out the information a bidder must provide as part of its tender submission and as per the evaluation criteria to be applied by NESO in evaluating tender submissions. We propose that the ITT documentation must be approved by Ofgem. If Ofgem approve the ITT documentation, NESO will be required to issue it to all Qualifying Bidders in accordance with the requirements set out in that documentation and request the submission of tender bids.³⁷
- 2.20. To align process timelines and minimise the overall time taken to run a tender, Ofgem's proposed approach is that bidders passing the PQ and making a tender submission will make that bidder eligible to apply for an onshore electricity transmission licence in respect of the project subject to the tender exercise. We propose licence applications be made simultaneously with tender submissions. Ofgem must undertake an 'interim review' of all licence applications prior to the determination of the Preferred Bidder and notify NESO of its completion as soon as is reasonably practicable.³⁸ It is important to note that the results of the interim review do not of themselves require Ofgem to grant an onshore transmission licence, and this will be granted in accordance with Ofgem's licencing policies and processes (as will be updated in due course for early competition).³⁹ The licence application process is explained below in paragraphs 2.34 to 2.36.

Evaluation of Tender submissions

- 2.21. Evaluation of bids submitted in the tender exercise as part of the ITT stage is a key role NESO will be required to undertake, and we propose the evaluation will be based on a range of technical and commercial factors (which will be explained in the ITT documentation). The purpose of this process is to determine the 'Provisional Preferred Bidder' of the tender exercise in order to move onto the 'Preferred Bidder' step. Subject to meeting the conditions set out in the draft Tender Regulations, the Preferred Bidder will become the Successful Bidder responsible for progressing a

³⁵ Regulation 12(1)(a), draft Tender Regulations.

³⁶ Regulation 12(1)(b), draft Tender Regulations.

³⁷ Regulation 12(2)-(3), draft Tender Regulations.

³⁸ Regulation 28(1), draft Tender Regulations.

³⁹ Regulation 28(3), draft Tender Regulations.

project, subject to being granted a licence by Ofgem (licence application process is explained below in paragraphs 2.34 to 2.36).

- 2.22. Following completion of NESO's evaluation of tender submissions, which must be in accordance with the evaluation criteria set out in the ITT documentation, we propose that NESO must submit a "Delivery Body Functions Assessment Report"⁴⁰ to Ofgem for review. This report will, amongst other things, provide a progress update on how the tender exercise is tracking against key dates and milestones, any changes to the qualifying project, details of NESO's evaluation at the PQQ stage and, where applicable, NESO's justification for holding a Best and Final Offer ("**BAFO**") stage (discussed below at paragraphs 2.24 and 2.25). Once NESO has submitted its assessment report to Ofgem, the draft Tender Regulations provide that NESO can proceed to determine the 'Provisional Preferred Bidder' or whether to hold a BAFO stage.⁴¹
- 2.23. We consider there may be cases where a Provisional Preferred Bidder cannot be chosen, for example, where there is little discernible difference between the bids of multiple parties or where additional value for consumers can be obtained. Where this is the case, we consider it is in consumers' interests that the tender process provides NESO with an option to allow bidders an opportunity to refine their bids. The draft Tender Regulations make provision for a BAFO stage where, if NESO decides to hold it in accordance with criteria set out in the ITT documentation, selected bidders will be invited to submit a BAFO.

Best and Final Offer (optional stage of the tender exercise)

- 2.24. If this stage takes place, Qualifying Bidders who are selected by NESO to take part in the BAFO stage can submit a 'Best and Final Offer' in respect of the tender. NESO will then evaluate each offer in accordance with BAFO documentation that it has prepared and determine a Provisional Preferred Bidder.
- 2.25. Our current view is that Ofgem must approve the BAFO documentation before it is issued to selected bidders by NESO.⁴²

Preferred Bidder

- 2.26. The proposed Preferred Bidder stage is where the Qualifying Bidders are informed whether they have been successful or unsuccessful in the tender exercise. We

⁴⁰ i.e. a Delivery Body Functions Assessment Report to be submitted before NESO determines the provisional preferred bidder or whether to hold a best and final offer stage as per Regulation 15, draft Tender Regulations.

⁴¹ Regulation 15(1), draft Tender Regulations.

