Guidance

# Offshore Electricity Transmission - Tender Process Guidance Document

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We run competitive tender exercises to appoint Offshore Transmission Owners (OFTOs) for various offshore wind projects.

This document provides guidance on the tender process. It sets out the stages of the tender process and provides information intended to be useful to developers and bidders. It should be read in conjunction with the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and with documentation produced for individual tender rounds we run.

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# Version control

| Version | Date Issued | Summary of changes |
|---|---|---|
| 1 | 30 November 2020 | The previous version of this document, used to support the tender processes for Tender Rounds 7 through to 11. |
| 2 | 25 February 2025 | A general refresh of the November 2020 document has been undertaken to ensure that:<br><br>• At the time of publication, this document is presented in Ofgem's current standard template;<br><br>• Textual formatting is updated to ensure consistency across the document;<br><br>• Minor typographical errors have been amended, and sections of text have been refreshed to ensure that they run more logically, and duplication is removed; and<br><br>• A general update in certain sections where circumstances may now be slightly different to when the November 2020 version was published (e.g. under 'Third Package', starting at paragraph 3.32).<br><br>None of the changes made are considered to be material, however all interested parties should use this document as the most current version. |
| 3 | 21 October 2026 | Minor updates made:<br>• Refreshed text concerning 'Certification' and removal of reference to 'Third Package' (paragraph 3.32 onwards and associated glossary items);<br>• Update to duration of the generator commissioning clause (see paragraph 10.10);<br>• Minor typographical corrections; and<br>• Update to the table in paragraph 12.10 (Charging Schedule) to revise the last line in the table ('Payment to cost estimate and cost assessment costs') required to be made by the Successful Bidder from 'circa £100,000' up to 'circa £150,000'. |

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# Executive Summary

The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (**the Tender Regulations**) set out the tender process framework for the granting of an Offshore Transmission Owner (**OFTO**) Licence, including how Ofgem will run a competitive tender process for Generator Build and OFTO Build projects.

**Definitions of terms used in this document are detailed in the Glossary in Appendix 4.**

This document, in conjunction with the Tender Regulations, sets out the processes with which Developers and Bidders must comply when participating in a Tender Round.

This document includes:

- an overview of the tender process, including the legislative and regulatory framework and key stages; consequences of failure to comply with the tender regulations, including where events of re-run, cancellation and disqualification apply;
- the processes for the involvement of Developers and Bidders in a Tender Round;
- the requirements for participation and exchange of information during a Tender Round;
- guidance information on each stage of a Tender Round, including the purpose of each stage, the key activities and outcomes and the stage specific requirements of Developers and Bidders; and
- in Appendix 1, the disclaimers and notices which apply to this Guidance Document.

**In participating in a Tender Round, Developers and Bidders must comply with the Tender Regulations. A material breach of the Tender Regulations by a Developer or Bidder would result in disqualification from a Tender Exercise or Tender Round.**

**In reading this Guidance Document, Developers and Bidders should take into account the disclaimers and notices in Appendix 1.**

# Associated documents

This Guidance Document should be read in conjunction with the following documents:

- The Tender Regulations[1] (or the equivalent Regulations in force at the time of a given Tender Round).
- Tender stage-specific documents, which Ofgem will publish in advance of the start of each of the following stages:
    - Pre-Qualification Stage or Enhanced Pre-Qualification Stage (with additional EPQ Stage, if held);
    - Qualification to Tender Stage (if applicable);
    - Invitation to Tender Stage; and
    - Best and Final Offer Stage (if applicable).
- Ofgem's Cost Assessment Guidance which sets out the cost assessment process for determining the transfer value of the Transmission Assets[2].

[1] The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015
[2] Offshore Transmission: Guidance for Cost Assessment (2022) | Ofgem

# 1. Introduction to the Tender Process

**Chapter summary**

This chapter sets out an overview of the legislative and regulatory framework and the tender process.

## Objectives of the OFTO regime

1.1. The key objectives of the competitive tender process are:

(i) Deliver transmission infrastructure to connect offshore generation, on a timely basis and ensure that OFTOs are robust and can deliver Transmission Services successfully over the licence period;

(ii) Provide certainty and best value to consumers though the competitive tender process; and

(iii) Attract new entrants to the transmission sector.

## The Electricity Act

1.2. Under Section 6(1)(b) of the Electricity Act 1989 (**the Electricity Act**), the Authority may grant a licence authorising a person to participate in the transmission of electricity. This extends to include offshore transmission. Ofgem also has an ongoing role to ensure compliance of licensees with the provisions of the OFTO Licence.

1.3. Section 6C of the Electricity Act[3] empowers the Authority to make regulations that enable it to determine on a competitive basis the entity to whom an OFTO Licence should be granted. Ofgem will have regard to its principal objective and general duties when running the tender process.

1.4. Schedule 2A of the Electricity Act[4] entitles Ofgem to make a property transfer scheme Please refer to section 13.30 for further details on the Schedule 2A Property Transfer Scheme.

[3] As amended by s334(2)(i) and Schedule 15 of the Energy Act 2023.
[4] As inserted by section 44(4) and Schedule 2 of the Energy Act 2008 and by s334(2)(i) and Schedule 15 of the Energy Act 2023.

## The Tender Regulations

1.5. The Tender Regulations set out the process and rules with which Developers and Bidders must comply when participating in a Tender Exercise for the grant of an OFTO Licence. This Guidance Document outlines the tender process, provides some further detail as to how this works in practice, and provides some context to the requirements set out in the Tender Regulations. However, this Guidance Document is not a substitute for a thorough understanding of the Tender Regulations. All Developers, Bidders and other interested parties should ensure that they are familiar with and fully understand the Tender Regulations.

1.6. Ofgem's role in managing the competitive tender process is set out in the Tender Regulations and detailed further in this Guidance Document and includes:

1.6.1. determining which projects (i.e. Transmission Assets) qualify for a Tender Round, and are therefore Qualifying Projects;

1.6.2. running competitive Tender Exercises for Qualifying Projects to determine Successful Bidders who will be granted OFTO Licences for each Qualifying Project; and

1.6.3. calculating the economic and efficient costs which ought to have been incurred in connection with developing and constructing the Transmission Assets for each Qualifying Project.

1.7. Tender Process Guidance Document (this document)

1.7.1. The purpose of this Guidance Document is to set out further detail of how we operate the tender process, including the requirements, expectations and obligations of Developers and Bidders. It is intended to apply across tender rounds to provide certainty and transparency to interested stakeholders.

1.7.2. This Guidance Document applies to Generator-Build projects. In the event of an OFTO Build tender being requested, Ofgem may publish additional guidance material.

## Other guidance

1.8. The Tender Regulations also require Ofgem to publish rules particular to each tender stage of a Tender Exercise. We publish those documents separately on the relevant section of our website and (if applicable) via the Portal.

1.9. In the event of any conflict between a) this Guidance Document b) the Tender Regulations or c) any of the stage-specific documents, then the following order of precedence applies:

(i) Tender Regulations

(ii) Stage-specific documents

(iii) Guidance Document

# 2. Overview of the Tender Process

**Chapter summary**

This chapter notes the stages of the tender process.

## Key stages of a Tender Exercise

2.1. The Tender Round runs from the date specified in the notice issued by the Authority under regulation 12(1) of the Tender Regulations[5] confirming its intention to commence a Tender Exercise through to grant of an OFTO Licence.

2.2. The Tender Round will include the following key stages:

2.2.1. Qualification of projects: Projects which do not qualify for this Tender Round will have the opportunity to be considered for subsequent Tender Rounds;

2.2.2. Tender entry;

2.2.3. Pre-Qualification Stage(s):

- Enhanced Pre-Qualification (**EPQ**); or
- Pre-Qualification (**PQ**) and Qualification to Tender (**QTT**);

2.2.4. Invitation to Tender (**ITT**) Stage;

2.2.5. Best and Final Offer (**BAFO**) Stage (if applicable);

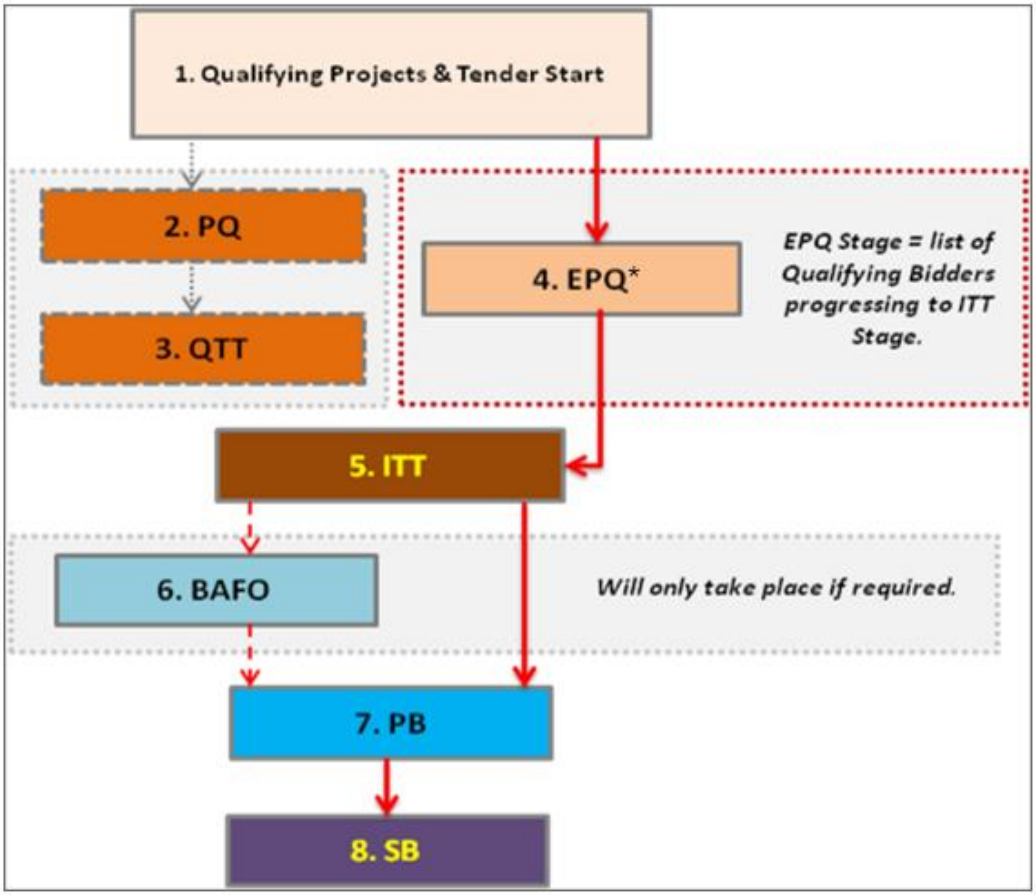
2.2.6. Preferred Bidder (**PB**) Stage; and

2.2.7. Successful Bidder (**SB**) Stage.

2.3. Further details of each stage are set out in Chapters 5 to 11 of this Guidance Document, while an outline of the process is detailed in Figure 1 and Figure 2.

[5] Subject to regulations 12(2) and/or 12(3) of the Tender Regulations.

**Figure 1: Overview of Tender Process**




* An additional EPQ may be held

## Variation of a Tender Exercise

2.4. Where Ofgem determines it is impracticable for any documentation or notice to be delivered or action to be taken in accordance with the Tender Regulations by the time, date or manner specified, Ofgem may decide to extend a Tender Exercise and postpone any Submission date in accordance with regulation 34(2) of the Tender Regulations.

2.5. Where the above paragraphs apply, Ofgem will seek to notify Developers and Bidders in a reasonable time-period.

## Cost Estimate/Assessment[6]

2.6. Regulation 4 of the Tender Regulations provides for Ofgem to calculate, based on all relevant information available to it at the time, the economic and efficient costs

[6] For further information on the Cost Assessment process, see Offshore Transmission: Guidance for Cost Assessment (2022) | Ofgem. Please also note that Ofgem consulted on proposed updates to this guidance, the deadline for which closed on 7 September 2026. Responses are currently being considered. The consultation can be accessed here: Updating the Offshore Transmission Cost Assessment Guidance, 13 July 2025

which ought to have been incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project.

2.7. Where the construction of the Transmission Assets has not reached the stage when those Transmission Assets are available for transmitting electricity, this calculation will take the form of an estimate of the costs that ought to be incurred in connection with the development and construction of those Transmission Assets.

2.8. For the purposes of commencing a Tender Exercise for a Qualifying Project, Ofgem will consider the cost information that Developers have provided in respect of their Qualifying Projects to derive the Initial Transfer Value. The Initial Transfer Value will then be included in the Pre-Qualification Document released to Bidders at the Pre-Qualification Stage(s) of the Tender Exercise. As part of our analysis of the Developer's cost information, we will raise any specific questions or concerns with the Developer. Use of this information at the PQ Stage or EPQ Stage is not an endorsement by Ofgem of the basis on which the Developer derived their estimated costs or any assumptions or methodology that the Developer used in their calculations; it will simply be used for the purpose of commencing the Tender Exercise.

2.9. Once the PQ Stage or EPQ Stage has commenced, Ofgem may request further information from the Developer to calculate, for each Qualifying Project, our estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets. This estimate is the Indicative Transfer Value that will be included in the ITT Document for the purposes of Bidders' ITT Submissions.

2.10. Ofgem may require further information, by a specified date, for the purposes of enabling Bidders to take into account the most accurate costs estimate for a Qualifying Project in order to meet the requirements of a particular stage. Where the Developer provides information after the specified date, Ofgem may decide not to take that information into account in undertaking the estimate and subsequent assessment.

2.11. The Developer must pay Ofgem's costs associated with the estimate of costs, including any updates, as set out in the Tender Regulations.

2.12. Where construction of the Transmission Assets has reached the stage where those assets are available for the transmission of electricity, Ofgem shall, as soon as reasonably practicable after the Transmission Assets are available for use <u>and</u> when it has the necessary costs information, assess the costs that ought to have

been incurred in connection with their development and construction. For the avoidance of doubt, it is noted that the cost assessment process necessarily acts with a time lag as Ofgem processes and analyses the relevant costs information. As set out in the Tender Regulations, Ofgem will proceed to the stage of the assessment of costs as soon as it is reasonably practicable for Ofgem to do so after the Transmission Assets are available for use and when it has the necessary costs information to proceed to the assessment stage. The assessment of costs shall be used by Ofgem to determine the value of the Transmission Assets to be transferred to the Successful Bidder in respect of a Qualifying Project (the **Final Transfer Value**).

2.13. Ofgem intends to commence the process for the assessment of costs during the PB Stage of a Tender Exercise for a Qualifying Project.

2.14. It is expected that Ofgem's assessment of costs and determination of the Final Transfer Value for a Qualifying Project will be concluded prior to the grant of an OFTO Licence to a Successful Bidder. If, under exceptional circumstances, this is not possible, Ofgem may adjust the Tender Revenue Stream to reflect the difference (if any) between the Indicative Transfer Value and the Final Transfer Value following the completion of the Authority's final assessment of costs (where this occurs after the licence is granted).

2.15. The Successful Bidder must pay the costs associated with Ofgem's assessment of costs, as set out in the Tender Regulations.

## Re-run of a Tender Exercise

2.16. Where Ofgem is satisfied that any of the events of re-run, as set out in Schedule 7 of the Tender Regulations, are occurring or have occurred in respect of a Qualifying Project, the Tender Exercise may be re-run from the beginning of the Tender Exercise or from a particular stage.

2.17. Should Ofgem be unable to identify a Preferred Bidder, Reserve Bidder or Successful Bidder following a re-run, Ofgem may either further re-run the Tender Exercise from the beginning or from a particular stage; or cancel the Tender Exercise.

## Cancellation

2.18. Where Ofgem is satisfied that any of the events of cancellation, as set out in regulation 24(2)(b) or at Schedule 8[7] of the Tender Regulations, are occurring or have occurred in respect of a Qualifying Project, it may publish a notice cancelling that Tender Exercise from a Tender Round following a period to allow for representations. Where such notice has been published, that Tender Exercise is finished.

2.19. Where Ofgem decides that the Tender Exercise for a Qualifying Project is finished, Ofgem may seek to appoint an OFTO through the OFTO of Last Resort mechanism referred to below.

2.20. The cost consequences of cancellation for Developers and Bidders are set out in regulation 26 of the Tender Regulations.

## Disqualification

2.21. Where Ofgem is satisfied that any of the events of disqualification as set out in Schedule 9[8] of the Tender Regulations are occurring or have occurred, and that the occurrence would materially affect the outcome of a Tender Exercise or a Tender Round, it may disqualify a Developer or Bidder from the Tender Exercise or Tender Round.

2.22. If a Bidder is disqualified, Ofgem will not consider any Submission from that Bidder for the purpose of determining the Successful Bidder for the relevant Qualifying Project to which that Tender Exercise or Tender Round relates.

2.23. The cost consequences of disqualification for Developers and Bidders are set out in regulation 27 of the Tender Regulations.

