

By email  
Richard Clay  
Senior Manager, Offshore Transmission  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Millstream East  
Maidenhead Road  
Windsor  
SL4 5GD

Tel. 07789 577609  
Fax (01753) 431150  
www.centrica.com  
Thursday 16 April 2009

## Offshore Electricity Transmission – Updated Proposals for the Competitive Tender Process – 5 March 2009

Dear Richard,

Thank you for the opportunity to comment on the above consultation. This non confidential response is on behalf of the Centrica group of companies excluding Centrica Storage Ltd.

Centrica remains committed to assisting the OFTO regime and the tender process succeed. As a developer with a project in the initial tender round we are keen to see that the process is as efficient as possible. However, we still have concerns in relation to certain areas of the regime and tender process.

We have provided detailed comments on the competitive tender process in the body of the response below, but we would particularly like to highlight our main concerns as follows:

- We continue to believe that there would be benefit from the generator having some input in the selection process of the preferred (and reserve) bidder as it is the generator who has to engage in a long-term relationship with the OFTO. Generator involvement from the outset would help to ensure there is a successful working relationship between the OFTO and generator going forward. Although we note there is a suggestion that an appeal mechanism could be used, it is not clear whether this would constitute developer involvement as whom the appeal is for is not identified. With the developer having little or no control of the OFTO selection, consideration should be given to making provision for appropriate redress where the tender process has resulted in a suboptimal OFTO appointment resulting in loss to the developer/generator;
- We have a concern that in the transitional regime a requirement for developers to guarantee construction works would be finished within 12 months of OFTO licence award is too onerous. The current economic climate as well as specific construction conditions such as weather windows can adversely impact expected completion dates. A developer should only need to provide his best estimate (on a reasonable

endeavours basis) of the expected construction completion date, and undertake that it will use all reasonable endeavours to meet it;

- The developer faces a dilemma in the enduring regime. If there is an early OFTO tender, then consenting cannot start until an OFTO is appointed. If the developer opts for a late OFTO tender, then there is later engagement of the supply chain and potentially longer lead times for cables. It is not apparent how this process will lead to efficient and timely offshore wind farm construction;
- There should be different templates for the Independent Audit Report depending on whether the asset is operational or under construction;
- It is not clear how an auctions process would work in the initial tender rounds. As this would increase the complexity, Auctions should not be considered at this stage;
- There needs to be added clarity to how and when developer security will be returned and the circumstances in which it would be forfeited; and
- For all relevant confidential information to be provided into a data room, we need Ofgem to formally require its provision, in order to meet contractual provisions vis-à-vis the release of confidential information.

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

### **The proposal to separate the pre-conditions in the transitional regime**

Centrica welcomes the additional clarity this separation adds to the process. However, we remain concerned with regard to the tender entry pre-conditions that the requirement is to provide information ‘to the satisfaction of the Authority’. It is not clear what level of burden this pre-condition places on the developer and how the Authority can be satisfied. Would Ofgem provide information and sufficient notice to the developer of what information would satisfy them? It would be more appropriate for the condition to be “to the reasonable satisfaction of the Authority”.

### **The independent engineering audit report**

As this report is a required pre-condition to enter a tender round, Ofgem will need to take a view on whether the provided report is appropriate. Therefore Ofgem must believe it has, or will have some expertise in this area. It is our view that the report could reasonably take a different (and simpler) format for projects that are operational already as opposed to those that are yet to have construction completed.

In the instances where assets are already operational, we believe that it would be appropriate for the report to include:

- maintenance records;
- maintenance plans;
- monthly technical reports;
- SCADA data; and
- manuals (containing maintenance schedule recommendations to allow comparison with the 'as built' documents).

A **centrica** business

Centrica plc - The group includes British Gas Trading, British Gas Services and Accord Energy  
Registered in England No.3033654. Registered Office: Millstream, Maidenhead Road, Windsor, Berkshire SL4 5GD

## **The additional 12-month pre-condition for construction**

Centrica has significant concerns regarding the pre-condition for construction works to be expected to be completed within a short period (12 months) of the grant of an OFTO licence. Many factors including the current economic climate, supplier delay and unfavourable weather conditions can result in delays to construction which may be largely out of the developer's control. At the time of meeting the pre-conditions, there could be a significant period prior to the expected construction completion. This is a significant time after being granted transitional status in which circumstances may change. Additionally, expecting completion within 12 months would not be consistent with The Crown Estate's requirements to complete construction within 5 years of signing a lease agreement. It would be sensible for these to align. It is also not clear what the pre-condition would actually add as it is not clear what the consequence is when the developer misses its forecast completion date.