⁴² Regulation 14(3), Tender Regulations.

consider it vital that this stage is transparent and the justification for NESO's decisions clearly articulated to bidders. As such the draft Tender Regulations propose that NESO must send a notice to each Qualifying Bidder as soon as is reasonably practicable after the NESO has determined the Provisional Preferred Bidder and Ofgem has notified NESO that it has reviewed its assessment report⁴³ which sets out NESO's decision regarding who has been selected as the Provisional Preferred Bidder and its reasons relating to its evaluation in accordance with the evaluation criteria set out in the ITT documentation. We refer to this notice as the 'provisional outcome letter' in this consultation.

- 2.27. To ensure there are no delays to project delivery in the event that a Preferred Bidder cannot proceed in the tender exercise⁴⁴ at or after this point, our current view is that it is appropriate to provide an option of NESO selecting a 'Reserve Bidder' at ITT and Preferred Bidder stages. This represents a bidder that could become the Preferred Bidder in the event the original Preferred Bidder cannot proceed in the tender exercise. We propose that the process to determine the Reserve Bidder should be based on NESO's assessment of the tender submissions.
- 2.28. Our current view is that it is appropriate that unsuccessful bidders (that is, Qualifying Bidders who have not been selected as the Provisional Preferred Bidder) have an opportunity to submit their views on NESO's determination of the Provisional Preferred Bidder before NESO can progress into the next stage. As such, the draft Tender Regulations provide for a standstill period of 10 working days where Qualifying Bidders can respond to the provisional outcome letter.⁴⁵
- 2.29. After the standstill period is finished, NESO will be permitted to determine who is the Preferred Bidder based on its evaluation of the tender submissions (or of Best and Final Offers, if a BAFO Stage has occurred) and any responses NESO has received to the provisional outcome letters.⁴⁶
- 2.30. Once this determination is made, we propose that NESO must publish a notice that states who the Preferred Bidder is.⁴⁷ We propose that, before this notice is published, it must be approved by Ofgem. If applicable, we propose at this point

⁴³ Regulation 16(1)-(2), Tender Regulations.

⁴⁴ See Regulation 18(6) for circumstances in which NESO may withdraw its earlier notice in which it stated who was determined as the Preferred Bidder.

⁴⁵ Regulation 16(5)(b), Tender Regulations.

⁴⁶ Regulation 17(1), draft Tender Regulations.

⁴⁷ Regulation 18(1), draft Tender Regulations.

NESO can also determine a Reserve Bidder and provide notice to that bidder of its decision.⁴⁸

- 2.31. We also propose that NESO must issue another notice to the Preferred Bidder that details the matters the Preferred Bidder must resolve to NESO's satisfaction before it can become the 'Successful Bidder' of the tender exercise ("**PB matters**") and requiring the bidder to make payments to Ofgem for the purposes of recovering the costs of the tender exercise or provide security in respect of any liability in respect of those costs.⁴⁹

Successful Bidder

- 2.32. We propose that the Preferred Bidder will have to resolve the PB matters to NESO's satisfaction to become the Successful Bidder. When NESO is satisfied that the PB matters have been resolved we propose it must publish a notice to that effect and name the Successful Bidder and direct it to make any necessary payments to Ofgem relating to recovery of the tender costs.⁵⁰
- 2.33. The licence application process, as explained below, has its own requirements and we intend for it to run parallel to the tender process. The draft Tender Regulations make provision for a minimum 10 day 'standstill' period between Ofgem notifying its intention to grant a licence to a Successful Bidder and actually granting it, where representations or objections to the licence grant can be made to Ofgem.⁵¹

Licence Application

- 2.34. Under the Act, anyone transmitting electricity on the transmission network requires an electricity transmission licence from Ofgem, unless a relevant licence exemption applies.
- 2.35. As stated above, to align process timelines we are proposing that Qualifying Bidders become eligible to submit an application for an onshore electricity transmission licence in respect of the qualifying project at the time of ITT stage submission. Part 16 of the draft Tender Regulations set out a proposed licence application process. Key intersections between the tender exercise and the licence application process proposed in the draft Tender Regulations include:

⁴⁸ Regulation 17(2) and 18(2), draft Tender Regulations.

⁴⁹ Regulation 18(3)-(5), draft Tender Regulations.

