

200[ ] No.

## ELECTRICITY

The Electricity (Offshore Transmission Licences Award) Regulations 200[ ]

*Made*

*Coming into force*

The Gas and Electricity Markets Authority ("the Authority") makes the following Regulations in exercise of the powers conferred on the Authority by sections 6C and 6D and 60 of the Electricity Act 1989<sup>a</sup> ("the 1989 Act").

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

### PART 1 INTRODUCTORY

#### **Citation, commencement and extent**

1.—These Regulations may be cited as the Electricity (Offshore Transmission Licences Award) Regulations 2008 and shall come into force on [ ] .

#### **Interpretation**

2. In these Regulations—

"the 2004 Act" means the Energy Act 2004.

"the Applications Regulations" means the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007.

"the Authority" means the Gas and Electricity Markets Authority established by section 1 of the Utilities Act 2000.

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<sup>a</sup> [1989 c.29 Section 6C was inserted by section 92 of the Energy Act 2004 and section 6D is inserted by section [40] of the Energy Act 2008 (c.20)]

"bidder" means any person who submits an application for the offshore transmission licence to which the tender exercise relates [section 6D(2)(b) of the 1989 Act.]

"person who submits an application" means a person who submits a pre qualification questionnaire under regulation 9

"connection request" has the meaning given in section [6D(3) of the 1989 Act].

"CUSC" means the Connection and Use of System Code specified in standard licence condition C10 of the transmission licence.

"developer" means a person falling within sub sections [6D(2)(a) and (4) of the 1989 Act].

"entry criteria" means the criteria in regulation 5.

"expression of interest" means an expression of interest in response to an invitation by the Authority under regulation 9.

"GBSO" means the holder of a coordination licence given in section [6D(8) of the 1989 Act].

"Go Active" means the date on which sections 90, 91 and 92 of the 2004 Act are commenced.

"Go Live" means the date on which sections 89 and 180 of the 2004 Act are commenced.

"licence" means an offshore transmission licence given in section 6C(5) of the 1989 Act and "licence holder" shall be construed accordingly.

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

"project" means an existing or proposed offshore generating station.

"publish" means place on the Authority's website or make public by such other means as the Authority considers appropriate.

"qualifying bidder" means a person invited to tender under regulation 12.

"qualifying project" means a project that complies with the criteria in regulation 5 or 6

"qualifying transitional project" means a transitional project in respect of which the Authority considers the transitional entry criteria are satisfied.

"regulated asset" has the meaning given by section [6D(8) of the 1989 Act].

"STC" means the System Operator Transmission Owner Code specified in standard conditions B12 and E13 of the transmission licence.

"successful bidder" has the meaning given by section [6D(8) of 1989 Act].

"tender costs" has the meaning given in section [6D(8) of the 1989 Act].

"tender exercise" means the steps taken in accordance with these regulations with a view to determining to whom a licence is to be granted .

"transitional entry criteria" means the criteria in regulation 6.

"transitional project" means a project in respect of which the successful bidder is not required to construct or install the regulated assets.

“transitional tender exercise” means a tender exercise in respect of a qualifying transitional project

"website" means [www.ofgem.gov.uk](http://www.ofgem.gov.uk) or such other location as may be notified in such manner as the Authority shall determine.

## PART 2 COMMENCEMENT DATE

### **Commencement date of tender exercises**

**3.-** (1) The Authority shall publish a notice specifying the date at which tender exercises shall be commenced in a calendar year for any qualifying projects in respect of which it has received a request in accordance with regulation 7.

(2) Where in the Authority's opinion it is appropriate to do so the Authority may instead, having consulted the developer concerned, specify one or more dates on which particular tender exercises in respect of one or more qualifying projects shall be commenced.

(3) The Authority may exercise its power under paragraph (2) whether or not it has specified a date in accordance with paragraph (1).

(4) The Authority shall publish a notice in respect of any decision under paragraph 3(2).

