

## **Pre-Qualification Document 2009 Transitional Tenders**

**Document type: Pre-Qualification Document**



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### **Overview:**

A new regulatory regime for offshore electricity transmission has been established. A key part of the regime is the grant of Offshore Transmission Licences on the basis of a competitive Tender Process. Ofgem is responsible for managing this process.

This Pre-Qualification Document is issued by the Authority pursuant to Regulation 9(2) of the Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences under the Transitional Regime.

# **The Office of Gas and Electricity Markets**

## **Offshore Electricity Transmission**

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**Pre-Qualification Document**

**2009 Transitional Tenders**

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## **IMPORTANT NOTICE**

### **Introduction**

This Pre-Qualification Document is issued by the Authority pursuant to regulation 9(2) of the Tender Regulations and will apply to the first Tender Round which Ofgem will run for the grant of Offshore Transmission Licences under the Transitional Regime. By accepting and participating in the Tender Process set out in the Pre-Qualification Document each Applicant agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the Pre-Qualification Document and the Tender Rules. A material breach of the Tender Regulations, the Pre-Qualification Document or the Tender Rules would give Ofgem the right, under the Tender Regulations, to disqualify the Applicant from the Tender Process.

### **Non-reliance, accuracy of information and exclusion of liability**

It is the responsibility of each Applicant to ensure that it has all of the information it needs to prepare its Pre-Qualification Submission. While information provided by Ofgem and/or its Related Parties in this Pre-Qualification Document or otherwise in relation to the Tender Round has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. Neither Ofgem nor any of its Related Parties makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Related Parties in this Pre-Qualification Document or otherwise in relation to the Tender Round or any information provided by Developers through Data Rooms or otherwise. All such persons or entities 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 information or based on or relating to its use by an Applicant /or any other interested party.

### **Use of information**

This Pre-Qualification Document has been prepared and issued to set out the requirements for Pre-Qualification Submissions. This Pre-Qualification 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 Related Parties. Each Applicant and any other interested party must make its own independent assessment of the Qualifying Project(s) after making such investigation and taking such professional advice as it deems necessary.

The material in this Pre-Qualification Document is not and should not be regarded as legal or professional advice. Participants and other interested parties should seek their own legal or other professional advice where appropriate.

### **Copyright**

The information contained within this Pre-Qualification 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 Pre-Qualification Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

## **Freedom of information**

The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provides a general right of access to environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Applicants will be invited in the Pre-Qualification Questionnaire to identify which parts, if any, of their Pre-Qualification Submissions are provided to Ofgem in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 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.

Although Ofgem is not under any statutory obligation to consult with an Applicant in relation to requests for information made under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Applicant of requests wherever it is reasonably practicable to do so. However, all decisions about disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not an Applicant has identified any information as being in its opinion eligible for exemption. For further information and guidance, Applicants' attention is drawn to the Lord Chancellor's Code of Practice issued under section 45 of the Freedom of Information Act 2000 (see <http://www.dca.gov.uk/foi/codesprac.htm>).

## **Data protection**

In participating in the Tender Round, Applicants must comply with the Data Protection Act 1998 and all 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. Ofgem will collect, hold and use personal data obtained from and about Applicants and in order to participate in the Tender Round Applicants must agree to such data being collected, held and used.

## **Information provided by Applicants**

Ofgem is relying on the information provided by Applicants before and during the Tender Round (including but not limited to information concerning the members and structure of their consortia where relevant). If, at any time following the making of any Pre-Qualification Submission and before Ofgem publishes the longlist of those Applicants who have qualified for the Qualification to Tender Stage, there are any material changes or proposed changes to the information provided in the relevant Pre-Qualification Submission, or an Applicant becomes aware that information previously submitted is no longer true or accurate, such Applicant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where an Applicant informs Ofgem of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Applicant's Pre-Qualification Submission in light of that material change or proposed change.

By participating in the Tender Round, each Participant shall be deemed to consent to the disclosure by Ofgem to Ofgem's Related Parties of any information given to Ofgem either before or during the Tender Round by that Participant.

## **Grounds for cancellation or disqualification**

Parts 11 and 12 of the Tender Regulations set out the grounds on which the Tender Process may be cancelled in relation to a particular Qualifying Project(s) and the grounds on which an Applicant may be disqualified from participating in the Tender Process in relation to a particular Qualifying Project(s).