A 12-month time-frame would effectively require construction works to be completed by June 2012. This could severely impact the amount of projects that would currently qualify for the transitional arrangements and cause further uncertainty for those projects. In circumstances where construction would not be complete until a time in excess of 12 months after the award of an OFTO licence, this pre-condition would require the project to enter the enduring regime (as the regime does not currently envisage the developer constructing the assets). This is likely to add additional uncertainty for those projects on the cusp of being transitional. As construction in the enduring regime would not begin until the OFTO award, this might be significantly later than the date at which the developer would have reasonably begun construction under the transitional arrangements, and could ultimately lead to delay in wind farms becoming operational.

It is also not clear how such a pre-condition would impact projects where, due to current economic conditions, a developer chooses to complete construction in phases.

Centrica believes that this pre-condition is not required as bidders would have information on expected construction completion dates in the data room.

## **The proposal to separate the pre-conditions in the enduring regime**

Centrica welcomes that the updated proposals clarify that an Agreement for Lease with The Crown Estate is required as opposed to entering lease arrangements.

## **Warranties**

Centrica is concerned about the written warranty proposed to be required from the developer to qualifying bidders that "the information in the data room is to the best of the knowledge and belief of the developer true, accurate and complete in all material respects". This goes beyond what would be provided in the ordinary course of business. We do not believe that such a requirement would facilitate maximum information disclosure in instances where the developer does not believe it could be "warranted". It would be more appropriate for the developer to provide warranty that all relevant information in the possession of the developer had been provided. It is also not clear what the penalty on the developer would be if the information proves to be inaccurate.

## **The model Sale and Purchase Agreement**

The use of a model Sale and Purchase Agreement would appear to be a useful tool to assist the transfer of assets.

### **Ofgem's approach to O&M (4.40)**

Centrica believes that the developer should have the ability to include any procured O&M contracts into the data room with the discretion to mandate that the OFTO would either be obliged to adopt the contract or not. Were this not to be the case, there could be issues in regard to transferring assets and access rights.

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

### **The pre-qualification stage of the tender process**

We welcome the two-stage pre-qualification process to assist clarity. This should assist Ofgem to provide appropriate information to the prospective bidder's at the most appropriate stage.

We continue to believe that pre-qualification (on a non-specific site basis) could be achieved before the tender window is open, allowing for a more efficient process. Additionally, thought could be given to allowing those bidders that have met pre-qualification in one year to go through a less onerous (potentially an intention to bid and 'what has changed') qualification in following years. Such a central live list of qualified bidders could allow for efficiencies in later tender rounds, which we expect could take longer than 12 months (especially in the enduring regime).

### **Bundling of projects on a geographic basis**

It is not clear how a decision taken to bundle a project with no bidder interest on a geographic basis with another in the same tender round is significantly different to the OFTO of last resort process. Bundling projects could perversely impact bidder interest in the project that is being bundled with a less desirable project. It would be appropriate for all developers whose projects are to be bundled to agree to such a measure prior to it occurring.

### **The financial and non-financial criteria for PQ, QTT and ITT stages**

It is not clear how the financial criteria (in paragraph 5.27) would apply with general ring-fencing requirements. For example, reference is made to an applicant's "total net assets" being greater than or equal to 120% of the indicative RAV. If the applicant is a special purpose vehicle set up for the purposes of the tender or a new entrant, it is possible this might militate against them becoming an OFTO. If the assets are calculated at a group level, then there is need to secure assets/financing relative to that OFTO. We would appreciate more clarity on what this provision is intended to achieve.

### **Changes to consortia during a tender**

We would support flexibility to assist the formation of consortia prior to the QTT stage subject to the standing of the revised consortia.

## **Supply chain exclusion from consortia**

Centrica believes that it is worth recognising there are potential implications of exclusion of the supply chain from consortia. A key component of the regime is to ensure that wind farms are built and operational in the most timely and efficient manner. A decision to preclude the supply chain from consortia on an exclusive basis could create supply chain issues. It would preclude any direct relationship between the supply chain and the entity that will be its customer. A developer could engage the supply chain prior to entering information into a data room but in the enduring regime, the OFTO is its customer and not the developer. This could have implications for supply chain confidence at a time when the UK is competing in a global market for very limited supply chain products and services. Other markets providing more certainty to the supply chain are likely to procure the necessary services before the UK thus increasing the time before wind farms can become operational in the UK.