### **Commencement date of transitional tender exercises: supplemental**

**4.-**The Authority shall in relation to projects which satisfy the transitional entry criteria by no later than

(a) the Go Active date; or

(b) the Go Live date.

publish a notice under either regulation 3(1) or (2) specifying a date which is as soon as practicable after either of those dates.

### PART 3 QUALIFYING PROJECTS

#### **Entry criteria**

5.-(1) The Authority shall not commence a tender exercise other than a transitional tender exercise unless it considers that the project satisfies the conditions specified under paragraph (2) no later than [ ] before the date specified in a notice under regulation 3(1) or (2).

(2) Those conditions are that the developer has-

(a) entered into a CUSC bilateral connection agreement with the GBSO

(b) served a valid Option Notice on the Commissioners in accordance with the Crown Estate Agreement for a Lease (in respect of Round One and Round Two Agreements for a Lease);

(c) complied with such other conditions in connection with the tender exercise as the Authority may specify in a notice under regulation 3(1) or (2).

(3) The Authority shall not decline to commence a tender exercise where the condition in sub-paragraph (2)(a) is not satisfied by reason of the fact that the initial connection offer has been referred to the Authority for determination under standard condition C9 of the electricity transmission licence provided that

(a) the developer has provided security to meet the tender costs of the Authority in accordance with these regulations; and

(b) the issue that has been referred would not in the opinion of the Authority have a material impact on the design of the changes required to the onshore transmission network.

#### **Transitional entry criteria**

6.- (1) The Authority shall not commence a tender exercise in respect of a transitional project unless it considers that the project satisfies the conditions specified under paragraph (2) no later than [ ] before the date specified in a notice under regulation 3(1) or (2).

(2) Those conditions are that the developer has:

- (a) entered into a connection agreement with GBSO or a distribution licensee;
- (b) obtained all necessary property rights and environmental and planning consents for the project and the regulated assets to be constructed and maintained;
- (c) completed construction of, or entered into, all necessary construction contracts for the construction of the regulated assets;
- (d) secured financing to the satisfaction of the Authority to construct the regulated assets;
- (e) populated a data room to the satisfaction of the Authority;
- (f) committed to transfer the regulated assets to the successful bidder;
- (g) where the offshore generating station and regulated assets have been constructed, provided to the Authority an independent engineering audit report on functioning and performance of those regulated assets; and
- (h) complied with such other conditions in connection with the tender exercise as the Authority may publish in a notice.

**Request for appointment of licence holder**

7.-(1) A developer who wishes the Authority to appoint a licence holder in respect of a project or transitional project shall make a request to that effect in writing to the Authority no later than [ ] before the date specified in a notice under regulation 3(1) or (2).

(2) A request under paragraph (1) shall contain the information and documents necessary for the Authority to satisfy itself that the conditions in regulation 5 or 6 as the case may be are satisfied.

(3) The Authority may publish a notice setting out the type of information and documents that it will require in order to be satisfied that the conditions in regulation 5 or 6 as the case may be are satisfied.

(4) The Authority may request such further information, clarification or documents which in its opinion are necessary for it to be satisfied that the conditions in regulation 5 or 6 as the case may be are satisfied.

### **Notification and publication of qualifying projects**

**8.-** (1) Where it considers that a project or transitional project is a qualifying project the Authority shall-

- (a) send the developer a notice that a tender exercise will be commenced in respect of that project on such date specified in accordance with regulation 3.
- (b) notify the developer as to the amount of the payment and deposit or security that it requires to be provided in accordance with these regulations .

(2) The Authority shall also publish a notice identifying

- (a) the name of the developer and the qualifying project;
- (b) the date on which the tender exercise in respect of that project shall commence.

(3) Where the Authority considers that a project is not a qualifying project the Authority shall send the developer a notice to this effect containing the reasons why it considers the project is not a qualifying project.