## OFTO of Last Resort

2.24. There may be instances, including following cancellation of a Tender Exercise, where Ofgem would appoint an OFTO of Last Resort. Developers and Bidders should familiarise themselves with Ofgem's OFTO of Last Resort guidance.[9]

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[7] Pursuant to regulation 25(1) of the Tender Regulations.
[8] Pursuant to regulation 27(1) of the Tender Regulations.
[9] Guidance on the Offshore Transmission Owner (OFTO) of Last Resort mechanism, 26 February 2024

# 3. Participation

**Chapter summary**

This chapter sets out the role of Developers and Bidders in a Tender Round in addition to guidance regarding:

- Contact between Developers and Bidders;
- Contact with Ofgem;
- Bidder Groups and changes to Bidders Groups;
- Tender costs;
- Withdrawal from a Tender Exercise; and
- The Third Package.

## Developers

3.1. Under the Tender Regulations role of a Developer in the tender process is to:

3.1.1. satisfy the Qualifying Project requirements and Tender Entry Conditions for its project – see Section 5 for further details;

3.1.2. provide necessary information to enable Ofgem to estimate and assess the costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project – see Section 1 for further details;

3.1.3. populate the data room and present key information (Draft Transfer Agreement and Information Memorandum) to facilitate effective information provision;

3.1.4. make payments and provide Security to Ofgem; and

3.1.5. use its reasonable endeavours to enable the Preferred Bidder / Successful Bidder to resolve all relevant matters (to the extent that resolution of those matters depends on the actions of the Developer) to enable the transfer of Transmission Assets for that Qualifying Project, including providing relevant information - see Sections 8 and 9 for further details.

3.2. Developers should organise themselves internally in preparation for the Tender Exercise, for example, by ensuring they obtain board approvals, meet deadlines set out by Ofgem for the above activities and comply with the requirements of each stage of a Tender Exercise.

3.3. Developers should become familiar with all the events of disqualification and cancellation detailed in the Tender Regulations.

## Bidders

3.4. Under the Tender Regulations the role of a Bidder in the tender process is to:

3.4.1. make submissions to Ofgem when required at each stage of a Tender Exercise – see Sections 6 to 9 for further details;

3.4.2. respond to clarification requests from Ofgem regarding Submissions within a reasonable period – see Sections 6 to 9 for further details;

3.4.3. make payments to Ofgem at each relevant stage of a Tender Exercise, as set out in the Tender Regulations – see Sections 6 to 9 for further details; and

3.4.4. provide all relevant information to and resolve all relevant matters with the Developer and any other relevant parties for the transfer of Transmission Assets for a Qualifying Project for which they are the Preferred Bidder / Successful Bidder - see Sections 8 and 9 for further details.

3.5. Bidders should become familiar with all the events of disqualification and cancellation detailed in the Tender Regulations.

## Bidder Groups

3.6. Bidders may be a single person or may wish to collaborate with other persons to form a Bidder Group.

3.7. Bidder Groups must appoint a lead member or organisation authorised to make Submissions on behalf of the Bidder Group. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with the relevant requirements of the stage documentation.

3.8. Bidder Groups are expected to be finalised prior to making ITT Submissions.

3.9. If a Bidder Group is chosen as the Preferred Bidder for a Qualifying Project, Ofgem would expect a special purpose vehicle or similar to be established prior to granting the OFTO Licence. Ofgem is required to identify the person to whom an OFTO Licence is to be granted.

## Changes to a Bidder Group

3.10. Where a Bidder Group wishes to change its membership, it must notify Ofgem. Ofgem will not recognise any change to the Bidder Group membership until it has given its permission for the change.

3.11. Where a Bidder Group seeks to change its membership after the PQ stage or EPQ Stage and before the ITT Stage, Ofgem will reassess whether the revised Bidder Group meets the criteria set out in the PQ Document or EPQ Document respectively as part of the Bidder Group's ITT Submission. Ofgem will permit that change provided the new membership meets the selection criteria set out in the PQ Document or EPQ Document, as applicable.

3.12. Where a Bidder Group seeks to change its membership after an ITT Questionnaire or after its appointment as Preferred Bidder, Ofgem may permit the change, provided the requirements of the Tender Regulations are met.

3.13. Ofgem may refuse permission to a change in a Bidder Group where that Bidder Group fails to demonstrate it is able to fulfil the criteria that led to its inclusion at the previous stage of a Tender Exercise or where Ofgem determines that it would not be fair and equitable to other Bidders.

3.14. Bidders should note that any change to the membership of a Bidder Group that has not been approved by Ofgem may result in disqualification from a Tender Exercise, as detailed in the Tender Regulations.

3.15. Where Ofgem has permitted a change to the membership of a Bidder Group, it may give notice to the Bidder Group of the amount of any relevant payment payable to Ofgem in accordance with the Tender Regulations.

3.16. Bidders should become familiar with the provisions related to changes to bidder groups in the Tender Regulations[10].

## Developer/Bidder Contact

3.17. Developers and Bidders should note that collusion or anti-competitive behaviour between a Developer and a Bidder, or between Bidders, is an event of disqualification under the Tender Regulations.

3.18. Bidders are expressly prohibited from contacting Developers, or vice versa, in relation to any aspect of the Tender Round, a Tender Exercise or any Qualifying

[10] Regulation 33 of the Tender Regulations.

Project. Similarly, Bidders should not attempt to contact other Bidders in relation to any aspect of a Tender Round, Tender Exercise or a Qualifying Project.

3.19. Where Ofgem holds an event to which Developers and Bidders are both invited in advance of the PB Stage of a Tender Exercise (for example to provide Developers with an opportunity to explain their commercial proposals for operations and maintenance and/or insurance to Bidders), Bidders and Developers may not discuss or raise questions in relation to aspects of the Qualifying Project or Tender Exercise other than those specified in the agenda / event papers.

3.20. Once the Preferred Bidder is appointed, Developers will be provided with the contact details of the Preferred Bidder for their Qualifying Project. Contact between the Developer and Preferred Bidder for a Qualifying Project is therefore permitted at that stage to finalise commercial agreements for asset transfer.

## Contact with Ofgem

3.21. If a Bidder wants to contact Ofgem prior to the PB Stage in relation to any aspect of a Tender Exercise, it must do so via the Portal (see Section 4). A Bidder must not attempt to contact Ofgem or any of its Advisers in relation to any aspect of a Tender Exercise in any other way, unless Ofgem specifically instructs otherwise.

3.22. At the start of each stage, Ofgem may issue a schedule of meetings to Bidders and/or Developers, which may include briefing events or workshops they should attend. This schedule will set out the purpose and required attendees for each meeting.

## Costs

3.23. Each Developer and Bidder will bear its own costs of participating in a Tender Exercise and will be responsible for meeting the costs incurred by Ofgem in administering such Tender Exercise in accordance with the Tender Regulations.

3.24. Failure by a Developer to make a payment or provide Security as required by Ofgem is an event of cancellation under the Tender Regulations. Unless Ofgem has permitted that payment or Security to be made or provided within a further period notified by Ofgem, which will be no later than the tender commencement date.

3.25. Failure by a Bidder to pay any amount required by Ofgem pursuant to the Tender Regulations, unless that failure has been remedied within a period not exceeding ten days as notified to the Bidder, is an event of disqualification under the Tender Regulations.

3.26. Ofgem accepts no liability for any costs, expenses, damages or losses incurred by any Developer or Bidder (including any unsuccessful Bidder) in connection with a Tender Exercise.

3.27. The Tender Regulations detail cost consequences for a Developer or Bidder of withdrawal or disqualification from a Tender Exercise or Tender Round, or cancellation of a Tender Exercise. Developers and Bidders should familiarise themselves with the relevant sections of the Tender Regulations.

3.28. Any Developer payment required to be made to Ofgem in relation to a Tender Exercise in accordance with the Tender Regulations, must be made by a person within Section 6CB(3)(a) of the Electricity Act[11]. Where the Developer comprises a group of entities, the entity required to make the payment to Ofgem is that which holds the connection offer or the benefit of that connection offer, whether or not it is part of the Developer Group.

## Withdrawal from a Tender Exercise

3.29. The rights which Developers and Bidders have to withdraw from a Tender Exercise are set out in the Tender Regulations and summarised below.

3.30. **Developers**

3.30.1. A Developer may withdraw its Qualifying Project from a Tender Exercise at any time by giving written notice to Ofgem. Under the Tender Regulations[12], withdrawal by a Developer is an event of cancellation, and Ofgem may cancel the Tender Exercise for the relevant Qualifying Project.

3.31. **Bidders**

3.31.1. A Bidder who decides to withdraw from a Tender Exercise at any stage must give written notice to Ofgem as soon as possible after it has made the decision to withdraw.

3.31.2. Where a Bidder fails to make an ITT Submission or a BAFO Submission, as applicable, by the date and time specified by Ofgem, it shall be deemed to have withdrawn from the relevant Tender Exercise.

3.31.3. If a Bidder withdraws from a Tender Exercise in respect of a particular Qualifying Project, it may only be re-admitted to the Tender Exercise for that Qualifying Project or another Qualifying Project if it joins a Bidder

[11] As inserted by s334(2)(i) and Schedule 15 of the Energy Act 2023.
[12] Paragraph 1(g), Schedule 8 of the Tender Regulations.

Group which is an existing Bidder and Ofgem consents to its addition to such Bidder Group.

3.31.4. If a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from a Tender Exercise, it will not be re-admitted to the Tender Exercise for that Qualifying Project.

## Certification

3.32. The Utilities Act 2000 designates the Authority[13] as the body responsible for administering the certification process in Great Britain.

3.33. A person who holds a Transmission Licence and participates in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be given must ensure that they are certified by the Authority throughout that period. Offshore Transmission Licensees need to be certified by the Authority as complying with the full ownership unbundling requirements.

3.34. All Bidders are advised to make themselves aware of the requirements for certification and to review the relevant provisions in the Electricity Act. Further information on the procedure for processing applications for certification under the ownership unbundling requirements is set out in the following publications:

3.34.1. our open letter dated 10 November 2011[14]

3.34.2. our open letter dated 6 March 2015[15];

3.34.3. guidance published by Ofgem on 23 August 2017[16] setting out our approach to processing applications for certification following amendments to the ownership unbundling provisions in the Electricity Act and the Gas Act 1986; and

3.34.4. our open letter dated 17 March 2021 following the exit of the UK from the EU[17].

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[13] Ofgem carries out this function on behalf of the Authority.

[14] Certification of transmission system operators (TSOs) under the ownership unbundling requirements of the Third Package, 10 November 2011

[15] Certification arrangements in Great Britain following amendments to the ownership requirements of the Gas Act 1986 and the Electricity Act 1989,6 March 2015

[16] Certification arrangements in Great Britain following 2017 amendments to the ownership unbundling requirements of the Gas Act 1986 and the Electricity Act 1989: Removal of EEA limitation from the definition of Relevant Producer or Supplier and approach to the application of Ofgem's discretion, 23 August 2017

[17] Certification arrangements in Great Britain following amendments to the ownership unbundling provisions of the Gas Act 1986 and the Electricity Act 1989: End of the transition period, 17 March 2021

3.35. Any decisions the Authority takes in relation to this Tender Round are taken in its role as manager of the competitive tendering process pursuant to Section 6C of the Electricity Act and the Tender Regulations. Unless otherwise notified by Ofgem, any decision the Authority takes in relation to this Tender Round should not be taken as a decision, or any indication of what decision may be taken, on certification.

3.36. Ofgem is not able to advise Bidders as to the relevant provisions of the Electricity Act and strongly recommends Bidders seek appropriate independent legal advice in this respect. However, Ofgem welcomes engagement with Bidders in relation to applications for certification.

# 4. Information Exchange

**Chapter summary**

This chapter sets out the types of information to be exchanged between Developers and Ofgem and between Bidders and Ofgem. It also describes the process for exchanging this information and the systems used by Ofgem to facilitate the secure exchange of information.

## Information provided by Developers and Bidders

4.1. Developers and Bidders are required to provide information to Ofgem during the Tender Round pursuant to the Tender Regulations. Developers and Bidders are reminded that it is an event of disqualification under the Tender Regulations to submit any information to Ofgem that is false or misleading. Where this is caused by an error or omission, Ofgem may accept the provision of further information correcting or rectifying the error.

4.2. By participating in the Tender Round, each Bidder and Developer shall be deemed to consent to the disclosure by Ofgem to its Advisers of any information given to Ofgem, either before or during the Tender Round by that Developer or Bidder.

4.3. Where Ofgem requires a Developer to provide further information, Ofgem shall specify the date by which such information is to be provided.

## Tender Submissions

4.4. Ofgem will detail in the documentation made available to Bidders at the start of each stage of a Tender Exercise what information Bidders are required to submit, in what form/manner and by when.

4.5. Only one Submission is permitted per Bidder per Qualifying Project, and all Submissions must be made via the Portal.

4.6. Bidders must ensure:

4.6.1. the information they submit is true, accurate and complete; and

4.6.2. they act as the principal in the Tender Exercise in making their Submission and not as an agent for any undisclosed party.

4.7. Where Ofgem provide templates for Submissions on the Portal, all Submissions must be made using templates provided. Ofgem will not accept Submissions in

any other form (including font type and size) other than those specified and/or Submissions exceeding specified page limits.

4.8. All Submissions must be made by the deadline stated for each stage[18]. Ofgem will not accept any late Submissions. If any unforeseen issue (e.g. technical issues with the Portal) prevents a Submission from being made by the specified deadline, then the Bidder or Bidder must notify Ofgem of any such issue as soon as reasonably practicable before the specified deadline.

4.9. Ofgem is not bound to accept any Submission made by a Bidder.

4.10. Once a Submission has been made, the Bidder will receive confirmation of receipt. Ofgem will not open any Submission until after the Submission deadline.

4.11. Ofgem will check if each Submission is complete. If Ofgem identifies any omission(s), it will notify the Bidder. Ofgem may allow that Bidder a specified period of time to rectify the omission(s). In this event, Ofgem will only commence evaluation of the Submission following receipt of the requested information. Ofgem may disqualify a Bidder's Submission if any information is missing or if the omitted information requested is not provided within the required time.

4.12. If, at any time after a Submission has been made, there are any material changes, whether made or proposed, to the information provided in the relevant Submission, or a Bidder becomes aware that information previously submitted is no longer true or accurate, such Bidder must advise Ofgem as soon as is reasonably practicable. Where a Bidder informs Ofgem, or if Ofgem otherwise becomes aware, of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Bidder's Submission in light of that material change or proposed change, subject to Ofgem being satisfied that proceeding with the re-evaluation would be fair and equitable to all Bidders.

## Clarifications and Responses

4.13. All clarifications and responses must be made via the Portal.

## Clarification requests from Bidders

4.14. If a Bidder needs clarification in respect of a stage or document in a Tender Exercise, it may request clarification from Ofgem. Ofgem will endeavour to provide a response as soon as reasonably practicable, although it is likely that the timeframe within which it will respond will vary depending on the nature of the

[18] Ofgem may extend Submission deadlines by issuing a notice to Bidders in writing.

clarification requested. Ofgem will endeavour to provide responses to clarifications received prior to the clarification deadline specified and in accordance with the stage-specific rules. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the Submission deadline.

4.15. Ofgem may, where appropriate, forward a Bidder's clarification request to a Developer, to the NESO or to The Crown Estate/Crown Estate Scotland for a response. Where it does so, the identity of the Bidder that raised the clarification will remain confidential. In all instances, Ofgem will act as the intermediary in any clarification request, i.e. the details of the clarification and the response to it, will be managed and provided by Ofgem. No direct interface is permitted between a Bidder and a Developer, the NESO or The Crown Estate/Crown Estate Scotland (or vice versa) in respect of a clarification.

4.16. Ofgem's default position is, for reasons of transparency and fairness, to make responses to Bidders' clarifications available to all Bidders involved at the relevant stage of a Tender Exercise, although the identity of the Bidder that raised the clarification will remain confidential. However, if Ofgem considers that a Bidder's clarification is sufficiently specific and confidential to that Bidder, Ofgem may, at its discretion, provide the response solely to that Bidder.

## Clarification requests from Ofgem

4.17. Ofgem may issue a clarification request to a Bidder or a Developer, for example where information is unclear. Developers and Bidders must respond to clarification requests issued by Ofgem within the period specified by Ofgem. Failure by a Bidder to respond to a clarification request within the period specified by Ofgem risks any clarification response from the Bidder not being considered as part of Ofgem's evaluation of their Submission at that stage of the Tender Exercise.

4.18. As part of the Tender Entry Conditions (see Section 4), Developers are required to provide an undertaking in writing to respond to queries from Ofgem within a reasonable period during a Tender Exercise. Failure to do this is an event of cancellation under the Tender Regulations.

## Evaluation of Submissions

4.19. Ofgem will publish details on evaluation criteria and process in the documentation issued at each stage of a Tender Exercise.

4.20. Ofgem will evaluate Submissions made by Bidders at each stage of a Tender Exercise against evaluation criteria in the following broad areas (although evaluation will not necessarily be limited to these areas):

4.20.1. economic and financial standing;

4.20.2. technical capability; and

4.20.3. legal standing.