## **Bidder dialogue and clarifications within a tender process**

Centrica welcomes the ability for negotiation to be facilitated between bidders and developers in regard to the SPA. Whilst Ofgem will need to manage this carefully in any circumstances where the bidder is part of a bidding consortium, we believe that there are means for this to be done appropriately.

In relation to bidder clarifications, Ofgem expects developers to provide responses to the clarifications sought within defined timescales. There is no indication what these timescales are and whether the developer will be recompensed for the resource required to provide responses. All such timescales should be reasonable. Clarifications should exclude any requirement for site visits as these can incur considerable resource and cost. Additionally, there are only limited seasonal windows in which site visits can occur which may not align with this particular part of the tender window. For the same reasons given above, Centrica does not believe it is appropriate that this information should be required to be warranted especially where the defined timescales are short. The warranty should only be that the developer has provided all information available to it.

## **Developer involvement in the selection of the OFTO**

We note that Ofgem has retained sole selection rights of the preferred bidder and the OFTO for the licence award. We remain of the view that the developer should be able to provide input into the selection process, particularly in terms of providing a view on the non-financial aspects of a bidder's make-up. As a developer currently has little or no control of the selection of the OFTO, the developer should be able to seek redress in instances where Ofgem's decision or actions within the tender process can be shown to be suboptimal or resulted in tangible loss.

## **The tender documentation**

It does not appear that the PQ, QTT and ITT documentation as included in annexes 1 to 3 has been significantly updated since the last consultation (6 October 2008). We believe that most of our comments included in our Appendices 1 and 2 to our response to that consultation are still valid.

## **Reserve bidder in the transitional regime**

The process of how a reserve bidder would work in practice remains unclear, especially in relation to timing. In 17 (5) of Part 9 of the tender regulations it states the reserve bidder could be treated as the preferred bidder at any stage. Within the transitional regime, it is critical that there is sufficient time for the reserve bidder to meet the required criteria and be appointed prior to the transmission of energy across a 132kV transmission line becoming a prohibited activity.

## **Auctions**

Centrica understands the benefits of auctions where these are proved to be appropriate. However, as no detail of how this would work has been included it is not appropriate to comment at this stage. It is currently our view that auctions should not be considered until the tender process has been tested and proven to work as the added complexity is unlikely to complement the process, or encourage entry, at this stage.

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

As the focus of the consultations thus far has been on the transitional regime, some consideration will need to be given to how the enduring regime will work in practice. We therefore welcome the further detail provided in the latest consultation, but additional detail is needed on how and when a developer would go about seeking an OFTO and the implications.

As it currently stands the enduring regime allows the developer to either tender to appoint an OFTO early so that the OFTO takes all the design, consenting and construction risk; or to undertake some or all of the design and consenting, enter this into the data room and then tender for an OFTO.

If a developer opts for an early tender to obtain an OFTO, then the OFTO has to design and consent the whole layout. Such a wide remit could lead to the OFTO seeking many variations from the supply chain which would take significant resource to design and price. Without any input into the selection of the OFTO, this leaves the developer at significant risk of receiving a design that is not to its satisfaction or optimum.

If a developer decides to do much of the consenting and design before going to tender, then the supply chain is not engaged by its customer and the OFTO, when actually engaging the supply chain, might find that lead times are significant due to global demand and the changing economic climate, reducing the attractiveness of the proposition. Under this option, the developer also risks significant sunk costs and no OFTO coming forward. Therefore we believe it remains essential that there is an OFTO of last resort mechanism in the enduring regime.

The risks to all parties inherent in such dilemmas could impact investor confidence when deciding whether to invest in new projects. This in turn could lead to a reduction in investment or a greater risk of an OFTO not being secured.

Additionally, we have concerns that the tender process could take a significant length of time in the enduring regime particularly in relation to the ITT stage and bidders obtaining quotes from suppliers.

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

### **Disqualifying bidders**

It would seem reasonable that Ofgem retains the power to be able to disqualify a bidder for inappropriate conduct providing there is a good case that the conduct in question could have had a material impact on the tender process. Centrica assumes that these powers for the Authority to disqualify a bidder could also be triggered by a developer request where they have become aware of any relevant reason.