⁵⁰ Regulation 24(3), draft Tender Regulations

⁵¹ Regulation 29(2)(c), draft Tender Regulations

- Submission of a tender by a Qualifying Bidder will make that bidder eligible to apply for an onshore electricity transmission licence in respect of the qualifying project.⁵²
- Ofgem must undertake an interim review of all licence applications it has received prior to NESO determining a Provisional Preferred Bidder.⁵³
- As soon as reasonably practicable after NESO gives notice that a Preferred Bidder will become a Successful Bidder, Ofgem must determine whether to propose to grant an onshore transmission licence to that Successful Bidder in respect of the qualifying project.⁵⁴
- Before Ofgem can grant a licence, it must give notice to each Qualifying Bidder that it proposes to grant the licence, its reasons and specify a timeframe that bidders can make representations or objections.⁵⁵ If, following this standstill period, Ofgem decides to grant the licence it must publish this decision, and the tender exercise is finished.⁵⁶
- If Ofgem decides not to grant a licence, it must give NESO and the Successful Bidder notice of this decision and, if there is a Reserve Bidder, Ofgem must direct NESO to discontinue the tender exercise with the Successful Bidder and treat the Reserve Bidder as if they are the Provisional Preferred Bidder.⁵⁷

2.36. We propose assessment of licence applications will be made in accordance with Ofgem’s licensing policies and processes (as will be updated in due course for early competition). The way we envisage the licence application process working in practice is as follows:

- When we receive an application, we will carry out initial checks and aim to have these done within 10-15 working days. If the application has all the information required, then we will send the applicant a ‘duly made’ letter. If not, then we will send them a ‘not duly made’ letter with details of information missing. These tend to be applications which are complex, where the applicant does not supply the correct information or where there have been significant changes to the original application (such as change in directors or the ultimate holding company). We will continue to carry out the process until we are able to send to the applicant a ‘duly made’ letter, unless the applicant decides to withdraw

⁵² Regulation 12(4), draft Tender Regulations.

⁵³ Regulation 28(1), draft Tender Regulations.

⁵⁴ Regulation 29(1), draft Tender Regulations.

⁵⁵ Regulation 29(2), draft Tender Regulations.

⁵⁶ Regulation 29(3) and (7), draft Tender Regulations.

⁵⁷ Regulation 29(5), draft Tender Regulations.

their application, or cease effectively engaging (which may lead to us cancelling it).

- Once it is duly made, current transmission licence applications have a processing time of up to 6 months (this would run concurrently to the tender exercise and should not extend timelines). However, if at any point the information changes or we discover questionable information, for instance an insolvency, we would 'stop the clock' (in respect of the licensing process, not the tender process) and issue a 'not duly made' letter. When the applicant supplies Ofgem with the new information, we would issue a new 'duly made' letter. The processing time would then start over and have a new deadline.
- In addition to this process, we also have powers to extend the deadline if the application is considered complex. Under the Provision of Services Regulations 2009,⁵⁸ we can extend the deadline, but we must notify the applicant of the new deadline, and we can only extend the application once and for a limited time.⁵⁹ However, if the application is complex, then the delays in granting it could be significant.

Additional information

2.37. The draft Tender Regulations also include provisions indirectly related to the tender exercise, such as to allow for cost recovery,⁶⁰ Ofgem's ability to review the functions exercised by NESO as the delivery body for early competition under the draft Tender Regulations,⁶¹ managing change to bidders or bid documentation⁶² and conflict mitigation measures.⁶³ Relevant detail pertaining to these measures is included in the draft Tender Regulations included in Appendix 3 of this consultation.

⁵⁸ The Provision of Services Regulations 2009
<https://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents> (legislation.gov.uk)

⁵⁹ Regulation 19(3), The Provision of Services Regulations 2009
<https://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents> (legislation.gov.uk)

⁶⁰ Regulations 30 and 31, draft Tender Regulations.

⁶¹ Regulation 32, draft Tender Regulations.

⁶² Regulations 35 and 36, draft Tender Regulations.

⁶³ Regulations 37-39, draft Tender Regulations.

3. Draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024: Explanation of the Key Parts of the Regulation

Section summary

This section is divided into Parts 1-19 to reflect the proposed Parts of the draft Tender Regulations. It provides a short high-level description of each regulation based on the text of the regulations. The proposed legal text of the draft Tender Regulations is in Appendix 3 of this consultation document (attached separately). This section should be read in conjunction with the draft Tender Regulations.