## Confidentiality and Publicity

4.21. Bidders are required to sign a Confidentiality Agreement with the Developer in the form specified for each relevant Qualifying Project prior to receiving the relevant project information at the PQ Stage or EPQ Stage.

4.22. The Confidentiality Agreement will cover information received during the PQ and all subsequent tender stages.

4.23. Bidders and Developers must comply with their obligations under such an agreement and ensure compliance by their representatives including directors, employees, advisers and subcontractors, as provided for under such agreement.

4.24. Developers and Bidders shall not undertake (nor permit to be undertaken) at any time during a Tender Round any publicity activity with any section of the media in relation to the Tender Exercise for any Qualifying Project(s), other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet and e-mail accessible by the public at large and the representatives of such media.

## Transfer Agreement

4.25. Under the Tender Regulations, a Developer must complete a Transfer Agreement, as far as possible, with all relevant information available to it, for its Qualifying Project. Ofgem intends to share Developers' project-specific draft Transfer Agreements with Bidders at the PQ Stage or EPQ Stage, as applicable, to inform their PQ Submissions or EPQ Submissions, as applicable, provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at the time. The project-specific Transfer Agreements will also inform Bidders' ITT Submissions and discussions on asset transfer between Preferred Bidders and Developers during the PB Stage of a Tender Exercise.

## The Portal

4.26. Ofgem operates the Portal to provide access to information on a Tender Round and to enable interested parties to participate in a Tender Round. It provides a channel for both communication and data exchange at all stages of the Tender Round. Further details concerning the Portal provider and how information can be accessed will be published at the relevant time on our website and/or in relevant tender stage documentation.

4.27. Ofgem will use the Portal to circulate the documentation, instructions and information relating to the different stages of a Tender Exercise to relevant Bidders. The table below illustrates the parties that will have access to particular documents via the Portal at specific stages of a Tender Exercise.

| **Document/Information relating to a Qualifying Project** | **Access given to** |
|---|---|
| Prequalification Documentation | Bidders and other interested parties registered on the Portal. Also published on the Ofgem website. |
| Information Memorandum and draft Transfer Agreement | Bidders who have signed the relevant Confidentiality Agreement and Conflict of Interest Statement(s) |
| ITT Document | Shortlisted Bidders |
| BAFO Document (if applicable) | Selected Bidders |
| Data Room(s) | Bidders and Developers |

4.28. Developers will be required to upload any information or data relating to their Qualifying Project into the Data Room. The Data Room is a secure electronic data storage area, which will be made available to relevant Bidders through the Portal. Each Qualifying Project will have its own separate Data Room, which will be maintained by Ofgem with information provided by the relevant Developer.

4.29. Bidders will be required to submit to Ofgem any information or data relating to a Tender Exercise by uploading it to the Portal.

4.30. As detailed earlier, all Submissions, clarifications and responses must also be made via the Portal.

4.31. Further details on the Portal, including how it can be accessed and how it should be used, are set out in Appendix 2.

# 5. Qualifying Projects

**Chapter summary**

This chapter outlines project qualification requirements and the Tender Entry Conditions that must be satisfied under the Tender Regulations before Ofgem can commence a Tender Exercise.

## Introduction

5.1. A Tender Round will only be commenced by Ofgem for projects which have met the Qualifying Project requirements, or which have been deemed to be Qualifying Projects as discussed in more detail below. The key activities associated with determining the projects that qualify for a Tender Round are summarised below.

## Request to Commence a Tender Exercise

5.2. A Developer who wishes Ofgem to commence a Tender Exercise in respect of its project must submit a written request to Ofgem to that effect, stating whether the proposed project is intended to meet the Qualifying Project requirements for a Generator Build project or an OFTO Build project.

5.3. Where a Developer requests that Ofgem commence a Tender Exercise in respect of its project, Ofgem will determine whether that project is a Qualifying Project. Requests made to Ofgem for qualification into a Tender Round relate to Generator Build projects only. Developers therefore need to provide Ofgem with evidence demonstrating that their projects meet the Qualifying Project requirements set out in paragraph 2 of Schedule 1 to the Tender Regulations, which apply to Generator Build projects.

5.4. In practice, Ofgem and the Developer of a potential Qualifying Project are likely to have held a number of informal discussions before a Developer formally requests that Ofgem commence a Tender Exercise for its project. These early discussions, whilst not mandatory, provide a valuable opportunity for both parties to share information regarding the project and manage expectations in terms of whether a project is likely to qualify. The prior sharing of information also helps Ofgem expedite the formal evaluation of a project against the Qualifying Project requirements, as detailed below.

## Qualifying Project Requirements

5.5. The Qualifying Project requirements for Generator Build projects are detailed in paragraph 2 of Schedule 1 to the Tender Regulations.

## Determination of Qualifying Projects

5.6. Where a Developer can demonstrate its proposed project has satisfied all the Qualifying Project requirements for a Generator Build project as set out in the Tender Regulations, Ofgem will determine such project to be a Qualifying Project for this Tender Round.

5.7. If Ofgem determines that a Developer has not satisfied the requirements related to property consents or construction contracts, Ofgem may deem a project to be a Qualifying Project for this Tender Round, provided the Developer gives an undertaking to meet the requirement within a period notified by the Authority to the Developer.

## Notification of Qualifying Projects

5.8. Where Ofgem has determined that a proposed project satisfies all the Qualifying Project requirements for a Generator Build project, Ofgem shall notify the Developer.

5.9. Where Ofgem has determined that a proposed project is a Qualifying Project subject to the Developer providing an undertaking to meet outstanding requirements, if that Developer fails to satisfy the outstanding requirements within the period specified by Ofgem, Ofgem may cancel the Tender Exercise in respect of that project in accordance with the provisions of the Tender Regulations.

## Developer Payment and Security

5.10. Prior to commencing a Tender Exercise for a Qualifying Project, Ofgem will notify the Developer of the payment required in relation to Ofgem's estimated costs for running the Tender Exercise (and the date by which this payment must be made). Further details are provided in the Cost Recovery chapter of this document.

# 6. Tender Entry Conditions

**Chapter summary**

This chapter outlines project qualification requirements and the Tender Entry Conditions that must be satisfied under the Tender Regulations before Ofgem can commence a Tender Exercise.

## Tender Entry Conditions Overview

6.1. Once Ofgem is satisfied a Generator Build project meets all Qualifying Project requirements, Ofgem will notify the Developer of the information it requires, and the deadline for providing that information, to be satisfied that the Tender Entry Conditions[19] are met. Once Ofgem is so satisfied, a Tender Exercise can commence for the Qualifying Project.

6.2. Developers must satisfy all the Tender Entry Conditions by the date notified by Ofgem. Some of these Tender Entry Conditions must be satisfied prior to commencement of the Tender Exercise for a Qualifying Project, whereas Ofgem may permit others to be satisfied by a later date. Where this is the case, Ofgem will notify Developers accordingly.

6.3. Where a Developer does not meet the Tender Entry Conditions by the specified date, Ofgem may cancel the Tender Exercise for that project.

6.4. Further information on some Tender Entry Conditions is provided below, however, Developers should familiarise themselves with the requirements in the Tender Regulations.

## Information Memorandum (IM)

6.5. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to issue an IM for the Qualifying Project. The IM is the project information document released by Ofgem to Bidders at the PQ or EPQ Stage.

6.6. Ofgem must be satisfied that the information provided is appropriate and adequate, and Ofgem may require further information from the Developer.

[19] Set out in Paragraph 2 of Schedule 2 to the Tender Regulations.

## Data Room

6.7. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to establish a Data Room for a Qualifying Project. The Developer will provide information about its Qualifying Project, which Ofgem will use to assess its Qualifying Project status; however, further information will be required to establish the Data Room for bid purposes. Ofgem will provide Data Room Guidelines which Developers should adhere to when populating the relevant Data Rooms over the course of the Tender Exercise for their Qualifying Projects.

## Other Conditions

6.8. In addition to the conditions set out in the Tender Regulations, Ofgem is able to specify other Tender Entry Conditions that Developers must satisfy for a Qualifying Project before commencing a Tender Exercise where it deems it necessary[20].

## Notification of Meeting Tender Entry Conditions

6.9. Ofgem will require certain information from the Developer to satisfy itself that each tender entry condition for a Qualifying Project has been met.

6.10. Ofgem will notify the Developer if it is satisfied that all Tender Entry Conditions have been met, or if additional information is required.

6.11. If a Developer fails to satisfy any of the Tender Entry Conditions by the date specified by Ofgem, Ofgem may notify the Developer and publish a notice stating that the Tender Exercise for that Qualifying Project has been cancelled in accordance with the Tender Regulations.

## Commencement of Tenders

6.12. Ofgem will publish a notice stating its intention to commence a Tender Round for these Qualifying Projects as soon as reasonably practicable after:

6.12.1. Ofgem has determined the Qualifying Projects;

6.12.2. the relevant Developer has provided the appropriate payment and Security; and

6.12.3. the relevant Developer has satisfied those Tender Entry Conditions required to be satisfied prior to the publication of the commencement notice.

[20] For example, a condition that the Developer must consent in writing to Ofgem using information provided to it in respect of the Tender Exercise.

6.13. The notice will specify the Qualifying Projects included and the date on which the Tender Round will commence.

6.14. Ofgem may amend the commencement date of a Tender Round or Tender Exercise for a particular Qualifying Project following consultation with the Developer and shall publish a further notice specifying the revised commencement date for that Tender Round or Tender Exercise.

6.15. Ofgem shall publish the tender commencement notice confirming its intention to commence a Tender Exercise on the Ofgem website in accordance with regulation 12(1) of the Tender Regulations. In addition, Ofgem may publish a notice on the Find a Tender Service, as well as notices in other relevant publications.

# 7. PQ, QTT or EPQ Stage

**Chapter summary**

This chapter sets out the key activities of the PQ Stage and EPQ Stage.

## Introduction

7.1. The PQ Stage or EPQ Stage is the first stage of the Tender Exercise following tender commencement. The EPQ Stage is an extended version of the PQ stage of a Tender Exercise that can be used where the Authority decides not to run a QTT Stage.

7.2. The purpose of the PQ and QTT Stage, or the EPQ stage, is to identify a suitable shortlist of Bidders to proceed to the ITT Stage. It is anticipated that this will take approximately six months to complete.

7.3. The key activities associated with this stage are summarised below.

## Confidentiality Agreements

7.4. Ofgem will publish a Confidentiality Agreement and Conflicts of Interest Declaration for each Qualifying Project on the Portal, and will set out the date, time and manner in which each Bidder should submit completed versions of these to Ofgem. The Confidentiality Agreement will already have been signed by the relevant Developer, as detailed in Section 4 and should not be amended.

7.5. Each prospective Bidder must submit the signed documents referred to in paragraph 7.4. Doing so is regarded as the Bidder's expression of interest in the Tender Round.

## Published Documentation

7.6. Ofgem will publish the PQ Documents or EPQ Documents, as applicable, on the Portal and the Ofgem website. The Tender Regulations set out the documents Ofgem is required to publish at the PQ Stage or EPQ Stage[21].

[21] Schedule 3 of the Tender Regulations.

## Information Available to Bidders

### Information Memorandum (IM)

7.7. Each Bidder that has entered into a Confidentiality Agreement and provided satisfactory confirmation in respect of conflicts of interest will be granted access (on the Portal) to the IM prepared in respect of each of the relevant Qualifying Projects.

### Project-Specific Transfer Agreements

7.8. Developers will prepare project-specific Transfer Agreements. Provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at that time, Ofgem intends to make it available in addition to the PQ Document or EPQ Document, as applicable. Project-specific Transfer Agreements will only be made available to those Bidders that have submitted the relevant signed Confidentiality Agreement and satisfactory confirmation in respect of conflicts of interest to Ofgem, as described above. Further guidance on developing the Transfer Agreement is provided in chapter 13.

## Bidder Clarifications

7.9. If a party who intends to make a PQ Submission or EPQ Submission requires clarification in relation to any aspect of the PQ Document or EPQ Document, it may submit a clarification request to Ofgem via the Portal.

## PQ Submission

7.10. The PQ Document or EPQ Document for a Tender Round will contain instructions on how Bidders should complete and submit the questionnaire for any Qualifying Project(s) they wish to bid for.

7.11. Bidders must make their completed PQ Submissions or EPQ Submissions by the stated deadline, in accordance with the detailed instructions set out in the PQ Document or EPQ Document (as appropriate). Any Bidders who fail to submit a completed questionnaire shall be excluded from that Tender Round.

## Ofgem Clarifications of PQ or EPQ Submissions

7.12. Ofgem may ask Bidders to clarify their PQ Submissions or EPQ Submissions. Bidders must respond within the timescale specified in the clarification request.

## Evaluation of PQ or EPQ Submissions

7.13. Ofgem will evaluate each completed PQ Submission or EPQ Submission in accordance with the evaluation criteria and process set out in the PQ Document or EPQ Document (as appropriate) in order to determine the shortlist of Bidders that will be invited to participate in the ITT Stage up to the relevant maximum number. These shortlisted Qualifying Bidders will progress to the ITT Stage for the relevant Qualifying Projects.

7.14. Ofgem may decline to consider a PQ Submission or EPQ Submission where Ofgem determines that it does not comply in any material respect with the requirements specified in the PQ Document or EPQ Document (as appropriate).

## Notification to Bidders and Publication of Bidder Shortlist

7.15. Following its evaluation, Ofgem will determine which Bidders shall become Qualifying Bidders and will be invited to participate in the ITT Stage for that particular Tender Exercise.

7.16. Ofgem will notify each Bidder, via the Portal, whether its PQ Submission or EPQ Submission has been successful or unsuccessful and will give reasons for its determination.

7.17. The notices given to successful Bidders will set out the next steps required to participate in the ITT Stage.

7.18. Once all Bidders have been notified, the shortlist of Bidders for each Qualifying Project will be published on the Portal and on the Ofgem website. Ofgem may also make a general public announcement.

## Feedback

7.19. Ofgem may offer, upon request, confidential feedback to any Bidder following completion of the PQ Stage or EPQ Stage.

# 8. Invitation to Tender Stage

**Chapter summary**

This chapter sets out the key activities of the ITT Stage.

## Introduction

8.1. The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) for each Qualifying Project. It is anticipated that the ITT Stage will take approximately six months to complete.

8.2. The key activities associated with this stage are summarised below.

## ITT Document Published

8.3. Ofgem will issue the ITT Document to a Qualifying Bidder, via the Portal, for each Qualifying Project for which it has been invited to tender. The documentation Ofgem is required to publish is set out in the Tender Regulations[22].

## Information Available to Bidders

8.4. **Access to Data Room**

Qualifying Bidders will be granted access to the Data Room relating to the Qualifying Project for which they have been invited to tender. The Data Room will be accessed via the Portal.

8.5. **Project-Specific Transfer Agreement**

The project-specific Transfer Agreement, as provided by the Developer, will be included in the Data Room. Qualifying Bidders will be notified in the ITT Document of what they are required to do with the project-specific Transfer Agreement.

## Qualifying Bidder Clarifications

8.6. If a Qualifying Bidder has a clarification question in relation to any aspect of the ITT Document, it should submit the question to Ofgem via the Portal.

[22] Schedule 5 of the Tender Regulations.

## ITT Submission

8.7. Qualifying Bidders must make their completed ITT Submissions by the stated deadline, in accordance with the detailed instructions set out in the ITT Document. Any Qualifying Bidders who fail to submit completed questionnaires by the stated deadline shall be deemed to have withdrawn from that Tender Exercise.

8.8. If a Qualifying Bidder decides not to make an ITT Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably practicable after having made such decision.

## Ofgem Clarifications of ITT Submissions

8.9. Ofgem may ask Qualifying Bidders to clarify their ITT Submissions, which it will do via the Portal. Qualifying Bidders must respond, also via the Portal, within the timescale specified in the clarification request.

## Evaluation of ITT Submissions

8.10. Ofgem will evaluate each completed ITT Submission in accordance with the evaluation criteria and process set out in the ITT Document to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.

8.11. Ofgem may also determine a Qualifying Bidder to become the Reserve Bidder for a Qualifying Project.

8.12. Ofgem may decline to consider an ITT Submission where Ofgem determines that it does not comply with the requirements specified in the ITT Document.

8.13. In accordance with the Tender Regulations, Ofgem may decide to run a BAFO Stage. Ofgem's decision on whether to run a BAFO Stage will be based on the criteria published in the ITT Document.

## Notification to Qualifying Bidders

8.14. Ofgem will notify each Qualifying Bidder whether or not it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project and will provide reasons for its decision.

8.15. Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project and the name of the Reserve Bidder (if applicable).

## Notification of a BAFO Stage

8.16. If applicable, Ofgem will notify each shortlisted Qualifying Bidder if there will be a BAFO Stage for a Qualifying Project, and the applicable details related to that stage. More information about the BAFO stage is set out in chapter 9, below.

## Bidder Feedback

8.17. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the ITT Stage within one month of the notification outlined above.

# 9. Best and Final Offer Stage

**Chapter summary**

This chapter sets out the key activities of the Best and Final Offer (**BAFO**) Stage.