## **Confidentiality and publicity**

Qualifying Applicants will be required (before receiving the relevant Information Memoranda at the Qualification to Tender Stage) to sign a Confidentiality Agreement with the Developer of each relevant Qualifying Project. Such Confidentiality Agreement can be downloaded from the Portal. Qualifying Applicants and Developers must comply with their obligations under such agreements and procure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.

Applicants shall not undertake (or permit to be undertaken) at any time during the Tender Round any publicity activity with any section of the media in relation to 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.

## **Right to vary Tender Process**

Subject to the provisions of the Tender Regulations, Ofgem reserves the right to vary any element of the Tender Process, issue supplementary documentation (including rules particular to each stage of a Tender Process) or make additional arrangements at any time during the Tender Process to clarify any issue or amend any aspect of the Tender Process. All such supplementary documentation issued by Ofgem during the Tender Process will be deemed to form part of this Pre-Qualification Document to the extent indicated in the amendment. Subject to the provisions of the Tender Regulations, Ofgem may extend the Tender Process and postpone any submission date.

## **Costs**

Each Applicant will bear its own costs of participating in the Tender Process and will be responsible for meeting the costs incurred by Ofgem in administering the Tender Process in accordance with the Tender Regulations. Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Applicant, including without limitation any unsuccessful Applicant, for any costs, expenses, damages or losses incurred in connection with the Tender Process.

## **Miscellaneous**

Ofgem is not bound to accept any Submission made by a Participant. If a Participant withdraws or is disqualified from one or more Tender Processes or Ofgem cancels a Tender Process (in each case in accordance with the Tender Regulations), Ofgem shall not incur any liability for any losses whatsoever (whether in contract, tort or otherwise and including direct, indirect and consequential losses) towards any Participant or any of their Related Parties.

Ofgem shall not (except in accordance with the Tender Regulations) be liable for any costs or expenses incurred by any Participant and any of their Related Parties in relation to a Tender Process (whether such costs or expenses occurred prior to the commencement of the Tender Round or at any other time).

Nothing in the Pre-Qualification Document is intended to, or shall be deemed to, establish any partnership or joint venture between Ofgem and any Applicant.

Legal, technical and financial advisers are acting for Ofgem in relation to the Tender Round and will not regard any Applicant or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

The Tender Rules and the Pre-Qualification Document inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules and the Pre-Qualification Document are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Participants are strongly encouraged to read the Tender Regulations in addition to reading the Tender Rules and the Pre-Qualification Document.

In the event of a conflict between the Pre-Qualification Document and the Tender Regulations, the Tender Regulations take precedence.

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## **1. INTRODUCTION TO THE QUALIFYING PROJECT AND TENDER PROCESS**

### **1.1 Framework, roles and Tender Process**

The Tender Rules set out rules governing the Tender Process. Section 1 of the Tender Rules provides a brief description of the roles of the key parties involved in the Tender Process as well as the role of the OFTO.

### **1.2 Overview of Qualifying Projects**

High level information (including Ofgem's estimated transfer value) in respect of each Qualifying Project is available in the Preliminary Information Memorandum which can be found in the Portal.. Applicants should note that these Qualifying Projects have not yet satisfied the tender entry conditions (see section 5 of the Tender Rules) and that such conditions will need to be met in order for a Qualifying Project to proceed to the Qualification to Tender Stage.

### **1.3 Timetable**

A detailed timetable for activities within the Pre-Qualification Stage is set out below. Ofgem reserves the right (in accordance with the Tender Regulations) to vary this timetable at its discretion. Any such variation shall be communicated to interested parties via the Portal.

<b>Key Stage / Event</b>	<b>Date</b>
Preliminary Information Memorandum published	22 July 2009
PQ Document (and draft Qualification to Tender Document) published	22 July 2009
Bidder Day	23 July 2009
Clarification questions to Ofgem (if required)	23 July 2009 to 17 August 2009
Deadline for PQ Submission	24 August 2009 (12 noon)
Clarification of PQ Submission (if required)	24 August 2009 to 23 September 2009
Evaluation of PQ Submission	25 August 2009 to 23 September 2009
Notify Applicants and publish Qualifying Applicant longlist	24 September 2009
Requests for unsuccessful Applicant feedback	24 September to 24 October 2009



#### 1.4 **Amendments and/or supplements to the Tender Rules**

This Pre-Qualification Document does not amend anything in the Tender Rules, but provides a greater level of detail in relation to the specific requirements for the Pre-Qualification Stage.