Questions

- Q1.** Do you agree with our drafting of the draft Tender Regulations?
- Q2.** Are there specific changes you would recommend to the draft Tender Regulations?
- Q3.** Is the proposed drafting of the draft Tender Regulations clear and understandable?
If not, which parts require clarification?
- Q4.** Would you like to provide any further comments on the draft Tender Regulations and the proposed tender exercises that cannot be covered by the questions above?

Part 1: Introductory

- This Part contains the introductory provisions of the Tender Regulations.

Regulation 1: Citation, commencement and extent

- This draft regulation contains the citation, entry into force and the territorial application of the Tender Regulations.

Regulation 2: Interpretation

- This draft regulation defines the meaning of the key terms used throughout the regulations.

Part 2: Onshore Transmission Tender Exercise Objectives

- This Part sets out the objectives of the tender exercise.

Regulation 3: Onshore Transmission Tender Exercise Objectives

- The purpose of this draft regulation is to clearly set out the objectives in undertaking a tender exercise. It states that in carrying out a tender exercise, the tender parties

(being Ofgem as the Authority and NESO as the delivery body)⁶⁴ must have regard to the importance of acting with integrity and sharing information to allow bidders and others to understand their respective tender decisions. This draft regulation also provides that all bidders be treated consistently unless there is justification for different treatment by Ofgem or NESO.

Part 3: Preliminary Market Engagement

- This Part sets out the circumstances where preliminary market engagement can occur and the process to either publish a preliminary market engagement notice or give reasons for not doing so.

Regulation 4: Preliminary Market Engagement

- The purpose of this draft regulation is to provide transparent information around engagement between Ofgem, NESO and other parties ahead of commencing a tender exercise. This regulation sets out the proposed roles of Ofgem and NESO regarding preliminary market engagement and the reasons that engagement can occur.
- Our current view is that this regulation is necessary to ensure the integrity of the tender process and give bidders confidence that they are entering into a fair and transparent competition.
- We propose, in practice, to rely on NESO to take the lead in all activities, as needed, in the respect of preliminary market engagement (as listed in paragraph 1 (a) to (f) of draft regulation 4). We propose Ofgem's role would be to support or step in as and when necessary. This is for reasons such as NESO being the most appropriate industry participant with existing capabilities to conduct the required activities⁶⁵ and to avoid duplication of the activities undertaken.

Regulation 5: Preliminary Market Engagement Notices

- Draft regulation 5 details the requirement for NESO to either publish a 'preliminary market engagement notice' or provide the reasons for not doing so in the 'intention to commence' notice. This is only relevant where either Ofgem or NESO intends to conduct, or has conducted, preliminary market engagement. This is to ensure that

⁶⁴ Regulation 3, [Regulation Electricity \(Designation of Delivery Bodies\) \(Transmission\) Regulations 2023](https://www.legislation.gov.uk) (legislation.gov.uk).

⁶⁵ For instance, NESO has, in its current role as the ESO, undertaken market engagements with a diverse range of stakeholders on the degree of specificity of technical solutions to accurately price associated risks; and seeks to continue market engagement to better manage or improve the early competition tender process, [EC-I Update](#), pages 59, 67.

stakeholders are kept suitably informed regarding when engagement is occurring (or has occurred).

Part 4: Qualifying Projects

- This Part sets out the process to follow where NESO wishes to commence a tender exercise and Ofgem’s role in approving projects for tender.

Regulation 6: Qualifying Projects

- The purpose of this draft regulation is to determine whether a project qualifies for a tender exercise (see paragraph 2.8 above on the policy background relevant to the related project identification process for early competition). This regulation proposes that for a tender exercise to commence, NESO will first have to make a written request to Ofgem to commence a tender exercise in respect of a project and provide supporting information. Ofgem will then determine whether such a request relates to a “qualifying project” as per the requirements listed in paragraph 1 of Schedule 1. It proposes Ofgem may issue an information notice to NESO or any other person to request information it considers necessary to conduct its assessment in relation to paragraph 1 of Schedule 1.

