

## Offshore Electricity Transmission – Draft Tender Regulations

### Introduction

SP Energy Networks welcomes the opportunity to comment on the above draft regulations and we look forward to the next consultation on the offshore regulatory regime.

Although we understand that the regulations need to allow the Authority some flexibility, there are a number of gaps that leave essential areas of the regime unclear, these have been addressed in the points below. In view of the need to clarify a number of points, we would expect the opportunity to comment on a second draft of the regulations. We also think that consideration should be given to convening an industry working group to facilitate the next draft of the regulations.

### General Comments

One significant omission appears to be how the situation will be managed where bidders wish to submit a single bid for the offshore transmission assets associated with multiple wind farms that qualify as part of the same tender exercise. This could offer an efficient consolidated solution.

The regulations make provision for a number of payments and securities that must be made by bidders and developers at different stages of the process. The regulations do not make clear what elements of the tender costs the payments and securities cover and it is essential that the magnitude of these costs are clear at the outset. For a potential Offshore Transmission Owner (OFTO), the payments to the Authority will be in addition to the OFTO's own bidding costs, and as a result losses associated with an unsuccessful bid could be significant. This could have a detrimental affect on participation in the bidding process. Early consultations stated that unsuccessful bidders would be refunded (albeit partial) their payments. Ofgem should re-consider a mechanism to allow unsuccessful bidders to recover their payments and reasonable costs, as this will encourage OFTOs to make appropriate commitment to the provision of a range of offshore solutions.

It is also important that the regulations clearly set out the requirements and timescales that will apply to each stage of the tender process.

### Specific Comments

#### Ofgem's Cover Letter –

We would appreciate clarification on the reference to the potential need for Ofgem to approve consortiums and any associated changes; this requirement could result in delays as a result of complex negotiations.

#### Tender Regulations

##### Part 2 Commencement Date

Regulation 3(1) - does not provide for a minimum notice period before a tender exercise commences. There should be explicit provision for an adequate notice period to apply.

Regulation 3(4) - in relation to transitional tender exercises, this should also take account of a minimum notice period.

### Part 3 Qualifying Projects -

Regulation 6(2) - for the benefit of developers and bidders additional clarity is required for the developer conditions, in particular:

6(2)(e) – the extent of information in the data room

6(2)(f) – the form of commitment

6(2)(g) – the scope of the independent engineering report and by whom this will be commissioned.

Regulation 7(1) - This appears to be a 'circular' effect between regulation 7 (1) and 3(1)/3(2). Regulation 7(1) requires a developer to notify the Authority in a period of time prior to the date specified in 3 (1) or 3(2), whilst the date in 3(1) or 3(2) is initiated by a developer.

Regulation 7(3) - it should not be optional for the Authority to publish a notice setting out the type of information that it requires from developers.

### Part 6 Evaluation Stage

Regulation 14(1), 14(2) – subject to the detail and robustness of information provided to bidders in the ITT and subsequent discussions, the bidder may caveat their bid at the preferred bidder stage. These will be 'matters to be resolved' with the Authority before the details of the licence are finalised.

### Part 8 Cancellation of Tender Exercises

Regulation 18(6) - is obscure. Also, it is not clear who is the 'licensee' referred to.

### Part 9 Regulatory Asset Values

Regulation 21 - for transitional projects where the regulated assets have not been constructed Regulation 21(1) requires the ex ante regulatory asset value be established prior to commencement of the tender process. Regulation 21(3) requires the Authority to determine the ex post regulatory asset value, however it does not provide any timeframe. This ex post value should be determined prior to the tender exercise commences.

The time required in regulation 7(1) should reflect the time required by the Authority to establish the ex ante and ex post regulatory asset values.

Regulation 21(5) – this regulation should state who the 'owner of the regulated asset' will be and therefore who will make the payment.

### Part 10 Cost Recovery –

General - There is no facility within the regulations for bidders to recover their costs if a developer withdraws from the process. In the event of a developer withdrawing from the application process, bidders should be able to recover payments made to the Authority, and reasonable costs incurred in developing their bids. This is particularly relevant when the Authority allows a tender to proceed during the time that the initial connection offer is being referred to the Authority (regulation 5(3)). In these situations it appears that security is provided to allow the Authority to recover its costs, however there is does not appear to be a mechanism for bidders to recover their payments and costs.

In the January 2008 consultation (Chapter 5 Cost Recovery), reference is made (5.12, 5.16) to unsuccessful bidders being refunded, albeit not in full, payments made during the EOI and ITT stages, this should be clarified in the regulations.

In general the criteria for attribution of the Authority's costs between developers and bidders is unclear. More detail is needed on this.