## Introduction

9.1. In accordance with the criteria set out in the ITT Document, Ofgem will decide whether or not to undertake a BAFO Stage for a Qualifying Project[23]. The purpose of the optional BAFO Stage is to determine a Preferred Bidder (and possibly a Reserve Bidder) for a Qualifying Project.

## BAFO Document Published

9.2. Ofgem will issue the BAFO Document to a Qualifying Bidder, via the Portal, if it has been invited to participate in the BAFO Stage. The documentation Ofgem must provide to Qualifying Bidders is set out in the Tender Regulations[24].

## Qualifying Bidder Clarifications

9.3. If a Qualifying Bidder requires clarification regarding any aspect of the BAFO Document, it should submit a request to Ofgem via the Portal.

## BAFO Submission

9.4. Qualifying Bidders must make their BAFO Submissions by the stated deadline, in accordance with the detailed instructions set out in the BAFO Document. Any Qualifying Bidders who fail to submit a completed questionnaire shall be deemed to have withdrawn from that Tender Exercise.

9.5. If a Qualifying Bidder decides not to make a BAFO Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably practicable after having made such decision.

## Ofgem Clarifications of BAFO Submissions

9.6. Ofgem may ask Qualifying Bidders to clarify their BAFO Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request.

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[23] See regulation 19(1) of the Tender Regulations.
[24] Schedule 6 of the Tender Regulations.

## Evaluation of BAFO Submissions

9.7. Ofgem will evaluate each completed BAFO Submission in accordance with the evaluation criteria and process set out in the BAFO Document to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.

9.8. Ofgem may also determine which Bidder shall become the Reserve Bidder for a Qualifying Project.

9.9. Ofgem may decline to consider a BAFO Submission where Ofgem determines that it does not comply with the requirements specified in the BAFO Document.

## Notification to Bidders

9.10. Ofgem will notify each Qualifying Bidder whether or not it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project and will provide reasons for its determination.

9.11. Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project that is the subject of a BAFO and may publish the name of the Reserve Bidder (if applicable).

## Bidder Feedback

9.12. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the BAFO Stage within one month of the notification referred to above.

# 10. Preferred Bidder Stage

**Chapter summary**

This chapter sets out the key activities of the Preferred Bidder (**PB**) Stage.

## Introduction

10.1. The PB Stage commences once a Preferred Bidder is appointed. The purpose of the PB Stage is for the Preferred Bidder to resolve certain matters to the Authority's satisfaction before that Preferred Bidder becomes the Successful Bidder for a Qualifying Project. It is anticipated that this stage will take approximately six months to complete, depending on the progress of the project.

10.2. Ofgem's role during this stage is to determine the Tender Revenue Stream to be incorporated in the OFTO Licence for a Qualifying Project. Ofgem expects that most of the issues arising during this stage will be resolved on a commercial basis between the Preferred Bidder, the Developer and any other relevant parties. Ofgem does not propose to review or participate in the development of documents to which it is not a party, or to act as an arbiter of disputes between the parties.

10.3. The key activities associated with this stage are summarised below.

## Public Notice

10.4. At the start of the PB Stage, Ofgem will publish a notice for each relevant Qualifying Project confirming the name and address of the Preferred Bidder, and describing, in general terms, the matters to be resolved by the Preferred Bidder (to Ofgem's satisfaction) before that Preferred Bidder becomes the Successful Bidder, as outlined in the Tender Regulations[25].

## Notification to the Preferred Bidder

10.5. Ofgem will separately notify the Preferred Bidder of:

10.5.1. the name of the Reserve Bidder (if applicable);

10.5.2. a draft of the matters they will need to resolve (to the Authority's satisfaction) before becoming the Successful Bidder (the draft PB Matters); and

[25] Regulation 21 of the Tender Regulations.

10.5.3. details of the process and indicative timelines to asset transfer, financial close, the process for finalising the Tender Revenue Stream and the grant of the OFTO Licence.

10.6. Ofgem may notify the Preferred Bidder at this point of the details of any on-hold period where that applies for the Qualifying Project.

10.7. Preferred Bidders will be provided with an opportunity to provide written comments and discuss the draft PB Matters with Ofgem. Ofgem will consider any comments received in determining the PB Matters and may amend the draft PB Matters where it is satisfied that it is appropriate to do so.

## Generator Commissioning Clause

10.8. Based on our experience of previous tenders, the Preferred Bidder and Developer will need to finalise technical due diligence following completion of construction of the transmission assets. We therefore aim to have a Preferred Bidder in place by completion of construction.

10.9. A Developer who conveys electricity through transmission assets prior to transfer to an OFTO will contravene the prohibition in the Electricity Act on unlicensed participation in the transmission of electricity.

10.10. As part of constructing and developing the transmission assets, a Developer will export some power to test and commission the transmission assets to facilitate due diligence by the OFTO. Section 6F of the Electricity Act[26] (known as the generator commissioning clause) allows Developers under certain circumstances to lawfully convey electricity for commissioning purposes for a defined period of 27 months from issue of a completion notice.[27]

## PB Notice and the PB Matters

10.11. As soon as reasonably practicable after Ofgem issues the public notification of the Preferred Bidder, Ofgem will issue a PB Notice to the Preferred Bidder, setting out the PB Matters, which must be resolved to our satisfaction within specified timeframes before the PB becomes the Successful Bidder (**SB**). The PB Matters are set out in the Tender Regulations at a high level[28] and are detailed in the PB Notice.

10.12. The PB Matters in the PB Notice are likely to include:

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[26] This was originally for a duration of 18 months, but has subsequently been amended to a 27 month period (section 28 of the Planning and Infrastructure Act 2025 - Planning and Infrastructure Act 2025)
[27] For more information, see Offshore Electricity: Consultation on implementation of the Generator Commissioning Clause in the Energy Act 2013, 24 January 2014
[28] Regulation 21 of the Tender Regulations.

10.12.1. Confirmations that the Preferred Bidder has established necessary arrangements to provide Transmission Services for that particular Qualifying Project, including that:

(i) contractual and other arrangements required for the Transmission Assets to be transferred are agreed (including, as required, the Transfer Agreement, Interface Agreement, disclosure letter, any crossing agreements, deeds of assignment and/or novation or security documents);

(ii) relevant property, rights, consents, licences and permits required by the proposed OFTO, including the Crown Estate/Crown Estate Scotland lease, are in place or are agreed;

(iii) contractual and financial arrangements required by the proposed OFTO are agreed (including all necessary financing, operation and maintenance, and management service agreements);

(iv) operational arrangements are in place (including the takeover and transition plans, operation and maintenance, and health and safety policies);

(v) the proposed terms and conditions of the OFTO Licence have been accepted following the Section 8A Consultation;

(vi) a proposed Market Rate Revenue Adjustment (**MRA**) methodology is in place in relation to any proposed MRA term in the OFTO Licence;

(vii) a financial close protocol, setting out the processes and timescales which are to be followed by the Preferred Bidder to achieve financial close, together with the accompanying financial model optimisation protocol are in place; and

(viii) in relation to financing, all necessary contractual and financial arrangements are in place.

10.12.2. confirmation that the Preferred Bidder has in place a bilateral agreement with the NESO to provide Transmission Services for that particular Qualifying Project;

10.12.3. confirmation that the Preferred Bidder has acceded to the System Operator-Transmission Owner Code; and

10.12.4. any other matters which the Authority may determine are necessary in relation to that particular Qualifying Project, which may include:

(i) confirmation that funding terms and approvals remain valid;

(ii) confirmation that there has been no change between the arrangements set out in the bid and the final arrangements which will be put in place for provision of Transmission Services for that Qualifying Project.

10.13. We expect that a PB Notice would include the PB Matters listed above. However, these may be tailored to the particular project characteristics and circumstances of the Preferred Bidder at the time of issue. We will also publish a notice of appointment of Preferred Bidder for the Qualifying Project on our website, setting out an overview of the PB Matters in general terms.

10.14. We expect the Preferred Bidder to move promptly to resolve the PB Matters within the timeframes set out in the PB Notice by liaising directly with the Developer and other relevant third parties.

## Preferred Bidder Payment

10.15. The PB Notice will set out details of the Preferred Bidder payment to be made to Ofgem in accordance with regulation 21(6)(b) of the Tender Regulations. The Preferred Bidder payment will be payable shortly after Preferred Bidder appointment. The Preferred Bidder payment and all other payments described in this guidance are recoverable by the OFTO as allowed pass-through items via a revenue adjustment condition in the OFTO Licence. Further details on payments can be found in the Cost Recovery section of this document.

## Information Available to Preferred Bidders

10.16. **Information in Relation to Tender Process and OFTO Licence**

10.16.1. Ofgem will continue to provide information about the tender process via the Portal, including updated versions of the OFTO Licence, further guidance notes and information about the PB Stage, the assessment of costs and the transfer value of the Qualifying Project.

10.17. **Access to the Developer's Data Room**

10.17.1. To assist in performing their confirmatory due diligence, the Preferred Bidders will be granted access to the Data Room, which is maintained and updated by the Developer for the relevant Qualifying Project. This will allow a direct flow of information from the Developer

to the Preferred Bidder. Each Data Room will be accessible via the Portal.

10.17.2. Ofgem will take no responsibility for the content of documents in the Developer Data Room and will not review or comment upon documents in the Developer Data Room, other than as required for Ofgem to assess costs and determine the Final Transfer Value.

## Ofgem's role

10.18. **During the process to close, our role includes:**

10.18.1. establishing the PB Matters to be resolved by the Preferred Bidder[29];

10.18.2. determining whether the Preferred Bidder has resolved the PB Matters to our satisfaction for the purpose of commencing the Section 8A Consultation in the first instance and for the purpose of the Preferred Bidder becoming the Successful Bidder following the Section 8A Consultation[30];

10.18.3. calculating the Final Transfer Value of the transmission assets[31];

10.18.4. where applicable, granting minded-to statements in respect of derogations[32] and/or consents in respect of relevant conditions of the OFTO Licence;

10.18.5. finalising the TRS for the purpose of conducting the Section 8A Consultation; and

10.18.6. granting the OFTO Licence to the Successful Bidder[33].

10.19. A key PB Matter the Preferred Bidder must resolve is finalising documentation to effect asset transfer and financial close including the Transfer Agreement, funding documentation, operation and maintenance arrangements, and the Interface Agreement. We do not intend to review or participate in the development of documents to which we are not a party, nor to act as an arbiter of disputes between the parties. We expect that where issues arise in the process to close, most will be resolved on a commercial basis between the Preferred Bidder, the Developer and any other relevant parties.

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[29] Regulation 21 of the Tender Regulations.
[30] Regulation 28 of the Tender Regulations and s8A of the Electricity Act.
[31] Regulation 4 of the Tender Regulations.
[32] See paragraph 10.21 below.
[33] Regulation 29 of the Tender Regulations.

10.20. During the process to close, we will host bilateral meetings with each of the Preferred Bidder, Developer and other third parties as necessary to monitor progress towards resolution of the PB Matters. In limited circumstances, we may also attend meetings between the Preferred Bidder and the Developer where this facilitates efficient conclusion of the process to close.

## Derogations and "Minded-to" statements

10.21. If the Qualifying Project does not meet an applicable requirement of a particular technical code or standard, for example the STC, the Preferred Bidder may request we grant a derogation from the OFTO Licence requirement to comply with that particular technical code or standard. A derogation is a direction from us relieving a licensee from its obligation to comply with a technical standard or code in its licence in specified circumstances and to a specified extent. The Preferred Bidder is expected to identify and approach us promptly with derogation requests.[34]

10.22. Where the Preferred Bidder submits a request for a derogation prior to Licence Grant, we will confirm in advance of Licence Grant whether we intend to consent to such arrangements following Licence Grant.

10.23. Where the OFTO has submitted a request for a derogation on or after Licence Grant, the derogation will apply from the date on which we issue the direction.

10.24. Each derogation granted will be entered onto our public register.[35]

10.25. Similarly, we have discretion to grant derogations from or provide consent to alternative arrangements in relation to certain matters set out in the OFTO Licence, for example with respect to credit rating or business separation arrangements. The Preferred Bidder may identify and approach us in advance of Licence Grant to request any relevant consent for alternative arrangements.

## Modification of standard terms and conditions of the OFTO Licence

10.26. **Section 8A Consultation**

10.26.1. The OFTO Licence we grant will, by default, include only standard conditions and the terms. Therefore, we will modify the OFTO Licence at Licence Grant to incorporate OFTO specific provisions such as the TRS, incentives, and business separation requirements. Once Ofgem has received certain confirmations from the Preferred Bidder required

[34] For further information, see: Guidance on licence derogation requests | Ofgem
[35] Electronic Public Register - https://epr.ofgem.gov.uk/

under the PB Notice, it will make use of its powers under section 8A of the Electricity Act to propose these OFTO specific modifications, which will be subject to a consultation period of at least 28 days.

10.26.2. Ofgem will issue a public notice, on the Ofgem website commencing the Section 8A Consultation on proposed licence modifications. Any circumstances occurring during the Section 8A Consultation that necessitate a change to the proposed OFTO Licence conditions may require the Section 8A Consultation to be re-run. For example, any change to the TRS arising from further negotiation of the commercial terms between the parties during the consultation period may have this effect. It is therefore important that all parties confirm an effective "commercial close" has been reached before the Section 8A Consultation commences.

10.26.3. Neither commencement of the Section 8A Consultation, nor the resolution of commercial issues and transaction documents prior to commencement of the Section 8A Consultation, places the Developer or Preferred Bidder under any contractual obligation regarding transfer of the transmission assets nor does it require the Authority to grant an OFTO Licence.

10.26.4. Following expiry of the Section 8A Consultation (and consideration or any responses received), we will consider whether the Preferred Bidder has satisfactorily resolved the PB Matters for the purpose of appointing it as Successful Bidder.

## Tender Revenue Stream

10.27. At appointment of a Preferred Bidder, we require the TRS bid upon which the Preferred Bidder was selected to be firm, fully reflective of the final Transfer Agreement for the Qualifying Project made available by the Developer during the ITT Stage, and subject to the conditions precedent set out in the ITT document.

10.28. There may be certain circumstances under which we may consider permitting changes to the TRS bid during the PB Stage.

10.29. The Preferred Bidder will be provided with further details of the process for notifying us of proposed changes to the TRS bid following appointment, but it is anticipated that the following may lead to a permissible change:

10.29.1. changes to underlying market rates (excluding any applicable credit spreads and margins) up to the point of financial close;

10.29.2. changes to the Indicative Transfer Value or Final Transfer Value notified to the Preferred Bidder by Ofgem prior to Licence Grant;

10.29.3. updates to the final Transfer Agreement, only where these result in a reduction to the TRS bid;

10.29.4. material changes in respect of the Transmission Assets since the date of the ITT Submission (or BAFO Submission, if applicable);

10.29.5. any other circumstances expressly notified by us to the Preferred Bidder as potentially leading to a permissible change to the TRS bid.

10.30. We also expect the Preferred Bidder to work transparently to notify us of matters that may lead to a reduction in the TRS resulting from improvements to the position set out in the ITT Submission (or BAFO Submission if applicable), including, but not limited to, potential savings identified in the ITT Submission (or BAFO Submission if applicable).

## Market Rate Revenue Adjustment

10.31. Finalising the TRS will occur in parallel to the activities carried out by the Preferred Bidder prior to the Section 8A Consultation. The TRS bid, as adjusted by any permitted changes, will be published during the Section 8A Consultation.

10.32. The MRA term in the OFTO Licence provides for the OFTO's revenue to be adjusted to reflect the difference between market rates, including where relevant bond spreads in the case of a public bond issuance, assumed in the TRS for the purpose of the Section 8A Consultation and the market rates determined on the day of financial close. This ensures the OFTO is not affected by underlying movements in market rates since its ITT Submission (or BAFO Submission if applicable).

10.33. The PB Notice will require the Preferred Bidder to prepare a statement outlining the proposed methodology to calculate this adjustment. This statement must meet the criteria outlined in the OFTO Licence and be approved by us. We will determine the value of the MRA, in accordance with this methodology, and direct the MRA term in accordance with the terms of the OFTO Licence on the day of financial close.

## Final Transfer Value

10.34. Pursuant to the Tender Regulations, we will assess the economic and efficient costs that ought to have been incurred in connection with the development and construction of the Transmission Assets of the Qualifying Project. The assessment of costs will be used to determine the Final Transfer Value of the transmission assets to be transferred to the Successful Bidder. The Final Transfer Value will be calculated as soon as reasonably practicable after the Transmission Assets are available for use for the transmission of electricity and all relevant costs information has been provided.

10.35. During the process to close, we will liaise with the Developer to finalise the cost assessment process and determine a Final Transfer Value. We intend that 100% of the Final Transfer Value will be payable at Financial Close. We will notify the Preferred Bidder of the Indicative Transfer Value or determination of the Final Transfer Value. Any change to the transfer value prior to commencement of the Section 8A Consultation will be notified to the Preferred Bidder and considered as a permissible change to the TRS bid.