Regulation 7: Entry conditions in respect of qualifying projects

- The purpose of this draft regulation is to ensure Ofgem is able to obtain the information it needs in order to assess whether it is satisfied that NESO has met the “entry conditions” in respect of a qualifying project specified in paragraph 1 of Schedule 2. It proposed that Ofgem may request any information from NESO by way of a notice if Ofgem considers it necessary for the purposes of establishing whether the entry conditions have been met. Similarly, NESO may make an information request to any person for the purposes of meeting entry conditions. After the entry conditions have been met, Ofgem will give notice to that effect to NESO.

Part 5: Commencement of an Onshore Transmission Tender Exercise

- This Part sets out the process to follow to begin the tender process.

Regulation 8: Commencement of an onshore transmission tender exercise

- The purpose of this draft regulation is to detail the process that must be followed when commencing a competitive tender exercise. The draft regulation also provides for some flexibility if the tender exercise cannot go ahead on the date specified in the notice. We consider it necessary to include this flexibility in the draft Tender Regulations to

ensure tenders can still proceed should any unforeseen issues arise to delay the original date.

Part 6: Stages of an Onshore Transmission Tender Exercise

Regulation 9: Stages of an onshore transmission tender exercise

- The purpose of this draft regulation is to provide an overview of the five different stages of a tender exercise: Pre-Qualification stage; Invitation to Tender stage; Best and Final Offer stage; Delivery Body Functions Assessment stage; and Preferred Bidder stage.

Part 7: Pre-Qualification Stage

- This Part details the process to begin the Pre-Qualification step and for NESO to issue information relating to the tender. It then sets out the process NESO must follow for assessing the Pre-Qualification submissions from bidders.

Regulation 10: Pre-Qualification

- The purpose of this draft regulation is to set out the process NESO must follow to commence the Pre-Qualification stage. It contains details regarding confidentiality agreements, how confidential information must be shared, and giving notice regarding whether Ofgem will reimburse Qualifying Bidders' costs (in accordance with draft regulations 22(3) and 29(6)).
- Our current view is that it is necessary to include this draft regulation to ensure any sensitive information will remain confidential, giving all parties confidence to enter into the process and share the information necessary to develop robust bids. As discussed in paragraph 2.15 above, we have left some flexibility in the draft regulations regarding reimbursement of Qualifying Bidders' costs as our current view is that this will be case and circumstance specific.

Regulation 11: Determination of Qualifying Bidders at the Pre-Qualification stage

- The purpose of this draft regulation is to specify the process NESO will follow in determining whether potential bidders qualify to bid in the tender exercise, that is, whether they are "Qualifying Bidders".

Part 8: Invitation to Tender Stage

- This Part contains details of the ITT process and the determination of a 'Provisional Preferred Bidder' and, where relevant, a 'Provisional Reserve Bidder'. As per ESO's

early competition plan, in practice, this stage is expected to take 10 months.⁶⁶ We have intentionally not proposed to include expected timelines in the draft Tender Regulations, however to provide transparency to potential bidders we intend to include these in a guidance document to the Tender Regulations, to be published at a later date.

Regulation 12: Invitation to Tender

- The purpose of this draft regulation is to govern how Qualifying Bidders can participate in the ITT stage of the tender exercise. This draft regulation proposes the process NESO must follow when inviting Qualifying Bidders to make a tender submission.
- It proposes NESO will issue all Qualifying Bidders, subject to Ofgem’s approval, the ITT documentation. The information that will be covered in the invitation is specified in Schedule 4 of the draft Tender Regulations. NESO will then invite all Qualifying Bidders to submit a tender in respect of the qualifying project in accordance with the requirements sets out in the ITT documentation.
- This draft regulation also proposes that submission of a tender by a Qualifying Bidder will make them eligible to apply for an onshore transmission licence. To ensure the time taken to run a tender is not unnecessarily lengthened, the draft Tender Regulations licence applications to be submitted at this stage ahead of determining the Provisional Preferred Bidder.⁶⁷

Regulation 13: Determination of Provisional Preferred Bidder and Provisional Reserve Bidder at the Invitation to Tender stage

- The purpose of this draft regulation is to provide transparency and consistency around how Provisional Preferred Bidders are chosen. This draft regulation proposes the process NESO must follow in determining a Provisional Preferred Bidder, a Provisional Reserve Bidder and whether to hold a BAFO stage. Our current view is that it is necessary for NESO to have the option to identify a Provisional Reserve Bidder at its discretion, as should the Preferred Bidder not proceed it means the tender process can continue with limited interruption.