## PART 4 EXPRESSIONS OF INTEREST STAGE

### **Expressions of Interest**

**9.-**(1) On the date specified in a notice under regulation 3(1) or (2) the Authority shall invite expressions of interest in being awarded a licence in connection with one or more of the qualifying projects by publishing-

- (a) a notice specifying each qualifying project to which each particular tender exercise to be commenced relates; and
- (b) the expression of interest documentation.

(2) the expression of interest documentation in respect of each tender exercise shall include-

- (a) general information about the tender exercise to include

- (i) the date, time and manner in which a completed pre-qualification questionnaire must be delivered to the Authority;
  - (ii) the criteria to be used by the Authority in evaluating completed pre-qualification questionnaires;
  - (iii) the payment determined in accordance with these regulations that shall accompany any completed pre-qualification questionnaire delivered to the Authority.
- (b) information about the qualifying project subject to the tender exercise;
- (c) a pre-qualification questionnaire.

(3) The Authority may decline to consider a pre qualification questionnaire that does not comply in any material respect with any requirement specified in the expression of interest documentation.

**Determination of qualified bidders**

**10.** The Authority shall determine qualifying bidders on the basis of the completed pre-qualification questionnaires in accordance with the criteria set out in the expression of interest documentation.

**Notification and publication of qualified bidders**

**11.-** (1) The Authority shall notify each bidder of its determination under regulation 10 and the reasons for it.

(2) The Authority shall also publish the identity of all qualifying bidders.

PART 5  
INVITATION TO TENDER STAGE

**Invitations to tender**

**12.-** (1) The Authority shall invite qualifying bidders to submit a tender in connection with the tender exercise to which their application relates within the period specified in paragraph (5)(a).

(2) An invitation to tender shall be made by the Authority sending to the qualifying bidders the invitation to tender documentation.

(3) The Authority shall not send the invitation to tender documentation to any qualifying bidder that has not submitted to the Authority a signed confidentiality agreement whose terms have been approved by the Authority.

(4) The invitation to tender documentation shall include-

- (a) a detailed statement of requirements;
- (b) relevant commercial information;
- (c) instructions to qualifying bidders.

(5) The instructions to qualifying bidders shall include-

- (a) the time, date and manner in which qualifying bidders shall deliver a completed tender to the Authority;
- (b) the criteria to be used by the Authority in evaluating completed tenders;
- (c) the payment determined in accordance with these regulations that must accompany each completed tender delivered to the Authority.

(6) The Authority shall decline to consider a tender that does not comply in any material respect with any requirement specified in the invitation to tender documentation.

**Best and final offer**

**13.-** (1) Where the Authority is unable to determine the person to whom it will grant a licence in accordance with regulation 14 it shall determine that person by inviting those qualifying bidders from among whom it is unable to determine that person to submit a best and final offer in accordance with this regulation.

(2) An invitation to submit a best and final offer shall be made by the Authority issuing best and final offer instructions to the bidders concerned.

(3) Best and final offer instructions shall include-

- (a) the time, date and manner in which best and final offers shall be delivered to the Authority;
- (b) the matters to be covered by a best and final offer;
- (c) any payment determined in accordance with these regulations that must accompany each best and final offer delivered to the Authority.



(4) The Authority shall notify those qualifying bidders that have not been invited to submit best and final offers together with its reasons for why they have not been successful.

## PART 6 EVALUATION STAGE

### **Evaluation of tenders**

**14.** (1) The Authority shall evaluate tenders received in accordance with the criteria set out in the instructions to qualifying bidders (and where applicable any best and final offer instructions) with a view to determining

(a) the preferred bidder to whom it will grant a licence if certain matters are resolved to the Authority's satisfaction;

(b) a reserve bidder.

(2) The matters in paragraph (1) to be resolved to the Authority's satisfaction shall be notified to the preferred bidder.

(3) Other than in transitional tender exercises those matters shall include:

(a) that the final CUSC bilateral connection offer (including the offshore works) has been accepted by the developer;

(b) that the preferred bidder has acceded to the STC and is complying with it.