10.36. We intend to determine the Final Transfer Value prior to commencing the Section 8A Consultation, with the published TRS accounting for 100% of the Final Transfer Value. Where the Final Transfer Value is determined after commencing the Section 8A Consultation and sufficiently in advance of Licence Grant, we expect that:

10.36.1. The published TRS would continue to reflect the Indicative Transfer Value;

10.36.2. We would use the Post-tender Revenue Adjustment (PTRA) term at Licence Grant to adjust the TRS to reflect 100% of the Final Transfer Value, which will be payable at close.

10.37. If, under exceptional circumstances, this is not possible, and completion of our final assessment of costs occurs after Licence Grant, then we may use the PTRA term to adjust the TRS to reflect the difference (if any) between the Indicative Transfer Value and the Final Transfer Value.

10.38. Our Guidance for Cost Assessment[36] sets out how we conduct cost assessments for offshore transmission projects.

[36] Offshore Transmission: Guidance for Cost Assessment (2022) | Ofgem. Please also see footnote 6 above.

## Notification to Preferred Bidders

10.39. Following the Section 8A Consultation and once Ofgem is satisfied that the Preferred Bidder has resolved all the PB Matters, the Preferred Bidder will become the Successful Bidder for that Qualifying Project, and Ofgem will notify the Successful Bidder accordingly.

10.40. Where Ofgem is not satisfied that the Preferred Bidder has resolved the PB Matters, or where the Preferred Bidder fails to make the Preferred Bidder Payment, withdraws from the Tender Exercise or is disqualified, Ofgem may publish a notice discontinuing the Tender Exercise with the Preferred Bidder and may determine to treat the Reserve Bidder (if it has determined one) as if it were the Preferred Bidder for that particular Qualifying Project.

## Next Steps in the event that the Preferred Bidder does not become the Successful Bidder

10.41. Where appropriate, Ofgem will notify the Reserve Bidder that it has become the Preferred Bidder. The PB Stage will then start again with the new Preferred Bidder, in line with the rules and activities set out in this Section.

10.42. Where Ofgem has not determined a Reserve Bidder, then Ofgem will re-run the Tender Exercise for that particular Qualifying Project either from a particular stage or from the beginning of the Tender Exercise.

## Obligations of the Developer from the PB Stage

10.43. To facilitate Ofgem's determination of the Successful Bidder for a particular Qualifying Project, the Developer shall from the date specified use its reasonable endeavours to:

10.43.1. enable the Preferred Bidder to resolve the PB Matters, to the extent the resolution of those matters depends on the actions of the Developer; and

10.43.2. enable the Transmission Assets to be transferred to the Successful Bidder.

10.44. Failure by a Developer to meet the PB Stage obligations set out in the Tender Regulations[37] is an event of disqualification[38].

[37] Regulation 22 of the Tender Regulations.
[38] Schedule 9 of the Tender Regulations.

10.45. We expect Developers to organise themselves internally to prepare for financial close and to comply with their obligations under the Tender Regulations. It is expected that a Developer will need, for example, to do the following:

10.45.1. put in place appropriate technical, financial or other resources to prepare the relevant package of due diligence information and address due diligence enquiries;

10.45.2. complete internal due diligence to inform the final terms of the Transfer Agreement, with input from relevant advisers;

10.45.3. obtain appropriate internal and third party or funder approvals to finalise the Transfer Agreement; and

10.45.4. satisfy itself as to the completeness of due diligence information.

10.46. Adequate preparation for the due diligence process is key to efficient progression of the Transfer Agreement during the PB Stage in particular. Developers are also advised to try, insofar as possible, to ensure continuity of personnel in the Developer teams involved throughout the tender process.

# 11. Successful Bidder Stage

**Chapter summary**

This chapter sets out the key activities of the SB Stage, which is the final step of the tender process.

## Notification to Successful Bidders and Standstill Period

11.1. Following conclusion of the Section 8A Consultation, and once we are satisfied that the Preferred Bidder has resolved all the PB Matters, the Preferred Bidder shall become the Successful Bidder for the Qualifying Project. We will notify the Successful Bidder accordingly and confirm the amount of the Successful Bidder payment in accordance with the Tender Regulations[39].

11.2. Ofgem will also notify each unsuccessful Qualifying Bidder for the relevant Qualifying Project of its determination to grant an OFTO Licence to the Successful Bidder in accordance with the Tender Regulations[40]. A standstill period of 10 working days will then be observed as set out in of the Tender Regulations. The standstill period will not end before midnight on the tenth working day after the date on which the notification is given to Bidders.

11.3. As soon as reasonably practicable after the end of the standstill period, we will confirm our earlier determination to grant an OFTO Licence to the Successful Bidder and shall publish a notice to that effect.

## Successful Bidder Payments

11.4. The Successful Bidder must make a payment to Ofgem in respect of the relevant Qualifying Project.

11.5. We will confirm the amount of the cost assessment payment payable by the Successful Bidder which covers our costs in carrying out the cost assessment of the transmission assets for the Qualifying Project.[41]

11.6. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery section of this document (see chapter 12).

[39] Regulation 28 of the Tender Regulations.
[40] Regulation 29 of the Tender Regulations.
[41] Regulation 5(2) of the Tender Regulations.

## Notice of Determination to Grant an OFTO Licence

11.7. As soon as reasonably practicable after the end of the standstill period, Ofgem will confirm its determination to grant an OFTO Licence to the Successful Bidder in respect of a particular Qualifying Project. Ofgem will publish a notice to that effect and give notice to the Reserve Bidder that it is being stood down.

11.8. Where Ofgem publishes the notice referred to above the Tender Exercise is finished for that Qualifying Project.

## Process to Close and Asset Transfer

11.9. The Successful Bidder should undertake all relevant process to close activities (for example, execute all final form documents and draw down funds) to allow for an efficient process to financial close, asset transfer and grant of the OFTO Licence for the Transmission Assets.

11.10. Developers and Bidders should note that the Tender Regulations provide for the Transfer Agreement to be in the form of either an agreement for the transfer of property, rights and liabilities in respect of the Transmission Assets (an asset sale) or an agreement for the transfer of shares in an undertaking which holds the Transmission Assets (a share sale). For further information and guidance in respect of the Transfer Agreement, please refer to chapter 13.

## Other steps in the process to close

11.11. The process to close will include the following steps after appointment of the Preferred Bidder:

11.11.1. the Preferred Bidder performing confirmatory due diligence and working to resolve the PB Matters set by the Authority;

11.11.2. finalisation of the TRS in parallel with resolution of the PB Matters;

11.11.3. finalisation of the cost assessment process, by which we determine the Final Transfer Value of the transmission assets;

11.11.4. the Section 8A Consultation in respect of the OFTO Licence;

11.11.5. appointment of the Successful Bidder, followed by a standstill period; and

11.11.6. grant of an OFTO Licence, financial close and asset transfer.

11.12. We will liaise with the Preferred Bidder and the Developer in the period leading up to Licence Grant regarding the detailed mechanics of Licence Grant and the

financial close process, which will depend on the particular characteristics of the proposed OFTO, its funding structure and the Qualifying Project.

11.13. Financial close generally takes place shortly after grant of the OFTO Licence and is the process by which

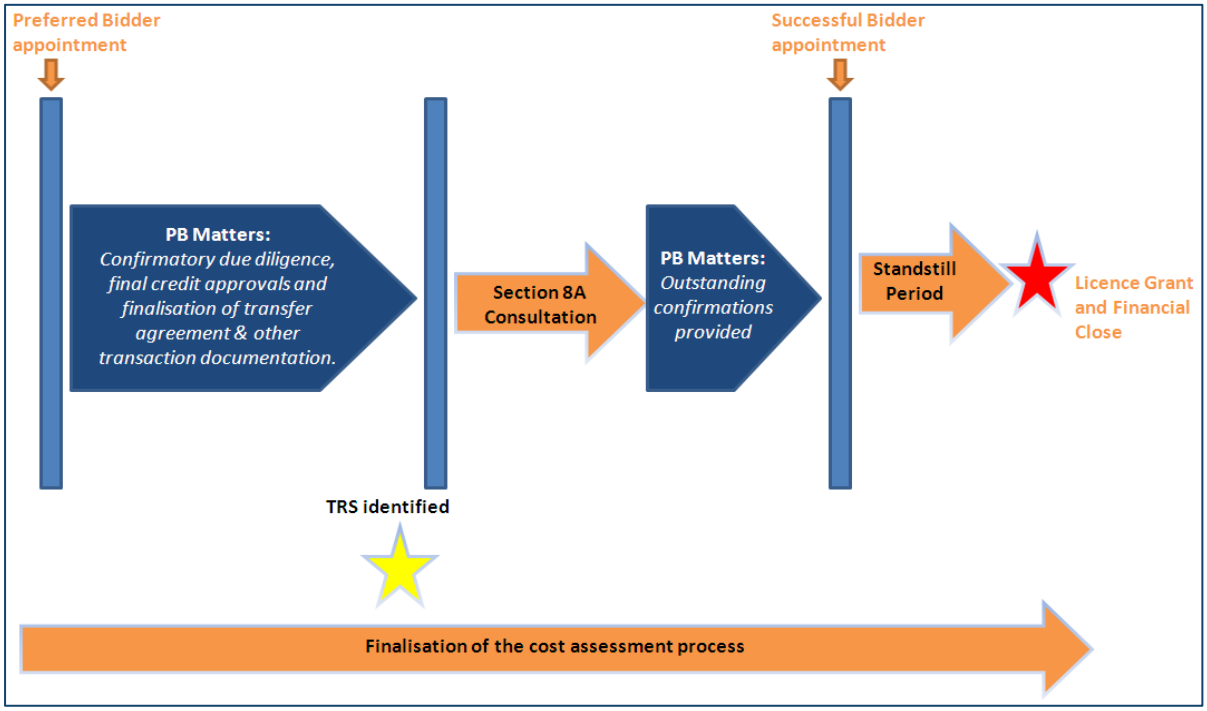
11.13.1. the TRS is adjusted to reflect market rates; and

11.13.2. the OFTO finance arrangements are finalised.

11.14. Asset transfer is the point at which the transmission assets transfer from the Developer to the OFTO, and where the OFTO pays the Final Transfer Value.

11.15. The diagram at figure 2 sets out the generic process to close at a high level. This diagram is provided for information only and is based on the anticipated process to close as at the date of publication of this guidance. The timeline for a Tender Exercise will be published in the ITT Document. However, it is anticipated that the period between Preferred Bidder appointment and Licence Grant will be approximately six months.

**Figure 2: Diagram of Generic Process to Close**



# 12. Cost Recovery

**Chapter summary**

The Tender Regulations establish how Ofgem recovers its costs of running tenders. This section provides specific details on the relevant securities and payments for each tender round and how these should be provided by Developers and/or Bidders.

## Legal Framework

12.1. We incur costs in running OFTO tenders. To recover these costs, the Electricity Act enables us to:

12.1.1. Secure a financial commitment from developers in respect of any potential liability the developer may have. This commitment is referred to as the 'Security';

12.1.2. Secure payments from Developers and Bidders to cover our costs of running a Tender Exercise. These payments are referred to as 'payments';

12.1.3. Secure a payment from the Developer to cover costs incurred in relation to undertaking a cost estimate; and

12.1.4. Secure a payment from the Successful Bidder to cover costs incurred in relation to undertaking a cost assessment.

12.2. The detailed framework for how we recover our costs of running tenders is set out in the Tender Regulations.

## Financial governance

12.3. The procedures for administering a Tender Round will be subject to review by Ofgem's internal audit function. The National Audit Office is the statutory external auditor of Ofgem and may also wish to review the procedures for administering the Tender Round. As well as providing an opinion on financial statements, the National Audit Office can also examine and report to Parliament on the economy, efficiency and effectiveness of any public spending.

## Developer's payment and Security

12.4. Each developer will be required, before a Tender Exercise is commenced for its Qualifying Project to:

12.4.1. Make a payment to Ofgem equal to the developer payment value outlined in paragraph 12.10; and

12.4.2. Provide Ofgem with Security in the form of a letter of credit or a cash deposit for an amount calculated in accordance with paragraph 12.6.[42]

12.5. Developer payments must be made by the person who made the connection request for the purposes of which the Tender Exercise has been, is being or is to be held (i.e. a person within Section 6CB(3)(a) of the Electricity Act) whether or not that person is a part of the Developer Group[43].

12.6. The amount of the Developer Security due will be reflective of the estimated total costs for running a Tender Round and will take into account the relative size of each Qualifying Project in the Tender Round. We will directly inform developers of the required level of Security.

12.7. The relevant Security will be returned to the Developer as soon as practicable following the grant of the OFTO Licence for the relevant Qualifying Project.

## Bidders' payments

12.8. Each bidder is responsible for its own costs of developing and submitting its Submission(s) during a Tender Exercise. In addition, a Preferred Bidder and a Successful Bidder will be required to make prescribed payments to us at the PB and SB Stages (based on a fixed fee and a potential variable component) respectively.[44]

12.9. The timing (and other details) of each of the above payments is in accordance with the charging schedule detailed in paragraph 12.10.

[42] Regulation 10 of the Tender Regulations.
[43] In accordance with paragraph 30(3) of the Tender Regulations.
[44] Regulations 21 and 28 of the Tender Regulations.

## Charging Schedule

12.10. The table below sets out the fees and Security required during the Tender Exercise by the respective participants:

| Process Stage | Developer | Bidder or Qualifying Bidder | Successful Bidder |
|---|---|---|---|
| Developer Security | Reflective of the estimated total costs for running a Tender Round[3] | N/A | N/A |
| Developer payment | £50,000 | N/A | N/A |
| Preferred Bidder payment | N/A | £250,000 | N/A |
| Successful Bidder payment | N/A | N/A | Project specific - sliding scale fee[1] |
| Payment for cost estimate and cost assessment costs[2] | Circa £150,000 | N/A | Circa £150,000 |

*Table notes*

[1] This payment is based on a sliding scale to reflect the size and complexity of the asset transfer and a potential variable component as indicated below. The payments will be determined on a project specific basis and confirmed under separate cover.

[2] This is an indication only of the costs associated with the cost estimate process for the developer and cost assessment process for the Successful Bidder. The payments will be determined on a project specific basis and invoiced after the actual costs are known.

[3] In calculating the estimated total costs, Ofgem will take into account the relative size of each Qualifying Project in the Tender Round.

## Successful Bidder Payment

12.11. The amount each Successful Bidder must pay at Licence Grant will consist of two components:

12.11.1. a base fee to be determined on a sliding scale basis as indicated in paragraph 12.10; and

12.11.2. a variable fee to reflect additional costs that we may bear in relation to a particular Qualifying Project in certain circumstances prescribed below. If no such circumstances exist, this fee is zero.

## Variable Fee

12.12. If one or more of the following events occur in relation to a particular Qualifying Project, we may need to increase the amount charged as the Successful Bidder payment for that project to reflect the incremental tender costs incurred by us as a result of the event:

12.12.1. the Tender Exercise is re-run from the beginning or a particular stage;

12.12.2. a BAFO Stage is held;

12.12.3. any unforeseen circumstances arise in relation to the Tender Exercise, or a particular stage of the Tender Exercise, which result in increased tender costs. For example, this may arise as a result of a delay to transmission assets construction or delay in resolving PB matters.

12.13. We will indicate the estimated level of the payment required from the Successful Bidder at the PB Stage, which will include the base fee, and any variable fee anticipated at that time. The Successful Bidder payment will be confirmed once the Successful Bidder is appointed, prior to the grant of the OFTO Licence.

# 13. Transfer Agreement Guidance

**Chapter summary**

This guidance is intended to inform Developers and Bidders of the principles and processes applying to development of the Transfer Agreement by which Transmission Assets the subject of a Generator Build Tender Exercise are to be transferred from the Developer to an OFTO.

## Overview

13.1. In participating in a Tender Round, the Developer must complete the Transfer Agreement and undertake to continue to complete with relevant information. Failure to complete the Transfer Agreement or breach of the undertaking to continue to complete the Transfer Agreement could result in a Developer's disqualification from a Tender Exercise or Tender Round and cancellation of the relevant Qualifying Project from the Tender Exercise.[45]

13.2. The Tender Regulations provide for the Transfer Agreement to be in the form of either an agreement for the transfer of property, rights and liabilities in respect of the Transmission Assets (an asset sale) or an agreement for the transfer of shares in an undertaking which holds the Transmission Assets (a share sale). [46]

13.3. Although reference is made throughout this guidance to "asset transfer", the principles and processes set out in this guidance apply whether transfer of the Transmission Assets is structured as an asset sale or as a share sale, unless expressly indicated otherwise.

13.4. It should be noted that this guidance is generic; the final terms of a Transfer Agreement will be project-specific and as negotiated by the parties.

13.5. The Transfer Agreement is a key document in the tender process, as the agreement under which the Transmission Assets are transferred from the Developer to the OFTO. Although the Transfer Agreement is a matter for the parties to commercially agree, Ofgem has an interest in it as manager of the tender process. The proposed terms should be consistent with the regulatory regime and should not affect Ofgem's ability to run a tender process effectively in accordance with:

[45] Schedules 8 and 9 of the Tender Regulations.
[46] Regulation 3 of the Tender Regulations.