⁶⁶ [EC-I Update](#), page 53.

⁶⁷ Regulation 25 proposes that Ofgem will set the date by which an application must be made, which must be prior to determination of the Provisional Preferred Bidder by the delivery body.

Part 9: Best And Final Offer Stage (optional)

Regulation 14: Best and Final Offer Stage

- This draft regulation sets out the process NESO and bidders must follow to determine a Provisional Preferred Bidder, and if relevant a Provisional Reserve Bidder, in circumstances where NESO has decided to hold a BAFO stage.

Part 10: Delivery Body Functions Assessment Report

- This Part states the information NESO must provide to Ofgem before deciding a Provisional Preferred Bidder or whether to hold a BAFO stage.

Regulation 15: Delivery Body Functions Assessment Report

- The purpose of this draft regulation is to set out how NESO provides details of how the tender exercise is progressing to Ofgem for review.
- This draft regulation ensures that details of NESO's assessment are provided to Ofgem in a consistent and transparent manner so that Ofgem can review whether NESO has complied with the processes and functions in its assessment of submitted bids.

Part 11: Preferred Bidder Stage

- This Part outlines the steps to notify Qualifying Bidders of the Provisional Preferred Bidder, the process to determine the Preferred and Reserve Bidder, and the notification of the Preferred and Reserve bidder.

Regulation 16: Notification of Provisional Preferred Bidder to Qualifying Bidders

- This draft regulation sets out how all Qualifying Bidders must be notified of the Provisional Preferred Bidder. The purpose of this draft regulation is to ensure Qualifying Bidders are informed of the outcome of NESO's assessment in a transparent and timely manner. Our current view is that this regulation is necessary to ensure a transparent process and all bidders can understand the justification for NESO's decision.

Regulation 17: Determination of Preferred Bidder and Reserve Bidder

- The purpose of this draft regulation is to ensure there is consistency in how Preferred Bidders are selected. This draft regulation contains the process NESO must follow in determining the Preferred and Reserve Bidders.

Regulation 18: Notification of Preferred Bidder and Reserve Bidder

- This draft regulation sets out how NESO must give notice of its decisions regarding who is the Preferred Bidder and Reserve Bidder. The key purpose of this draft regulation is to ensure the Preferred and Reserve Bidder are informed of the outcome of NESO's assessment in a transparent and timely manner.

Part 12: Withdrawal

- This Part sets out the process for bidders to withdraw from the tender exercise.

Regulation 19: Withdrawal

- The purpose of this draft regulation is to establish the process whereby bidders can withdraw from a tender exercise. This draft regulation proposes that a bidder, Qualifying Bidder, Provisional Preferred Bidder, Provisional Reserve Bidder, Preferred Bidder, Reserve Bidder or Successful Bidder may withdraw from a tender exercise by giving notice to that effect to NESO. Additionally, it proposes another ground for deemed withdrawals when bidders do not submit responses to Pre-Qualification documentation, a tender or a BAFO within the date and time specified by NESO or make a licence application within the date and time specified by Ofgem. The draft regulation also sets out specified circumstances in which some bidders may be able to be re-admitted to a tender exercise.

Part 13: Re-Run, Cancellation and Treatment of Payments and Security on Cancellation

- This Part sets out the process that occurs in the event a tender needs to be re-run or is cancelled, and the treatment of payments and security upon cancellation of the tender.

Regulation 20: Re-run, and re-run leading to cancellation

- The purpose of this draft regulation is to specify the circumstances in which a tender exercise can be re-run from the beginning or a particular stage and the process if NESO decides to cancel a tender exercise after a re-run. The re-run can be initiated by NESO subject to Ofgem's approval.
- When it is determined that an onshore tender exercise is to be cancelled following a re-run, NESO may publish a notice to that effect after it has (i) given seven days' notice of its intention to cancel the tender exercise and (ii) considered any representations made in relation to the notice of intention to cancel the tender exercise.