## 2. **INSTRUCTIONS TO APPLICANTS**

### 2.1 **Preliminary Requirements**

#### 2.1.1 **Consortium Applicants**

- (A) It is anticipated that single entity organisations may make Pre-Qualification Submissions. However, single entity organisations may consider that the resources, range and depth of skills required for a Qualifying Project are such that they wish to collaborate to form a consortium, with a lead organisation or special purpose vehicle ultimately being issued the Offshore Transmission Licence. Consortium applications are therefore equally welcome. If a consortium Applicant proposes that (if it is chosen as the Successful Bidder) a special purpose vehicle would be granted the Offshore Transmission Licence, Ofgem would not require the consortium to form that vehicle at this stage, although it will need to do so prior to the grant of the Offshore Transmission Licence.
- (B) It is anticipated that where an Applicant is a consortium, that consortium may wish to adjust its configuration and/or membership or a single entity Applicant may wish to form a consortium between the Pre-Qualification Stage and submitting a Qualification to Tender Submission. Applicants may propose such changes and where such changes are material Ofgem will reassess whether the revised consortium meets the criteria set out in the Pre-Qualification Document as part of its Qualification to Tender Submission.
- (C) Ofgem expects the configuration and membership of a consortium Applicant to be finalised when they submit their Qualification to Tender Submissions. However, where there is a change to a consortium after this point, Ofgem will determine on a case-by-case basis whether permitting the change to the consortium would be fair and equitable to all other Qualifying Applicants or Qualifying Bidders (as applicable) participating in the Tender Process in respect of that particular Qualifying Project. Any changes to consortia must be notified to Ofgem as soon as reasonably practicable.
- (D) Consortium Applicants are required to appoint a lead member who is authorised to make Pre-Qualification Submissions on behalf of the consortium. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with section 6 of the Pre-Qualification Questionnaire.

#### 2.1.2 **Pre-Qualification Questionnaire**

- (A) The Pre-Qualification Questionnaire, which is annexed to this Pre-Qualification Document at Appendix B, has been produced to enable Ofgem to assess whether an Applicant has sufficient economic and financial standing, management and operational capability and legal standing, based on the Applicant's current standing and track record, to satisfy Ofgem that the Applicant is capable of (i) taking over ownership of the Qualifying Project(s) for which it wishes to be invited to tender and (ii) assuming the responsibilities and duties associated within being an OFTO. Where the Applicant is a consortium, this assessment will be based on the current standing and track record of the consortium taken as a whole. As part of this evaluation, Ofgem will evaluate an Applicant's financial strength against the total investment the Applicant is proposing and therefore the Pre-Qualification Questionnaire requires Applicants to indicate the Qualifying Project(s) for which they wish to be invited to tender.
- (B) Questions in the Pre-Qualification Questionnaire which are required to be completed by the Applicant should be answered by, in the case of an Applicant which is a single entity, that entity, and in the case of an Applicant which is a consortium, the lead member of that consortium.
- (C) Certain questions in the Pre-Qualification Questionnaire require that information be provided in relation to individual members of a consortium Applicant, in which case the lead member of a consortium Applicant must provide information in relation to each consortium member ensuring that such information is clearly identified as relating to that consortium member.
- (D) Ofgem recognises that in the case of a consortium not every consortium member will, for example, be able to provide examples of experience requested. Ofgem's evaluation will look at the capabilities of the consortium taken as a whole.
- (E) The Pre-Qualification Questionnaire should be completed in English.

### 2.1.3 Bidder Day

Ofgem is hosting a "bidder day" at its office at 9 Millbank, London, SW1P 3GE on 23 July 2009.

### 2.1.4 Clarification

- (A) If an Applicant has a query in relation to any aspect of the Pre-Qualification Document or its Pre-Qualification Submission, it may submit that query via the Portal provided that queries are submitted no later than 17 August 2009. There will be no direct interface between Applicants and Developers and Applicants must not attempt to contact Ofgem for clarification other than via the Portal.
- (B) Ofgem will endeavour to provide responses as soon as reasonably possible, although it is likely that the timeframe within which Ofgem will respond will vary on a case-by-case basis depending on the nature of the

clarification requested. All responses from Ofgem will be provided via the Portal. Ofgem may issue responses in batches on a weekly basis.

- (C) Ofgem's response to an Applicant's query may be made available to all Applicants although the identity of the Applicant which raised the query will remain confidential. However, if Ofgem believes that an Applicant's query is sufficiently specific and confidential to that Applicant, Ofgem may at its discretion opt to provide its response solely to that Applicant.