13.5.1. its principal objectives and general duties[47];

13.5.2. its duties under the Tender Regulations; and

13.5.3. the key objectives of a competitive Tender Exercise.

13.6. This section sets out:

13.6.1. the process for development of the Transfer Agreement in parallel with the tender process;

13.6.2. Ofgem's role in the development of the Transfer Agreement;

13.6.3. and ancillary documentation;

13.7. Please also refer to Appendix 3 for further information.

## Process for development of the Transfer Agreement and Ancillary Documentation

13.8. Ofgem will specify particular timescales by which certain steps should be met during the development of the Transfer Agreement. To meet these timescales Developers should organise themselves internally to prepare both for the requirements of each stage of the tender process and for asset transfer.

13.9. Until the end of the ITT Stage, Ofgem will engage with Developers to monitor progress towards completing the Transfer Agreement in accordance with its undertaking to continue to complete the Transfer Agreement. We will also keep the draft Transfer Agreement under review to understand the extent to which it is consistent with this guidance. This may include:

13.9.1. arranging face-to-face meetings with Developers to discuss:

13.9.1.1. development of the Transfer Agreement;

13.9.1.2. aspects of the offshore transmission regime or the specifics of a Qualifying Project that might impact the terms and conditions of the Transfer Agreement or Ancillary Documentation; and

13.9.1.3. feedback on drafts of the Transfer Agreement; and

13.9.2. providing written clarification in relation to this guidance, whether by letter, supplemental guidance notes or otherwise, where appropriate.

[47] Set out in section 3A of the Electricity Act.

13.10. Ofgem will release drafts of the Transfer Agreement and related Ancillary Documentation to Bidders during the course of the PQ Stage or EPQ Stage, as applicable. However, the draft Transfer Agreement will only be released to Bidders who return signed copies of the Confidentiality Agreement and Conflicts of Interest Declaration to Ofgem. Bidders are free to identify and comment on issues related to the Transfer Agreement, however those comments will not be factored into the scoring process for the PQ Stage or EPQ Stage.

13.11. Ofgem does not endorse any of the documents nor the positions taken by Developers expressed in them, nor does Ofgem constrain its discretion as to the terms on which it might make a property transfer scheme under Schedule 2A to the Electricity Act.

13.12. The process for developing the Transfer Agreement at each stage of the Tender Exercise is set out in further detail below.

## PQ and QTT or EPQ Stage

13.13. Ofgem encourages Developers to consider Bidder comments relating to the Transfer Agreement to anticipate potential issues that may arise later in the process.

13.14. To deliver the most competitive tender process possible, Ofgem expects Developers to have developed the Transfer Agreement such that it is suitable to be shared with Bidders at the PQ Stage or EPQ Stage, as applicable, once Bidders have signed the necessary Confidentiality Agreement and satisfactory confirmation in respect of conflicts of interest including where Bidder intends to also, or only, participate in any additional EPQ Stage.

13.15. Ofgem will evaluate the Submissions for the Transfer Agreement in accordance with the criteria published in the PQ Document or EPQ Document, as applicable.

## ITT Stage

13.16. If not provided earlier, Ofgem will make the Developer's draft Transfer Agreement available to Bidders at the beginning of the ITT Stage. If previously available, Ofgem will provide a further draft of the Transfer Agreement, amended by the Developer to reflect its review of Bidder feedback during the PQ Stage or EPQ Stage, as applicable, and any further internal development.

13.17. Developers should also provide drafts of the Ancillary Documentation at the beginning of the ITT Stage to provide Bidders with a complete view of the terms of transfer and any transitional arrangements.

13.18. Ofgem proposes to share Qualifying Bidder mark-ups and commentary with Developers. Developers are expected to consider the mark-ups and commentaries, and Ofgem encourages them to address issues raised in amending the Transfer Agreement and Ancillary Documentation, particularly with a view to ensuring the fundability of the transfer.

13.19. Ofgem intends to facilitate and supervise discussions between Developers and Bidders on the Transfer Agreement and Ancillary Documentation during the ITT Stage. These sessions are intended to facilitate resolution of queries on the Transfer Agreement, Ancillary Documentation and commercial offers. Ofgem will notify the parties with details prior to or at the start of the ITT Stage.

13.20. Ofgem will liaise with Developers during the ITT Stage to review the development of the Transfer Agreement. This will include reviewing the consistency of the Transfer Agreement with this guidance and may include discussing the manner and extent to which Developers propose to address issues raised in Qualifying Bidder feedback.

13.21. Before the end of the ITT Stage, Ofgem expects to issue a final draft Transfer Agreement prepared by Developers. Bidders should make their firm TRS Bids against this final draft and their bids should fully reflect its terms. Therefore, the final draft Transfer Agreement must be as complete as possible. Where a Developer is not able to complete an aspect of the Transfer Agreement due to project-specific circumstances, Ofgem expects the Developer to explain its proposed approach to resolving the outstanding aspects either in the Transfer Agreement or in additional documentation.

13.22. Developers may provide information notes to accompany any versions or revised versions of the Transfer Agreement or Ancillary Documentation. The sole purpose of the notes should be to:

13.22.1. explain any changes to the Transfer Agreement and Ancillary Documentation;

13.22.2. clarify any issues that are unclear to Bidders in view of their comments on the previous drafts of the Transfer Agreement and Ancillary Documentation; and/or

13.22.3. give context to the Developer's approach to specific clauses within the Transfer Agreement and Ancillary Documentation in light of Qualifying Bidder feedback where necessary.

13.23. In the interests of maintaining a fair and transparent tender process, the information note should not refer to individual Bidders or address matters other than those set out above.

## PB Stage (following any BAFO Stage, if applicable) until Asset Transfer

13.24. Ofgem expects that it will continue to engage Developers on the Transfer Agreement until the end of the ITT Stage. From appointment of the Preferred Bidder, Ofgem expects most of the issues arising in the process to close will be resolved on a commercial basis through direct discussions between the Developer, the Preferred Bidder and any other relevant parties.

13.25. The Preferred Bidder will be expected to move promptly to finalise the Transfer Agreement with the Developer, together with all other transaction documents alongside securing final funding approvals, in accordance with timescales for that Qualifying Project as notified to the Preferred Bidder.

13.26. Although ITT Submissions provided by Bidders are expected to be fully reflective of the final draft Transfer Agreement, Ofgem acknowledges that the Developer and Preferred Bidder will need to finalise the terms of the Transfer Agreement during the PB Stage, and in certain areas, Developers may be in a position to provide updates to the Transfer Agreement.

13.27. During the PB Stage, Ofgem does not propose to review or participate in developing documents to which it is not a party, including the Transfer Agreement and Ancillary Documentation, or to act as an arbiter of disputes between the parties.

13.28. Similarly, Ofgem does not intend to review the agreed form of the Transfer Agreement or other Ancillary Documentation although we may request copies, either before or after their execution.

13.29. Finalisation of the Transfer Agreement and Ancillary Documentation is part of the matters to be satisfied before a Preferred Bidder becomes the Successful Bidder for a project and the tender process moves to the SB Stage.

## Ofgem's role in development of the Transfer Agreement

13.30. **Schedule 2A property transfer scheme**

13.30.1. Schedule 2A of the Electricity Act entitles Ofgem to make a property transfer scheme for Generator-Build Qualifying Projects and sets out the process, timing, terms and other matters relating to such schemes.

13.30.2. The purpose of a Schedule 2A property transfer scheme is to affect the transfer of property, rights and liabilities required by an OFTO to perform its functions upon application by a Bidder or Developer, for example in situations where commercial agreement has not been reached.

13.30.3. A Preferred Bidder or Successful Bidder, as applicable, and/or a Developer may apply to Ofgem for a property transfer scheme[48]. If the application is successful, Ofgem will make a scheme to transfer property rights and liabilities from the Developer to the Successful Bidder.

13.30.4. Use of this guidance and a structured dialogue between Bidders and the Developer on the proposed terms of the Transfer Agreement throughout the tender process should facilitate its successful agreement. This should therefore minimise the need for parties to seek to use the statutory transfer powers described above. Ofgem would only expect these powers to be exercised as a last resort, with parties exhausting all possibilities to negotiate commercial arrangements before applying for a Schedule 2A property transfer scheme.

13.30.5. Nothing in this guidance should be taken as constraining Ofgem's discretion as to the terms on which it might make a Schedule 2A property transfer scheme in any particular case.

## Ancillary Documentation

13.31. **Interface Agreement**

13.31.1. Under the Connection and Use of System Code (CUSC), the Developer is required to enter into an Interface Agreement with the OFTO in a form to be agreed between them but based substantially on the form set out in Exhibit O to the CUSC[49]. The Interface Agreement sets out the rights and obligations between the Developer and OFTO in respect of the interface of their generation assets and Transmission Assets.

13.31.2. The Interface Agreement is a key document for Developers and Qualifying Bidders. Ofgem encourages Developers to consider and

[48] Paragraph 3 of Schedule 2A to the Electricity Act.
[49] A similar requirement on the OFTO is contained in the System Operator Transmission Owner Code (STC).

prepare this document as early as possible to give Bidders visibility of the terms proposed. Bidders will be asked to provide commentary on the draft Interface Agreement during the ITT Stage.

13.32. **Disclosure Letters**

13.32.1. Developers should develop a draft disclosure letter in relation to the warranties given under the Transfer Agreement. Ofgem expects the Developer to provide Bidders with appropriate supporting information and documentation relating to any disclosure against the warranties. Without this information, Bidders may be unable to price the implications of the disclosure. For example, where the disclosure relates to a defect in the assets, the disclosure might include details of any proposed rectification, including scope, timing and impact.

13.32.2. Developers should update the draft disclosure letter with relevant information as and when it becomes available. Bidders will be asked to provide a mark-up and commentary on the disclosure letter at the ITT Stage of the tender process.

# Appendix 1 – Disclaimer and Notices

## 1.1. Non-reliance, Accuracy of Information and Exclusion of Liability

1.1.1. It is the responsibility of each Developer to ensure that it has all of the information it needs to satisfy the Qualifying Project requirements and Tender Entry Conditions.

1.1.2. It is the responsibility of each Bidder to ensure that it has all of the information it needs to prepare its Submissions.

1.1.3. While information provided by Ofgem and/or its Advisers in this Guidance Document or otherwise in relation to a Tender Round has been prepared in good faith, neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) in relation to the Tender Round or any information provided by Developers through Data Rooms or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the Guidance Document or based on or relating to its use by a Bidder, a Developer and/or any other interested party.

## 1.2. Use of Information

1.2.1. This Guidance Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Bidder, Developer and any other interested party must make its own independent assessment of the Qualifying Project(s).

1.2.2. The material in this Guidance Document is not and should not be regarded as legal or professional advice. Bidders, Developers and other interested parties should seek their own legal or other professional advice where appropriate.

1.2.3. Nothing in this Guidance Document is intended to or shall be deemed to establish any partnership or joint venture between Ofgem and any Bidder or any Developer.

1.2.4. Advisers acting for Ofgem in relation to a Tender Round will not regard any Developer or Bidder or other interested party as their client or be responsible to anyone other than Ofgem in relation to that Tender Round or any matter related to it.

## 1.3. Freedom of Information

1.3.1. Ofgem is subject to the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (the **EIRs**) (together **Information Laws)**. FOIA provides a general right of access to all information held by public authorities and the EIRs 2004 provide a general right of access to all environmental information held by public authorities. Developers should identify which parts, if any, of the information which they provide to Ofgem, either before or during a Tender Round, are provided in confidence and provide reasons why they consider the information is eligible for exemption/exception under the Information Laws and should be kept confidential. Bidders should identify which parts, if any, of their Submissions are provided to Ofgem in confidence and provide reasons why they consider the information is eligible for exemption/exception under the Information Laws and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.

1.3.2. Although Ofgem is not under any statutory obligation to consult with a Bidder or Developer in relation to requests for information made under the Information Laws, Ofgem will endeavour to inform the relevant Bidder or Developer of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Bidder or Developer has identified any information as being in its opinion eligible for exemption/exception.[50]

## 1.4. Data Protection

1.4.1. In participating in a Tender Round, Developers and Bidders must comply with the Data Protection Act 2018, the United Kingdom General Data

[50] 1For further information and guidance, Bidders' and Developers' attention is drawn to the Codes of Practice issued under FOIA (Freedom of Information Code of Practice - GOV.UK (www.gov.uk)).

Protection Regulation (**UK GDPR**) and all other relevant regulations, together with any codes of conduct and guidance issued by the Information Commissioner and must not do or cause or permit to be done anything which may cause or otherwise result in a breach by Ofgem of such requirements. Any Portal providers selected by Ofgem, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Developers and Bidders. To participate in a Tender Round, Developers and Bidders must agree to such data being collected, held and used.

## 1.5. Copyright

1.5.1. The information contained in this Guidance Document is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in this Guidance Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

## 1.6. National Audit Office

1.6.1. The Comptroller and Auditor General of the National Audit Office is the auditor for central government. Ofgem and any documents and information held by Ofgem in connection with a Tender Round (including commercially sensitive information and information marked as confidential) may be subject to audit by the Comptroller and Auditor General.

1.6.2. Accordingly, Developers and Bidders should be aware that for the purposes of the National Audit Act 1983 the Comptroller and Auditor General:

1.6.2.1. may examine and take copies of documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) and request such information as it may reasonably require; and

1.6.2.2. has the right to publish information related to a Tender Round (including commercially sensitive information and information marked as confidential) in its reports to Parliament.

# Appendix 2 – The Portal

## 1. Portal User Agreement and ID/Password

### 1.1. Developers

1.1.1. Ofgem will create a user account to access the Portal for each Developer so they are able to upload information relating to their Qualifying Project. Each Developer must agree to the terms of use of the Portal by signing the Portal User Agreement before Ofgem provides access to the Portal.

1.1.2. After accepting the terms of the Portal User Agreement, each Developer must identify to Ofgem an individual who will be issued with a username and password to access the Portal. They should also identify a back-up user who can authorise new accounts in the main user's absence. This same individual will act as the main point of contact to Ofgem with regards to the Portal. If a Developer requires additional User(s) accounts to be established, they must request authorisation from Ofgem via this point of contact. User accounts set up for Developers can only be used to access the Developer section of the Portal relating to their Qualifying Project. Log in details cannot be used to access the Bidder section of the Portal. Where a Developer wishes to participate in a Tender Round as a Bidder, it must register separately as a Bidder.

### 1.2. Bidders and Other Interested Parties

1.2.1. To access more detailed information about available tenders or to participate in a Tender Round, Bidders or other interested parties will need to create a user account to the Portal. Further details for how to access the Portal and how to arrange user accounts will be notified on Ofgem's website. Before any information can be accessed, each potential Bidder or interested party must agree to the terms of the User Agreement.

1.2.2. Following acceptance of the terms of the User Agreement, potential Bidders or other interested parties must register any and each of their proposed User Agents by providing the required registration data and specifying a user ID for each of them in accordance with the requirements as specified on the Portal. Each User Agent will then be provided with an initial password, which it will be required to change. Once this process has been completed, the User Agent will be able to access the relevant sections of the Portal.

1.2.3. Each Bidder or other interested party must designate a User Agent to manage Portal access by that Bidder's or interested party's other users (if applicable).

## 2. Data Room Uploading and Updating

2.1. In accordance with the Data Room Guidelines, each Developer is required to upload relevant documents to its project-specific Data Room for its Qualifying Project on to the Portal. The Data Room for each Qualifying Project will be made available to relevant Bidders at the ITT Stage.

2.2. In accordance with the Tender Regulations[51], a Developer (having regard to the instructions in the Data Room Guidelines) is obliged to ensure the Data Room is continuously updated with the most recent, relevant information. Bidders will be automatically notified if any updates are made to information on the Portal and when new documents are uploaded.

## 3. Security requirements

3.1. The Portal is compliant with Government Procurement Service standards.

3.2. A Developer, potential Bidder, Bidder, Qualifying Bidder or other interested party must immediately inform Ofgem and the Portal Helpdesk if any registered Portal User or User Agent ceases to be a representative of the relevant organisation or no longer requires access to the Portal for the purpose of a Tender Round.

3.3. Usernames and passwords are strictly personal to the Portal User to which they are given and are non-transferable (including to other Portal Users of the same Developer, potential Bidder, Bidder or Qualifying Bidder). Each Developer, potential Bidder and Bidder must ensure that its user agent(s) do not divulge or disclose their username or password to third parties (including to other Portal Users of the same Developer, potential Bidder, Bidder or Qualifying Bidder). In the event that a Developer, potential Bidder, Bidder, Qualifying Bidder or a user becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they must immediately notify the Portal Helpdesk.

3.4. Any Submission by a potential Bidder or Bidder using the username and password of any of its user agents will be deemed to be a valid Submission and will be binding

[51] Paragraph 1(b), schedule 2 of the Tender Regulations.

on that Bidder. A potential Bidder or Bidder will be responsible for any unauthorised, false or fraudulent submission that is submitted using the user ID and password of one of its user agents.