- The draft regulation also provides circumstances in which a tender exercise can be further re-run if no Provisional Preferred Bidder, Provisional Reserve Bidder, Preferred Bidder, Reserve Bidder or Successful Bidder is or can be determined following the first re-run. For example, if no Provisional Preferred Bidder, Provisional Reserve Bidder, Preferred Bidder, Reserve Bidder or Successful Bidder is or can be determined following a re-run, the draft regulation proposes that Ofgem can direct NESO to further re-run a tender exercise from the beginning or from a particular stage, or give seven days' notice of its intention to direct NESO to cancel the onshore tender exercise. In such instance, Ofgem will consider any representations made in relation to the notice of intention to cancel the tender exercise prior to directing NESO to publish a notice cancelling that tender exercise.
- The draft regulation proposes that if NESO publishes a notice cancelling the tender exercise, the tender exercise will conclude.

Regulation 21: Cancellation

- The purpose of this draft regulation is to establish the process that must be followed in the event a tender is cancelled. Paragraph 1 of Schedule 8 of the draft Tender Regulations lists 'events of cancellation'. If NESO is satisfied that any of the listed events are occurring or have occurred in respect of a qualifying project, it may publish a notice cancelling the tender exercise. Ofgem can also direct NESO to cancel a tender exercise if it is satisfied that any of the events listed in paragraphs 1 or 2 of Schedule 8 are occurring or have occurred.

Regulation 22: Treatment of payments and security on cancellation

- The purpose of this draft regulation is to establish a process for dealing with payments and securities in the event a tender is cancelled. This draft regulation sets out the instances where Ofgem will and will not be required to repay bidder payments, or security provided in monetary deposit.

Part 14: Disqualification From an Onshore Transmission Tender

- This Part covers the circumstances and process where a bidder is to be disqualified from the tender exercise.

Regulation 23: Disqualification

- The purpose of this draft regulation is to specify the circumstances in which a bidder must be disqualified from a tender exercise. This draft regulation details the process

that must be followed in the event a bidder is disqualified. Schedule 9 lists the events of disqualification.

- If a bidder is disqualified in accordance with this regulation, the draft regulation proposes that Ofgem must not repay any payment made wholly or in part by that bidder or release any security provided by that bidder, including any interest if the security is a monetary deposit.

Part 15: Notification of Successful Bidder

- This Part details the process NESO must follow when notifying a Successful Bidder.

Regulation 24: Notification of Successful Bidder

- The key purpose of this draft regulation is to ensure Successful Bidders are informed of that status in a transparent and timely manner. This draft regulation details the process to follow to progress from Preferred Bidder to Successful Bidder.
- The draft regulation also provides that NESO must give a notice to the Successful Bidder requiring it to make a payment to Ofgem for recovering the tender costs incurred by Ofgem and NESO and, in certain circumstances, for Ofgem's costs in reimbursing bid costs.

Part 16: Onshore Transmission Licence Application

- This Part sets out the process that must be followed when applying for, reviewing and approving onshore electricity transmission licence applications made in respect of a qualifying project. Licence applications must also be made in accordance with Ofgem's licence application policies and processes (as will be updated in due course for early competition).

Regulation 25: Manner of Application

- This draft regulation sets out how bidders need to submit licence applications to Ofgem.

Regulation 26: Application form

- This draft regulation stipulates that Ofgem must issue a licence application form to all Qualifying Bidders.

Regulation 27: Procedure for applications

- This draft regulation sets out the procedure Ofgem must follow when refusing a licence application.

Regulation 28: Interim Review of Applications

- This draft regulation proposes that Ofgem must undertake an interim review of all licence applications prior to NESO determining which Qualifying Bidder is to become the Provisional Preferred Bidder, and if relevant the Provisional Reserve Bidder, in the respect of a qualifying project. It proposes Ofgem will notify NESO of the completion of this review. The draft regulation also clarifies that the completion of an interim review will not require Ofgem to grant an onshore transmission licence.

Regulation 29: Approval of Applications

- The purpose of this draft regulation is to set out the process Ofgem must follow when awarding a licence to a Successful Bidder. After NESO gives notice of the Successful Bidder, Ofgem will determine whether to grant them an onshore transmission licence.
- Before granting a licence, the draft regulation proposes that Ofgem will notify each Qualifying Bidder informing them that it intends to grant an onshore transmission licence to the Successful Bidder, the reasons for doing so and the time period available to them to make any representations or objections to Ofgem. If Ofgem does not grant an onshore transmission licence after considering representations, then it will treat the Reserve Bidder as the Provisional Preferred Bidder.