### **Notification and publication of preferred bidder and reserve bidder**

**15.-** (1) The Authority shall notify each qualifying bidder of its determination under regulation 14 and provide each unsuccessful bidder with the reasons for it (except where reasons have already been given under regulation 13(4)).

(2) As soon as the Authority is satisfied that it will grant the licence to a particular person if the matters in regulation 14(2) are resolved to the Authority's satisfaction, it must publish a notice to that effect.

(3) The notice must -

(a) specify the name and address of the preferred bidder;

(b) describe in general terms, those matters, how they are to be satisfied, and what date]; and

(c) specify the payment payable by the preferred bidder in respect of the award of the licence to him.

(4) Where-

- (a) the matters referred to in paragraph (2) are not resolved to the Authority's satisfaction; or
- (b) the preferred bidder withdraws from a tender exercise

the Authority shall withdraw a notice published under paragraph (2).

(5) A notice published under paragraph (2) must be withdrawn before a subsequent notice may be published under that sub-paragraph in relation to the same tender exercise.

(6) Where the Authority determines a reserve bidder, it shall publish the name and address of that person.

## PART 7 LICENCE AWARD

### **Licence award**

**16.-(1)** Subject to the Authority being satisfied as to the matters referred to in a notice under regulation 15(2) the Authority shall award a licence to the successful bidder.

(2) Where the Authority withdraws a notice under regulation 15(4) above it [may determine to] award the licence to the reserve bidder provided the matters required of that person under regulations 14(2) are resolved to its satisfaction.

### **Notification and publication of award**

**17.-(1)** As soon as the Authority determines to award a licence to a person it must notify that person of its determination and publish a notice to that effect.

(2) The notice shall specify the name and address of the successful bidder.

## PART 8 CANCELLATION OF TENDER EXERCISES

### **Cancellation**

**18.-(1)** Where-

- (a) the Authority receives no expressions of interest pursuant to regulation 9;
- (b) the Authority determines that in its opinion it would not be appropriate to grant a licence to any qualifying bidder;

- (c) the preferred bidder withdraws from the tender exercise;
- (d) the reserve bidder withdraws from the tender exercise: or
- (e) the requirements of regulation 14(2) are not satisfied

the Authority shall cancel the tender exercise.

(2) Where the Authority cancels a transitional tender exercise in accordance with paragraph (1)(a) it shall commence a further tender exercise in respect of that transitional project and specify a date under regulation 3(2) as soon as practicable for that purpose.

(3) In the event that no expressions of interest are received in response to a further tender exercise the Authority shall invite no further expressions of interest in respect of that transitional project and shall instead invite the developer to submit an application to be appointed as the licence holder for the project in accordance with paragraphs (4), (5) and (6).

(4) An application under paragraph (4) shall contain such information as the Authority may specify in a notice in accordance with the Applications Regulations.

(5) The Authority shall consider any application made under paragraph (4) in accordance with the Applications Regulations.

(6) An application by a developer under paragraph (4) means an application by an entity owned by the developer but which is not in a position to control, or exercise significant influence over, a policy of the licensee by virtue of rights under contractual arrangements or rights of ownership which are held by the developer or of which the developer is a beneficiary.

## PART 9 REGULATORY ASSET VALUES

### **Regulatory asset value**

**21.-** (1) Prior to commencing a tender exercise in respect of a transitional project where the construction of the regulated assets has not been completed the Authority shall determine the ex ante regulatory asset value.

(2) The ex ante regulatory asset value shall be the Authority's estimate of the efficient costs of constructing the regulated assets.

(3) Where in relation to a transitional project the construction of the regulated assets has been completed the Authority shall determine the ex post regulatory asset value.

(4) The ex post regulatory asset value shall be the Authority's assessment of the costs which ought to have been incurred in connection with the efficient construction of the regulated assets.

(5) Where a transitional tender exercise has been held the Authority shall require the owner of a regulated asset by means of a written demand to make a payment in respect of the Authority's costs incurred in determining the ex ante and ex post regulatory asset values.