## 2.2 **Pre-Qualification Submission**

### 2.2.1 **Deadline for Pre-Qualification Submission**

Each Applicant's Pre-Qualification Submission must be submitted via the Portal no later than 12 noon on 24 August 2009. Once a Pre-Qualification Questionnaire has been submitted via the Portal, the Applicant will receive confirmation that its Pre-Qualification Questionnaire has been received.

### 2.2.2 **Detailed Instructions on Form and Contents of Pre-Qualification Submission**

Applicants must complete one Pre-Qualification Questionnaire in respect of all the Qualifying Projects for which they wish to be invited to tender (i.e. not a separate one for each Qualifying Project for which they wish to be invited to tender). Pre-Qualification Submissions should be submitted via the Portal in accordance with the requirements set out in this Pre-Qualification Document.

Pre-Qualification Submissions should contain the following:

- (A) a completed Pre-Qualification Questionnaire, together with optional and/or required supporting documentation, in the form set out at Appendix B to this Pre-Qualification Document; and
- (B) a completed Applicant's checklist in the form set out in Appendix C to this Pre-Qualification Document; and
- (C) confirmation that the non-refundable payment of £5,000 has been transferred to Ofgem (see Ofgem's cost recovery methodology set out in the Tender Rules for details).

No other documents or information should be submitted with the completed Pre-Qualification Submission.

- 2.2.3 Ofgem is relying on the information provided by Developers and Applicants before and during the Tender Process (including but not limited to, for Applicants, the information concerning the members and structure of their consortia where relevant). If, at any time following the making of any Pre-Qualification Submission and before Ofgem publishes the longlist of Qualifying Applicants, there are any material changes or proposed material changes to the information provided in the relevant Pre-Qualification Submission, or an Applicant becomes aware that information previously submitted is no longer true or accurate, such Applicant must advise Ofgem as soon as is reasonably practicable. For the avoidance of doubt, where an Applicant informs Ofgem of any such material change or proposed material change, Ofgem shall be entitled to re-evaluate that

Applicant's Pre-Qualification Submission in light of that material change or proposed material change.

## 2.3 Evaluation of Pre-Qualification Submission

### 2.3.1 Ofgem's Right to Seek Clarification/Further Information from Applicants

Following receipt of the Pre-Qualification Submissions, Ofgem will undertake a completeness check. If Ofgem identifies any omissions from the information required to be provided by an Applicant it will notify the relevant Applicant and give that Applicant 48 hours to rectify the omission. Ofgem may invite Applicants to clarify their Pre-Qualification Submission at any time.

### 2.3.2 Identification of compliant Submissions

A Pre-Qualification Submission will only be deemed to be compliant if it includes all of the material and fulfils all of the requirements set out in the Applicants' Checklist at Appendix C.

### 2.3.3 Evaluation Process

#### (A) Evaluation Criteria

The purpose of the Pre-Qualification Stage is to determine those Applicants that meet the criteria to be Qualifying Applicants by assessing whether an Applicant has sufficient economic and financial standing, management and operational capability and legal standing, based on the Applicant's current standing and track record, to satisfy Ofgem that the Applicant is capable of (i) taking over ownership of the Qualifying Project(s) for which it wishes to be invited to tender and (ii) assuming the responsibilities and duties associated within being an OFTO. Where the Applicant is a consortium, this assessment will be based on the current standing and track record of the consortium taken as a whole.

Applicants are required to demonstrate through their responses to certain questions that they meet the criteria on a pass/fail basis.

The criteria relevant to each section of the Pre-Qualification Questionnaire are set out below:

#### **Section 2 – Organisational structure**

An Applicant must provide details and evidence of its ownership and, organisational structure.

#### **Section 3 – Economic and financial standing**

An Applicant must demonstrate that it has the necessary financial strength to be considered viable to support the proposed expenditure level (on the basis of the aggregate of Ofgem's estimated transfer values for the Qualifying Project(s) for which the Applicant wishes to be invited to tender).

Where the Applicant proposes a combination of Corporate Finance and external financing, it should provide answers to the relevant questions in this section.

#### **Section 4 – Management and operational capability**

An Applicant must demonstrate that it has the necessary expertise to manage and operate an essential services asset or regulated infrastructure asset of similar size and complexity to the Qualifying Project(s) for which the Applicant wishes to be invited to tender.

#### **Section 5 – Legal standing, pending litigation and potential conflict issues**

An Applicant must demonstrate that it satisfies the minimum legal requirements in order to be granted an Offshore Transmission Licence, that it is not involved in any relevant material litigation and that it does not have any potential conflicts of interest which materially detract from its ability to tender for, manage and operate the nominated Qualifying Project(s).