3.5. Developers, potential Bidders, Bidders, Qualifying Bidders and interested parties and their user agents will not be able to view or find out the identity of other Developers, potential Bidders, Bidders, Qualifying Bidders or interested parties or their user agents on, or through the use of, the Portal.

## 4. Portal Information and Helpdesk

4.1. Help guides are available on the Portal to provide further information about how to use the Portal in relation to a Tender Round.

4.2. A Helpdesk facility for technical support queries raised by Portal users is also available. Helpdesk staff are instructed only to supervise and maintain the operation of the Portal and users are not permitted to ask any questions of Helpdesk staff in relation to a Tender Round or in respect of Tender Round information available through the Portal.

4.3. Further details concerning the Portal Helpdesk will be notified on Ofgem's website and through the tender documentation and/or separate correspondence.

# Appendix 3 – Further Guidance on Transfer Agreement

1.1. This section sets out certain principles with which parties should seek to be consistent in developing and agreeing the Transfer Agreement. Ofgem has developed these principles in light of its principal objective and general duties, its duties and powers under the Tender Regulations and the stated key objectives of the tender process. Ofgem will have regard to these principles when reviewing the draft Transfer Agreement developed during the PQ/EPQ and ITT Stages. The principles set out below also apply to the Ancillary Documentation prepared by the Developer. This is not intended to be an exhaustive statement of all principles which may be relevant. In respect of the Qualifying Project that is within the Developer's ability to transfer, to enable the Successful Bidder to fulfil its obligations as OFTO, the Transfer Agreement should transfer to the Successful Bidder any:

2.1.1. property interests, rights or liabilities in or relating to the Transmission Assets;

2.1.2. shares or other interests in the undertaking in which any property interests, rights or liabilities in relation to Transmission Assets are vested; or

2.1.3. beneficial interest in any property interests, rights or liabilities within paragraph 2.1.1 or shares or other interests within paragraph 2.1.2.

2.2. Developers should inform Ofgem about the intended sale structure so that Ofgem is able to consider any impact on the Tender Exercise. A share sale may have implications on the tender documentation and on cost assessment arrangements, in that the OFTO would be purchasing a company that may have liabilities that may not be easily captured by the current cost assessment process.

2.3. Although Ofgem does not expect any additional costs of a share sale relative to an asset sale to be passed onto consumers, Ofgem expects consumers to share any benefits.

2.4. Developers must provide all necessary information on a timely basis. Ofgem may specify particular timescales by which certain information and steps, including in relation to the development of the Transfer Agreement, should be met. Ofgem expects the timescales for key decisions, for example where board approvals are required, to be aligned with the key dates for the Tender Exercise.

2.5. As part of the Qualifying Project requirements to be satisfied under the Tender Regulations[52], a Developer must obtain all necessary consents and property rights for the Transmission Assets to be constructed and maintained. A Developer must ensure any such consents or property rights that are capable of being assigned to the Successful Bidder are so assignable.

2.6. Ofgem expects that the Transfer Agreement will, to the extent possible, transfer to the Successful Bidder all property, rights and liabilities owned by the Developer in relation to the Transmission Assets and which are capable of transfer. Ofgem expects this to include asset-related information and documents (such as test reports, drawings and manuals), and other records relevant to the ownership, operation and maintenance of the assets.

2.7. In particular the OFTO should receive the benefit of the construction contracts relating to the transferring assets, including the warranties under those contracts. Developers should identify the methods they will use to transfer the benefit of these contracts to the OFTO as early as possible in the process, for example by way of novation, assignment or collateral warranty. By the ITT Stage at the latest the Transfer Agreement should include details of how the benefit of the contracts will be transferred.

2.8. Ofgem recognises that there may be certain consents, licences or permits held by the Developer which relate to the Transmission Assets but cannot be transferred or assigned to the Successful Bidder. These would remain with the Developer.

2.9. Certain assets may be shared between generation and transmission interests and might therefore be subject to sharing arrangements under the Transfer Agreement or the Interface Agreement.

2.10. Ofgem has an interest in ensuring the tender process is conducted on a competitive basis and treats all Bidders equally. The Transfer Agreement should not, therefore, contain provisions that might materially favour or disadvantage one bidder, or one kind of bidder, over another. Such provisions could affect the viability and competitiveness of the tender process.

2.11. For example, Ofgem does not expect to see provisions included in or omitted from the Transfer Agreement that might:

[52] Schedule 1 of the Tender Regulations.

2.11.1. materially affect the risk profile of most Qualifying Bidders, but which may not impact to the same extent a Qualifying Bidder which is related to the Developer;

2.11.2. favour or disadvantage certain sources of funding over others. For example, a balance sheet bidder versus a bidder relying on non-recourse project finance or capital markets;

2.11.3. favour or disadvantage Bidders in certain jurisdictions. For example, through the dispute resolution arrangements; or

2.11.4. be so unattractive, in terms of risk allocation or otherwise, that Bidders may be deterred from bidding.

2.12. The Transfer Agreement should be consistent with, and should not contain provisions that contradict or undermine the intent of the regulatory regime set out in the Electricity Act, Tender Regulations, the OFTO Licence and other associated codes and documents. Nor should its provisions contradict the policy considerations underpinning the regime, including the tender process.

2.13. In particular, Ofgem does not expect to see obligations or remedies under the Transfer Agreement that overlap with, extend or conflict with obligations on the OFTO already set out under the OFTO Licence, The Crown Estate/Crown Estate Scotland lease, the STC, other Industry Codes, or statute. Furthermore, Ofgem does not expect the Transfer Agreement to contain provisions that create ongoing relationships with the OFTO relating to issues already dealt with in other areas of the regime, or where the Developer's ongoing relationship will be with NGET under the CUSC. These may include, for example, obligations covering the maintenance or insurance of assets after transfer or indemnification provisions for failure to have consents and permits in place.

2.14. Under the Tender Regulations[53] in a Generator Build project, Ofgem must assess the economic and efficient costs of developing and constructing the Transmission Assets and use that assessment to determine the transfer value for the Transmission Assets. Ofgem expects this to be reflected in the provisions in the Transfer Agreement relating to the determination and payment of the consideration for the transfer.

2.15. Ofgem's estimates and assessment of costs under the Tender Regulations will be based on its understanding of the Transmission Assets transferring to the

[53] Regulation 4 of the Tender Regulations.

Successful Bidder (whether by way of an asset sale or a share sale). The Developer should notify Ofgem if, as a result of developing or finalising the Transfer Agreement, the Transmission Assets transferring to the OFTO differ from information previously provided to Ofgem. This may affect Ofgem's cost assessment.

**Interface Agreement**

2.16. Similar considerations apply to the Interface Agreement. In particular:

2.16.1. Developers must be satisfied that any amendments to the form of the CUSC Interface Agreement do not result in the Developer breaching its generation licence or the CUSC;

2.16.2. Bidders must ensure that, as prospective parties to the Interface Agreement, they would not breach the OFTO Licence or the STC; and

2.16.3. Ofgem would not expect the Interface Agreement to include obligations or remedies that overlap with, extend or conflict with obligations on the OFTO already set out under the OFTO Licence, Transfer Agreement, The Crown Estate/Crown Estate Scotland lease, the STC, other Industry Codes, or statute.

2.17. The Interface Agreement should facilitate the achievement of an economic and efficient outcome to the competitive tender process.

2.18. Ofgem would not expect to see clauses proposed in the Interface Agreement that result in Bidders bearing unnecessary costs or risks, for example, as a result of duplicating obligations imposed on the OFTO that are already set out under other areas in the offshore regime, or the imposition of unnecessary costs by having to resolve disputes in foreign jurisdictions.

3.1. The Transfer Agreement should facilitate the achievement of an economic and efficient outcome to the competitive tender process.

3.2. Ofgem would not expect to see clauses proposed in the Transfer Agreement that result in Bidders bearing unnecessary costs or risks, for example, as a result of duplicating obligations imposed on the OFTO that are already set out under other areas in the offshore regime, or the imposition of unnecessary costs by having to resolve disputes in foreign jurisdictions.

3.3. Ofgem would not expect to see clauses proposed that result in an unbalanced allocation of risk between the parties, the impact of which would ultimately be borne by consumers.

3.4. Ofgem expects Developers to ensure that the Transfer Agreement is as clear and complete as possible during the ITT Stage. Developers should ensure the terms of the Transfer Agreement are supported by complete and accurate information, for example cable burial or performance data and data or reports in respect of any remedial works or construction delays. Provision of this information should ensure Bidders are able to make ITT Submissions that are as firm and competitive as possible.

3.5. A Developer must carry out its activities in an efficient manner for the purposes of facilitating the tender process. Ofgem expects Developers to take all reasonable steps to facilitate the development and finalisation of the Transfer Agreement and effect asset transfer. Such steps may include the allocation of resources with appropriate expertise and experience, ensuring continuity (as far as possible) within such teams and ensuring that the appropriate internal procedures are in place.

**Sale and purchase**

3.6. Given the design of the regulatory regime, it is intended that execution of the Transfer Agreement, completion of asset transfer and grant of the OFTO Licence to the OFTO will occur broadly simultaneously, once construction of the Transmission Assets is completed. Where a period of time is expected to elapse between the Transfer Agreement coming into effect and asset transfer, a Developer should consider including appropriate provisions to cater for this.

**Assets**

3.7. Each Developer should provide details of all the assets, property and rights, liabilities and obligations (including fixed assets, spares, contracts and properties) to be transferred to the Successful Bidder. Ofgem expects such particulars of the Transmission Assets to be set out in a schedule to the Transfer Agreement.

3.8. To provide firm bids at the ITT Stage, Bidders require certainty as to what is being transferred. Ofgem expects the Developer to transfer the benefit of all construction contracts relating to the Transmission Assets. The Transfer Agreement should clearly set out how such benefit will be transferred, for example by way of assignment, novation or collateral warranty.

3.9. If the Transmission Assets differ from the position set out in the Information Memorandum, we recommend that the Developer clarify why the position has changed.

3.10. If relevant to its Qualifying Project, a Developer should also include a comprehensive framework for the transfer (or sharing) of any applicable information technology systems and intellectual property rights.

3.11. If there are assets or contracts to be shared between the Transmission Assets and the generation assets, the Transfer Agreement (or Interface Agreement where relevant) should clearly set out proposals covering the transfer and sharing of these assets and contracts.

3.12. Ofgem would expect the Transfer Agreement to be structured to affect a clean division of title and liability on and from the completion date such that the Developer is responsible for payables incurred or attributable to any period prior to completion and is entitled to receive and enforce any receivables accrued up to and including completion.

**Payment of transfer value**

3.13. Ofgem will use its assessment of costs to determine the value of the Transmission Assets transferring to the Successful Bidder for a Qualifying Project. Ofgem will carry out estimates of costs during the tender process and these estimates will be included in the documentation for the ITT Stage as the Indicative Transfer Value.

3.14. Ofgem considers that assuming full consideration will be payable on asset transfer will allow for greater certainty and deliverability for both the Developer and potential OFTOs regarding the amount, timing and funding of the Final Transfer Value.

3.15. Ofgem intends to finalise the assessment of costs and determine the Final Transfer Value prior to Licence Grant. However, in circumstances where this is not possible, Ofgem may determine that a proportion of the Indicative Transfer Value should be paid to the Developer on transfer, with deferred consideration paid thereafter. In this case, Ofgem will determine what proportion of the Indicative Transfer Value the Developer should receive on transfer. On conclusion of Ofgem's assessment of costs, the deferred consideration (being the difference between the Final Transfer Value and the proportion of the Indicative Transfer Value received by the Developer on transfer) will then be paid by the Successful Bidder to the Developer.

3.16. Ofgem recognises that if payment of deferred consideration is required, Developers may want interest on deferred consideration. Where interest is allowed on analogous deferred payments under the onshore and OFTO Licences, a base rate of interest is used. Ofgem therefore expects a similar rate to be used in the Transfer Agreement as the rate of interest on deferred consideration.

3.17. In addition, Developers may wish to include provisions in the Transfer Agreement requiring the Successful Bidder to give Security in respect of its obligations to pay the deferred consideration, for example by way of parent company guarantee, letter of credit or other form of Security. Any Security should be limited to the difference between the initial purchase price and 100% of the Indicative Transfer Value provided at ITT Stage. Consideration of the financial standing of the prospective OFTO (in accordance with the conditions of the OFTO Licence) is an important part of the tender process. Therefore, Ofgem does not expect to see Security for ongoing obligations under the Transfer Agreement.

**Excluded assets and contracts**

3.18. The Developer may wish to set out details in the Transfer Agreement of the assets excluded from the transfer to the Successful Bidder, for example, the generation assets and contracts relating to them. The details of any such excluded assets and contracts will necessarily be project specific.

3.19. The Transfer Agreement should clearly set out the completion obligations and deliverables on both the Developer and the Successful Bidder.

3.20. Ofgem expects that the Transfer Agreement will also contain provisions detailing the obligations on each of the parties for a period of time after completing the transfer, as is standard.

3.21. The Transfer Agreement should contain details of the warranties the Developer will give the Successful Bidder regarding the transfer. The warranties given by Developers should be tailored to project-specific circumstances and Developers should consider whether further warranties are required.

3.22. In preparing the warranties and limitations on liability in the Transfer Agreement and disclosure letter, Ofgem encourages Developers to consider the impact insufficient warranty protection may have on the Qualifying Bidders' TRS Bids.

3.23. Based on Ofgem's experience of the OFTO Regime, Bidders may have concerns about the creditworthiness of the selling entity where it is a special purpose vehicle. Developers should consider offering Security for the obligations of the vendor under the Transfer Agreement.

3.24. Given the nature of the Transmission Assets and that construction will be ongoing through the tender process, the Preferred Bidder may become aware of issues or potential issues associated with the Transmission Assets such as remedial works required on assets, cable breakages or cable reburials following completion of the ITT Stage. Ofgem therefore encourages Developers to consider including proposals, either in the Transfer Agreement or associated information note, explaining how they propose to deal with such issues if they arise on the basis of 'most likely scenarios'. Including proposals to address these scenarios does not imply the event has or will occur and would only be intended to cover issues arising in the period up to completion in respect of the relevant project. For example, the Developer may consider offering indemnities for work associated with cable breakages or reburials, in which case the Developer should provide as much information as possible as to the terms of such an indemnity. This will enable Bidders to better understand the implications of such events and price their bids accordingly based on certain scenarios occurring. It should also allow for speedy resolution should such an event occur prior to completion.

3.25. Ofgem expects the Transfer Agreement to include standard provisions in relation to the prohibition on announcements and disclosure of confidential information, as well as other standard provisions relating to the assignment of the benefit of the Transfer Agreement, third party rights, variation, notices and governing law.

3.26. Ofgem expects parties to the Transfer Agreement to have a mutual obligation to obtain any required third-party consent or agreement in relation to the transfer of title of any of the assets and contracts (including property rights and contracts). The Transfer Agreement should contain provisions dealing with the situation where such consent or agreement cannot be obtained prior to completion. For example, one way of resolving this issue is for the Developer to be deemed to hold the benefit of the applicable assets in trust for the Successful Bidder pending the receipt of such consent or agreement.

3.27. In accordance with the Tender Regulations[54], Developers must satisfy a number of conditions to enable Ofgem to run a Tender Exercise for their Qualifying Project. One of these conditions is that a Developer must ensure that all necessary consents and property rights that are capable of being assigned are assignable. The onus is on Developers to ensure that all contracts, consents, leases and rights necessary to complete the transfer of assets are in transferable form as far as possible prior to any asset transfer. As execution and completion of the Transfer Agreement is simultaneous, Ofgem expects Developers to clearly set out, either in the Transfer Agreement or in an information note, a summary of what third party consents is required including the process and timetable for obtaining such consents, and to keep this updated to reflect progress.

3.28. Ofgem expects the Developer to assign and/or transfer any permits, licences or approvals relating to the assets to the extent possible.

3.29. The Transfer Agreement may also include provisions agreeing an appropriate allocation of risk and responsibility in respect of permits, licences or approvals that relate to both transmission and generation assets. In addition, Ofgem expects the Transfer Agreement to contain provisions dealing with liabilities and obligations relating to decommissioning and environmental matters.

3.30. Ofgem is aware some permits, licences or approvals are not assignable or transferable and will be retained by the Developer but may still contain obligations which relate to the Transmission Assets. Similarly, a permit, licence or approval that is transferring to the Successful Bidder may contain obligations that relate to the generation assets.

3.31. Ofgem expects Developers to clearly set out, either in the Transfer Agreement or in a separate information note, a summary of what permits, licences and approvals are required, including the process and timetable for obtaining such permits, licences and approvals, and to keep this updated to reflect progress. Such note should also clearly set out which of these are being transferred and which are being retained.

3.32. The Transfer Agreement should clearly set out which of the Developer's liabilities are assumed by the Successful Bidder and which are excluded from the transfer.

[54] Schedule 2 of the Tender Regulations.

3.33. The Transfer Agreement should clearly set out details of all property rights, title and interests (including licences, easement deeds, wayleave agreements and leases) transferring to the Successful Bidder and the terms on which these are to be transferred.