## PART 10 COST RECOVERY

### **Recovery of tender costs from developers**

**22.-(1)** The amount of any payment required of a developer or on its behalf under these regulations shall not exceed the Authority's estimate of its required expenditure in respect of the tender costs in respect of which that payment is required.

(2) The amount of any deposit or security required of a developer or on its behalf under these regulations shall not exceed the Authority's estimate of the tender costs in respect of which that deposit or security is required.

(3) Where it appears to the Authority that any payment made or deposit or security provided by a developer under these regulations will be insufficient to meet its required expenditure or provide security for its tender costs it may require the developer to make a further payment or provide an increased deposit or security.

(3) In determining the amount of any further payment, deposit or security under these regulations the Authority shall have regard to

- (a) any payments already made to the Authority by the developer or on its behalf;
- (b) costs which the Authority expects to recover in respect of the tender exercise under regulation 23.

(4) The Authority shall specify in relation to any payment under these regulations-

- (a) the amount of the payment;
- (b) the date by which it is to be made; and
- (c) the manner in which it is to be made.

(5) The Authority shall in relation to any deposit or security under these regulations-

- (a) specify the amount of the deposit or security;
- (b) specify the date by which it is to be provided; and
- (c) approve the manner in which it is to be provided.

#### **Recovery of tender costs from bidders**

**23.**-(1) Any payments required from bidders under these regulations shall not exceed in aggregate the tender costs that the Authority estimates it will incur that are directly attributable to the evaluation of bids.

(2) The Authority shall publish its methodology for calculating the payments required to be made under these regulations by individual bidders.

(3) Where it appears to the Authority that the payments required are insufficient to cover the costs referred to in paragraph (1), the Authority may at any time increase the amount of any payment required under these regulations .

#### **Repayment and reduction of security**

**24.**-(1) If payments or deposit made under these regulations exceed the tender costs actually incurred by the Authority in respect of which they were provided the Authority shall as soon as reasonably practicable after a tender exercise is finished repay to the person or persons that made the payments or deposit the amount by which any payment or deposit they have made exceeds those costs, and shall include interest on any sum repaid at the rate [allowed by the Office of HM Paymaster General]

(2) Where any security required to be provided under these regulations exceeds the tender costs in respect of which they were provided, the Authority shall as soon as reasonably practicable after a tender exercise is finished reduce the amount of any security forfeited by the amount it exceeds the tender costs actually incurred by the Authority.

(3) Where it appears to the Authority before a tender exercise is finished that any payments or deposit required in accordance with these regulations clearly exceed the Authority's estimate of the costs in respect of which those payments or deposit were required it shall as soon as reasonably practicable repay to the person or persons that made the payments or deposit the amount by which the Authority in its opinion considers they exceed the tender costs in respect of which they were made that it will actually incur, and shall include interest on any sum repaid at the rate [allowed by the Office of HM Paymaster General].

(4) Where it appears to the Authority before a tender exercise is finished that any security required in accordance with these regulations clearly exceeds the Authority's

estimate of the costs in respect of which that security was required it shall as soon as reasonably practicable reduce the amount of security required by the amount by which the Authority in its opinion considers it exceeds the tender costs that the Authority will actually incur.

**Failure to make payments or provide security**

**25.-** (1) If a developer or person on its behalf fails to make a payment or provide security as required under these regulations the Authority may cancel the tender exercise if that failure is not remedied within a further period specified by the Authority.

(2) If a bidder fails to make a payment as required under these regulations the Authority may exclude that bidder from the tender exercise if that failure is not remedied with a period further period specified by the Authority.

PART 11  
SUPPLEMENTAL

**Procedure**

**26.-** Subject to the provision of these regulations the Authority may regulate its own procedure.

**Disapplication of certain provisions**

**27.-** Sections 6A(procedure for licence applications) and 6B (applications for transmission licences) of the 1989 Act shall not apply to applications for a licence under these regulations.