Part 17: Cost Recovery

- This Part contains the process for Ofgem and NESO to recover costs incurred relating to the tender process.

Regulation 30: Recovery of tender costs by the Authority

- This draft regulation proposes that Ofgem can recover its tender costs after a tender exercise finishes and states how such costs are to be calculated. After the costs are calculated, Ofgem will issue a notice to the Successful Bidder in respect of the tender costs.

Regulation 31: Recovery of tender costs by the delivery body

- This draft regulation details how NESO can recover its costs incurred as the delivery body.

Part 18: Authority Review of Delivery Body Functions

Regulation 32: Authority review of Delivery Body Functions

- This draft regulation empowers Ofgem to review any function of NESO conferred to it by the draft Tender Regulations. The draft regulation also provides Ofgem the ability to appoint another person to conduct such a review on its behalf.

Part 19: Miscellaneous

- This Part covers various miscellaneous matters in respect of the tender process. It includes the following draft regulations:
 - **Regulation 33 - Information notices:** This draft regulation details the process that must be followed when either Ofgem or NESO issue an information notice in accordance with regulations 6(4), 7(2), 7(3) or 26(5).
 - **Regulation 34 - Failure to make payments or provide security:** This draft regulation makes provision to disqualify Qualifying Bidders who fail to make any payment or provide security as required under the draft Tender Regulations.
 - **Regulation 35 - Changes to bidder groups:** This draft regulation sets out the circumstances and process that must be followed in making changes to the membership of a bidder group.
 - **Regulation 36 - Changes to delivery of documents or actions:** This draft regulation sets out circumstances where Ofgem or NESO (as applicable) must give notice to relevant bidders of changes in the time, date, or manner in which documents or notices are to be published or delivered or actions required to be undertaken are to be completed.
 - **Regulation 37 - Conflicts of interest (duty to identify):** This draft regulation places a duty on Ofgem and NESO to take all reasonable steps to identify, and keep under review, any conflicts or potential conflicts of interests in the respect of a tender exercise.
 - **Regulation 38 - Conflicts of interest (duty to mitigate):** This draft regulation places a duty on Ofgem and NESO to take all reasonable steps to ensure that a conflict of interest does not put a person involved in a tender exercise at an unfair advantage or disadvantage in relation to that tender exercise.
 - **Regulation 39 - Conflicts assessments:** This draft regulation requires Ofgem and NESO to prepare a conflicts assessment in relation to a tender exercise and to take steps to manage any conflicts/potential conflicts that may arise.

- **Regulation 40 - Existing licence holders:** This draft regulation sets out the process Ofgem must follow when the Successful Bidder already holds a transmission licence.
- **Regulation 41 - Applicability of certain provisions:** This draft regulation sets out that the draft Tender Regulations do not prohibit Ofgem from considering or granting applications for onshore transmission licences in accordance with the relevant provisions of the Electricity Act 1989 (as applicable).

Schedules

The Schedules detail the procedures which are contingent upon certain events occurring or arising in the relevant parts of the draft Tender Regulations. The relevant schedule is referenced in the relevant regulation and vice versa – further details of the schedules are in Appendix 3:

- Schedule 1: Qualifying Projects
- Schedule 2: Entry Conditions
- Schedule 3: Pre-Qualification
- Schedule 4: Invitation to Tender
- Schedule 5: Best And Final Offer
- Schedule 6: Delivery Body Functions Assessment Report
- Schedule 7: Events of Re-Run
- Schedule 8: Events of Cancellation
- Schedule 9: Events of Disqualification

Appendices

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1	Consultation questions	39
2	Privacy notice on consultations	40
3	The Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024 (draft text)	Attached separately

Appendix 1 – Consultation questions

Question 1: Do you agree with our drafting of the draft Tender Regulations?

Question 2: Are there specific changes or modifications you would recommend to the draft Tender Regulations?

Question 3: Is the proposed drafting of the Tender Regulations clear and understandable? If not, which parts require clarification?

Question 4: Would you like to provide any further comments on the draft Tender Regulations and the proposed tender exercises that cannot be covered by the questions above?

Appendix 2 – Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

We will not be sharing your personal data

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 12 months following closure of this consultation.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data

- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".