3.34. Ofgem expects that The Crown Estate/Crown Estate Scotland lease granted to the Developer in relation to a Qualifying Project will be split prior to execution of the Transfer Agreement into a lease in respect of the generation assets and a lease in respect of the Transmission Assets. The lease for the Transmission Assets should be assigned to the Successful Bidder on completion and the parties should work with The Crown Estate/Crown Estate Scotland to achieve this.

3.35. If any employees will be transferring with the Transmission Asset for a particular Qualifying Project, the Developer should include provisions in the Transfer Agreement to transfer such employees and their benefits (including pensions).

3.36. The Developer should review the tax structure to be adopted and the tax treatment to be applied on a project-specific basis, having regard to the likely tax affairs of the relevant parties and the facts and circumstances of the particular Qualifying Project. This should be reflected in the Transfer Agreement. Ofgem has received guidance from HMRC regarding the treatment of the asset transfer to the Successful Bidder as a going concern for VAT purposes[55]. This guidance will be provided to both Developers and Qualifying Bidders via the Data Room for the projects. If we receive updated guidance from HMRC on this issue, we will make Developers and Bidders aware of this.

3.37. The Developer should put forward their proposed position on capital allowances. The sharing, or otherwise, of any tax benefits such as capital allowances is a matter for commercial agreement between the parties having regard to their specific circumstances. Therefore, we recognise that the position may be finalised after appointment of the Preferred Bidder.

3.38. Developers should note that Ofgem intends to assume for the purposes of its estimate of costs and calculation of the Indicative Transfer Value that the Successful Bidder will obtain the full benefit of all available capital allowances. If the Developer proposes to retain the benefit of any capital allowances the Final Transfer Value will be reduced to reflect this.

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[55] See the letter from HMRC to Ofgem dated 14 December 2009.

4.1. To ensure an orderly and successful transfer of the Transmission Assets to the Successful Bidder, Ofgem suggests that once a Preferred Bidder is appointed for a Qualifying Project, the Developer and Preferred Bidder should discuss transition arrangements. The parties should agree a transition plan that sets out the actions, timetables and milestones to be met by each party to ensure that the transfer is carried out in an efficient and effective manner. Ofgem expects Developers to include, either in the Transfer Agreement or in a separate information note, details of any proposed transition arrangements.

5.1. As outlined above, transfer will occur once construction of the Transmission Assets has been completed. Ofgem encourages Developers to provide information about the commissioning process in the Data Room to give clarity to Qualifying Bidders. The Successful Bidder is likely to require evidence of completion of construction as a completion deliverable. Developers should also consider what comfort they can provide to the Successful Bidder in respect of the commissioning process, for example through independent verification or certification.

5.2. Ofgem expects these provisions will be project-specific and will need to reflect the certification provisions under the relevant construction contract(s) as well as relevant processes under the Developer's construction contract with NGET and under the appropriate Industry Codes.

# Appendix 4 - Glossary

## A

**Advisers:** In relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, sub-contractors (of any tier) and affiliates.

**Authority:** The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem and any reference to Ofgem in this document refers to Ofgem carrying out the Authority's functions as set out in the Electricity Act and/or the Utilities Act 2000 on its behalf.

## B

**BAFO Document:** The document delivered to each Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO Stage.

**BAFO Submission:** A selected Bidder's response to the BAFO Document.

**Best and Final Offer (BAFO) Stage:** A stage of a Tender Exercise which the Authority may decide to run after the ITT Stage in order to determine which Bidder shall become the Preferred Bidder in respect of a Qualifying Project. This stage starts from the distribution by Ofgem of the BAFO Document to selected Bidders, including BAFO preparation, Submission and evaluation, and ending when a Preferred Bidder is selected and notified.

**Bidder:** Any person or Bidder Group that makes or, where applicable, intends to make, a PQ Submission, a QTT Submission, or an EPQ Submission, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

**Bidder Group:** Two or more persons acting together as a consortium for the purposes of any PQ, EPQ, QTT, ITT or BAFO Submission to Ofgem in accordance with the Tender Regulations. This includes both equity and non-equity consortium members.

## C

**Confidentiality Agreement:** The agreement between a Developer and a Bidder or Bidder Group in respect of confidential information disclosed in connection with a Tender Exercise.

**Crown Estate Scotland:** The body that manages Crown property in Scotland and that is responsible for awarding offshore wind leases for access to the seabed to wind farm operators in Scotland. Each OFTO must enter into a lease or licence with Crown Estate Scotland to be able to operate and maintain its Offshore Transmission System on the seabed in Scotland.

## D

**Data Room:** In respect of a Qualifying Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Bidders or Qualifying Bidders through the Portal.

**Data Room Guidelines:** The document issued by Ofgem to Developers to assist them with providing information to Ofgem to enable the population of the Data Room.

**Developer:** The Tender Regulations define a 'developer' as 'any person within section 6D(2)(a) of the 1989 Act[56] or within a developer group'. The Electricity Act (as amended by the Energy Act 2023) defines such person as 'any person who made a connection request for the purposes of which the tender exercise has been, is being, or is to be, held[57]'. In practice, such person is also the entity responsible for the construction of the generation assets and, under Generator Build, the transmission assets. Under Generator Build, this is the person who requests that Ofgem commences a Tender Exercise for a proposed project.

**Developer Group:** The Tender Regulations define a 'developer group' as two or more persons acting together for the purpose of developing a Qualifying Project.

[56] S6D(2)(a) was replaced with s6CB(3)(a) by the s334(2)(i) and Schedule 15 of the Energy Act 2023.
[57] S6CB(3)(a) of the Electricity Act as inserted by s334(2)(i) and Schedule 15 of the Energy Act 2023.

## E

**EIRs:** The Environmental Information Regulations 2004 as amended from time to time.

**Electricity Act:** The Electricity Act 1989 as amended from time to time.

**Enhanced PQ (EPQ) Stage:** The stage of a Tender Exercise starting from the publication of the EPQ Document, including the preparation, submission and evaluation of EPQ Submissions and ending once Ofgem has published the shortlist of Qualifying Bidders who have been invited to participate in the ITT Stage of the Tender Exercise.

**EPQ Document:** The document prepared and issued by Ofgem for the purpose of selecting a shortlist of Bidders to progress to the ITT Stage, and which sets out the rules and requirements of the EPQ Stage.

**EPQ Questionnaire:** The questionnaire that forms part of the EPQ Document.

**EPQ Submission:** A bidder's response to the EPQ Document.

## F

**Final Transfer Value:** The final value determined by Ofgem, using its assessment of the economic and efficient costs that ought to have been incurred in connection with:
(a) for a Generator Build Tender Exercise, the development and construction of the relevant transmission assets; or
(b) for an OFTO Build Tender Exercise, obtaining the relevant preliminary works.

**FOIA**: The Freedom of Information Act 2000 as amended from time to time.

## G

**Generator Build:** A model for the construction of offshore transmission assets. Under this option, the generator, as Developer, carries out the preliminary works, procurement and construction of the transmission assets. The OFTO operates, maintains and decommissions the transmission assets.

## I

**Indicative Transfer Value:** Ofgem's estimate of the economic and efficient costs that ought to be incurred in connection with:
(a) for a Generator Build Tender Exercise, the development and construction of the relevant transmission assets; or
(b) for an OFTO Build Tender Exercise, obtaining the relevant preliminary works.

**Information Laws:** the EIRs and FOIA

**Information Memorandum (IM):** The document prepared by, or on behalf of, the Developer for a Qualifying Project containing detailed information for such Qualifying Project which is issued to Bidders at the EPQ Stage via the Portal, providing they have returned the completed Confidentiality Agreement and COI declarations via the Portal.

**Initial Transfer Value:** The initial transfer value for a Qualifying Project based on information provided by the relevant Developer.

**Interface Agreement:** The agreement to be entered into between the Developer and the OFTO under the requirements of the Connection and Use of System Code.

**Invitation to Tender (ITT) Stage:** The stage of a Tender Exercise during which the Authority may determine which Bidder becomes the Preferred Bidder or whether to hold a BAFO stage. This stage starts from the distribution of the ITT Document to Qualifying Bidders by Ofgem, and includes the preparation, submission and evaluation of ITT Submissions.

**ITT Document:** The document prepared and issued by Ofgem to each Qualifying Bidder invited to make an ITT Submission, and which sets out the rules and requirements of the ITT Stage.

**ITT Questionnaire:** The questionnaire that forms part of the ITT Document.

**ITT Submission:** A Bidder's response to the ITT Document.

## L

**Licence Grant:** Following its determination to grant an Offshore Transmission Licence to the Successful Bidder, the Authority confirms such determination in accordance with regulation 29(5) of the Tender Regulations and grants such Offshore Transmission Licence to the Successful Bidder pursuant to section 6(1)(b) of the Electricity Act.

## M

**Market Rate Revenue Adjustment (MRA):** An adjustment to the base revenue under Amended Standard Condition E12-A2 of the OFTO Licence to account for any difference between the market rates assumed in the TRS and the market rates on the date that the OFTO Licence comes into force.

## N

**National Electricity Transmission System (NETS):** The system consisting (wholly or mainly) of high voltage electric lines owned or operated by transmission licensees within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any interconnector and includes any electrical plant or meters owned or operated by any transmission licensee within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone in connection with the transmission of electricity.

**National Electricity System Operator (NESO):** The entity responsible for coordinating and directing the flow of electricity over the NETS.

**NGET:** National Grid Electricity Transmission Plc. NGET owns and maintains the transmission system in England and Wales.

## O

**Offshore Transmission Owner (OFTO):** The holder of an OFTO Licence.

**Offshore Transmission System:** A Transmission System made up of Transmission Assets that is used for purposes connected with transmission of electricity in offshore waters, where offshore waters means:

(a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;

(b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964; and

(c) waters within an area under section 84(4) of the Energy Act 2004.

**Ofgem:** Office of Gas and Electricity Markets. 'Ofgem' is governed by the Authority and has delegated power to carry out the duties and functions of the Authority in respect of the OFTO tender process. "Ofgem" and "we" are used interchangeably in this document.

**OFTO Build:** A model for the construction of offshore assets. Under this option, the Developer obtains the connection offer and undertakes high level design and preliminary works. The OFTO constructs, operates, maintains and decommissions the transmission assets.

**OFTO Licence:** The licence awarded under section 6(1)(b) of the Electricity Act following a Tender Exercise authorising an OFTO to participate in the transmission of electricity in respect of the relevant Offshore Transmission System. The licence sets out an OFTO's rights and obligations as the offshore transmission asset owner and operator.

**OFTO of Last Resort:** An OFTO appointed outside of a Tender Exercise from existing transmission licensees to provide Transmission Services in respect of particular offshore transmission assets in accordance with standard condition B18 of the transmission licence and E21 of the OFTO Licence where there is a significant likelihood that the Developer whose generating station that is, or is to be, connected to those transmission assets would be unreasonably delayed or stranded.

## P

**PB Matters:** The matters to be resolved by the Preferred Bidder to the Authority's satisfaction as specified in regulation 21(4)(a) or (b) of the Tender Regulations, as the case may be, before that Preferred Bidder becomes the Successful Bidder in accordance with regulation 27(a) of the Tender Regulations.

**PB Notice:** The notice issued by Ofgem to each Preferred Bidder under regulation 21(6) of the Tender Regulations setting out:

(a) the final PB Matters;

(b) how, and by when, the PB Matters should be resolved; and

(c) the amount payable to Ofgem in relation to the PB Stage, as calculated in accordance with the Tender Regulations.

**PB Stage:** The stage of a Tender Exercise during which the Preferred Bidder has to resolve certain matters in order that Ofgem may grant the Offshore Transmission Licence. This stage starts at the date of Ofgem's notice to a Bidder that it has been selected as Preferred Bidder and ending at the date Ofgem determines that the Preferred Bidder has become the Successful Bidder and publishes a notice to that effect in accordance with regulation 27(2) of the Tender Regulations.

**Portal:** The electronic tendering Portal used by Ofgem and as notified from time to time.

**Post-tender Revenue Adjustment (PTRA):** An adjustment to the base revenue under Amended Standard Condition E12-A3 of the OFTO Licence to account for any difference between the Indicative Transfer Value and the Final Transfer Value.

**PQ Document:** The document prepared and issued by Ofgem for the purpose of selecting a longlist of Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage.

**PQ Submission:** A bidder's response to the PQ Document.

**Preferred Bidder (PB):** In relation to a Qualifying Project, the Bidder determined by Ofgem following its evaluation of the submissions received, to which Ofgem intends to

grant the Offshore Transmission Licence subject to the satisfaction of the conditions specified by Ofgem in accordance with the Tender Regulations in force at that time.

**Pre-Qualification (PQ) Stage:** The stage of a Tender Exercise starting from the publication of the PQ Document, including the preparation, submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Bidders who have been invited to participate in the QTT Stage.

## Q

**QTT Document:** The documentation prepared and issued by Ofgem for the purpose of selecting a shortlist of Bidders to progress to the ITT Stage and which sets out the rules and requirements of the QTT Stage.

**QTT Submission:** A Qualifying Bidder's response to the QTT Document.

**Qualification to Tender (QTT) Stage:** The stage of a Tender Exercise starting from the distribution by Ofgem of the QTT Document to Bidders, including the preparation, submission and evaluation of the QTT Submissions and ending once Ofgem has published the shortlist of Bidders who are invited to participate in the ITT Stage. This has now been replaced by the EPQ.

**Qualifying Project:** An offshore transmission project in respect of which Ofgem determines that the Developer has satisfied the requirements described in:

(a) for Generator Build projects, paragraph 2 of Schedule 1 to the Tender Regulations, or will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem; or

(b) for OFTO Build projects, paragraph 1 of Schedule 1 to the Tender Regulations.

## R

**Reserve Bidder:** The determined by Ofgem as the second choice Bidder (in accordance with regulations 19(3) or 20 (5) of the Tender Regulations) to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem ultimately decide not to grant the Offshore Transmission Licence to the Preferred Bidder.

## S

**SB Stage:** The period starting at the date of Ofgem's notice to a Preferred Bidder that it has become the Successful Bidder and ending at the date when the Successful Bidder is granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

**Section 8A Consultation:** The public consultation required by section 8A of the Electricity Act for any modifications to the standard conditions of the Offshore Transmission Licence to be made at Licence Grant. The modifications are required in order to incorporate the OFTO-specific provisions in the licence. The consultation must run for at least 28 days.

**Security:** Includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.

**Submission(s):** A PQ Submission, an EPQ Submission, a QTT Submission, an ITT Submission or a BAFO Submission (as applicable).

**Successful Bidder (SB):** The Preferred Bidder in a Tender Exercise who has resolved the PB Matters to the Authority's satisfaction, such that the Authority intends to grant to it an Offshore Transmission Licence.

**System Operator – Transmission Owner Code (STC):** The industry code that defines the high level relationship between the NESO and Transmission Owners setting out the roles, responsibilities, obligations and rights etc of the NESO and the Transmission Owners.

## T

**Tender Entry Conditions:** The requirements that a Developer must meet before commencement of a Tender Exercise, as described in paragraph 1 (for Generator Build projects) or paragraph 2 (for OFTO Build projects) of Schedule 2 to the Tender Regulations.

**Tender Exercise:** The competitive process run by Ofgem in accordance with the Tender Regulations in order to identify a Successful Bidder to whom a particular Offshore Transmission Licence is to be granted.

**Tender Regulations:** The Electricity (Competitive Tenders for Offshore Transmission Licences) 2015 as amended from time to time.

**Tender Revenue Stream (TRS):** The revenue established through the tender process, which is the value set out in paragraph 4 of amended standard condition E12–J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) of the OFTO Licence.

**Tender Round:** One or more Tender Exercises being held or to be held by Ofgem with a view to determining the Successful Bidders to whom Offshore Transmission Licences are to be granted for each Qualifying Project subject to such Tender Exercises.

**The Crown Estate:** The body that manages Crown property in England, Wales and Northern Ireland and that is responsible for awarding offshore wind leases for access to the seabed to wind farm operators in those locations. Each OFTO must enter into a lease or licence with The Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed in England, Wales and Northern Ireland.

**Transfer Agreement:** The agreement to transfer any:

(a) property interests, rights or liabilities in relation to Transmission Assets;

(b) shares or other interests in an undertaking in which any property interests, rights or liabilities in relation to Transmission Assets are vested; or

(c) beneficial interest in any property interests, rights or liabilities or shares or other interests relating to Transmission Assets;

from a Developer to a Successful Bidder in respect of a Qualifying Project subject to a Tender Exercise under the Enduring Regime.

**Transmission Assets:** are, for the purposes of the Tender Regulations, the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system.

**Transmission System:** Is defined in Section 4(4) of the Electricity Act as 'a system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another'. The Transmission System is expected to include subsea export cables, onshore export cables, onshore and offshore substations, and any other assets, consents, property arrangements or permits required by an incoming OFTO to fulfil its obligations as a transmission operator.

**Transmission Services:** Those services which are provided or are to be provided to the system operator by another transmission licensee pursuant to standard condition E15 (Obligation to provide transmission services) of the OFTO Licence.

## U

**United Kingdom General Data Protection Regulation (UK GDPR):** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.