Ofgem may also wish to consider including a provision for the situation when a bidder has withheld relevant information. This should also lead to a bidder being disqualified.

Given the conditions for disqualification, Ofgem should give consideration to providing a code of practice for the right and appropriate behaviour for interaction between developers and potential OFTO bidders prior to the tender process. For example, it is not clear what might be considered as canvassing the Authority.

### **Instances where a tender process could be cancelled**

Centrica notes that a tender process can be cancelled due to many circumstances that are out of the developer's control. It should be clear that developer security should not be forfeited under such circumstances and there should be a mechanism by which this is returned. It is also not clear in the tender regulations when a re-tender would occur in the event of a cancellation or how it would be ensured that an OFTO is appointed and assets provided in a timely manner.

### **Proposed cost recovery methodology and indicative charges**

We welcome the additional clarity on how costs will be recovered and raise the following issues:

- It is not clear when these costs will be available to the developer to ensure they are included in the ex-post RAV;
- As the developer is required to secure the entire tender process, there should be a mechanism whereby security is returned to the developer after each occasion Ofgem receives bidder payments (with any residual returned at the end);
- It needs to be clear under which specific situations the developer would forfeit the security;
- Security should be returned when a tender is cancelled due to reasons not attributable to the developer; and
- Where security posted is cash, this should accrue interest.

### **Appeals**

Appeals are mentioned briefly in 7.11 but it is not clear what would be appealed by whom. Centrica believes that as part of the ITT stage there could be a built-in appeals mechanism to allow the developer to object to the preferred bidder. This could be internal to Ofgem's selection process and would simply be a way in which the developer could be engaged in the selection process.

## **Chapter 8: Tender Regulations**

In our response of 2 April we provided our views against the Tender Regulations. To reiterate our main points here, we have concerns in relation to:

- Confidentiality and information provision – this needs to ensure that the developer is obliged to provide information and that Ofgem will treat the information as confidential. Additionally, the warranty obligation appears onerous. The developer should only need to warrant that it has provided all information;
- Cost recovery – in practice, how will developers be able to recover costs of the tender process via the ex-post RAV assessment;
- Inclusion of a provision that requires the Authority to consult the developer on the criteria for OFTO selection;
- OFTO failure to perform – developers should be able to request a re-tender in the case of persistent performance failure by the OFTO; and
- Security – clarity on how and when developer provided security would be forfeited.

## **Other considerations**

These comments are in relation to areas not addressed under the previous chapters

### **RAV considerations**

The developer will be able to claim its tender costs in its ex-post RAV. However, there appears to be a timing issue in so far as when the developer will get the information on Ofgem's costs to be able to be submitted in time for the inclusion in the RAV.

We note that Ofgem may cease a cost assessment exercise where the developer fails to meet the pre-conditions and the developer would forfeit its payments for the purpose of the assessment process. In such situations, the developer should only forfeit payments for costs incurred.

### **Tender window**

It is not clear what would occur if the tender window does not align with the construction programme or those proposed TAR solutions where there are windows for obtaining access rights. There would appear to be a risk of having peaks and troughs of construction and vessel use.

Additionally, we remain concerned that there is a risk that potential bidders will only focus on those projects of highest value in a tender window due to the significant requirements

and simultaneous tendering. This might especially be the case when multiple bidders approach the supply chain at the same time.

## **Tender Panel**

We note that in the last consultation a Tender Panel would be formed to make key recommendations to the Authority on the grant of OFTO licences. There does not appear to be any reference to a Tender Panel in the latest consultation. It would be useful to understand the process by which Ofgem will be making recommendations to the Authority, and/or who might constitute the Tender Panel.

## **Identifying preferred bidders**

The ITT will publish the list of pre-qualified bidders. As mentioned in our last response, it is our understanding that bidders would not normally be publicised until later in the process. We can see advantages and disadvantages with this approach; hence we would like to better understand Ofgem's reasons for identifying the pre-qualified bidders at such an early stage.

If you have any questions or comments relating to this response, please contact me on the number above or at [chris.stewart@centrica.com](mailto:chris.stewart@centrica.com)

Yours sincerely,

*By e-mail*

Chris Stewart  
Commercial Manager  
Business Development  
Centrica Energy