At this stage of the Tender Process, Applicants are required to provide a methodology statement for managing conflicts of interest, for information purposes only. However, Ofgem reserves the right to evaluate this information as part of future stages if the Applicant is taken forward.

#### **Section 6 – Certificate**

A duly authorised officer of the Applicant is required to confirm the statements in section 6. An Applicant who does not satisfy the criteria in section 6 will have its Pre-Qualification Submission rejected and such Pre-Qualification Submission will not be considered further.

In relation to statement (C) in this section, an Applicant will not be required to initial and sign where it can demonstrate that any relevant bankruptcy or other insolvency related claim is vexatious or not material in the context. In evaluating an Applicant's response to statement (C), Ofgem will consider whether an Applicant's explanation raises or fails to answer concerns over its ability to service the anticipated finance liabilities of an OFTO.

- (B) Applicants are also required to provide information in response to certain questions in the Pre-Qualification Questionnaire which may be used by Ofgem to contextualise a wider evaluation.

Some of the questions contained within the Pre-Qualification Questionnaire are included in order to allow the Applicant to demonstrate that it meets the minimum legal requirements required of all licensees.

#### **2.3.4 Qualifying Applicants to enter the Qualification to Tender Stage**

- (A) The objective of the evaluation process is to assess the Pre-Qualification Submissions in order to identify all the Applicants that pass the criteria and may therefore enter the Qualification to Tender Stage.

- (B) Pre-Qualification Submissions will be checked against the criteria for compliant Submissions. Pre-Qualification Submissions which satisfy the criteria for compliant Submissions will proceed to the next evaluation stage.
- (C) Compliant Submissions will then be evaluated against the evaluation criteria, as set out in paragraph 2.3.3, on a pass/fail basis. All Applicants that are evaluated as passing each and all of the criteria will qualify to take part in the Qualification to Tender Stage.
- (D) Ofgem will notify the Applicants of the outcome of the evaluation by publishing a longlist of those Applicants who have passed each and all of the criteria.

## 2.4 **Withdrawal, cancellation and disqualification**

2.4.1 Parts 10, 11 and 12 of the Tender Regulations and sections 12, 13 and 14 of the Tender Rules set out circumstances in which Applicants may withdraw or be excluded from the Tender Round and the consequences of such withdrawal or exclusion.

2.4.2 Ofgem reserves the right:

- (A) to reject any Pre-Qualification Submission that, in Ofgem's opinion, fails to comply with the requirements for Pre-Qualification Submissions set out in the Pre-Qualification Document; and/or
- (B) to exclude any Applicant that fails to comply with the Tender Regulations and/or the Tender Rules,

although, subject to the Tender Regulations, Ofgem shall not be obliged to reject any such Pre-Qualification Submissions or exclude any such Applicants in such circumstances.

## 2.5 **Unsuccessful Applicant Feedback**

In the event that a Pre-Qualification Submission is unsuccessful, the relevant Applicant will not be invited to participate in the Qualification to Tender Stage of any Qualifying Project in the current Tender Round. Any request for feedback must be made within one month of an Applicant receiving notification that it has been unsuccessful. Ofgem will provide feedback to any unsuccessful Applicant who requests it within a reasonable timeframe.

## APPENDIX A: GLOSSARY

"**Applicant**" means an entity that submits or proposes to submit a Pre-Qualification Submission;

"**Authority**" means the Gas and Electricity Markets Authority;

"**BAFO**" means the best and final offer that may be requested by Ofgem from some or all of the Qualifying Bidders;

"**BAFO Document**" means, in respect of a particular Qualifying Project, the document which will be delivered to each Qualifying Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO stage;

"**BAFO Stage**" means the period starting from the distribution of the BAFO Document to selected Qualifying Bidders by Ofgem, and including BAFO preparation, submission and evaluation, and ending when a Preferred Bidder is selected;

"**BAFO Submission**" means a selected Qualifying Bidder's response to the BAFO Document;

"**Bid**" means each bid submitted to Ofgem in response to an ITT Document;

"**Corporate Finance**" means any finance provided by the company without recourse to external parties, e.g. intercompany loans, where the shareholders or parent company are the sole source of finance;

"**Confidentiality Agreement**" means a confidentiality agreement in substantially the same form as provided through the Portal;

"**Data Room**" means, in respect of a Qualifying Project, an electronic data room populated by Ofgem with information provided by the relevant Developer which is made available to applicable Qualifying Bidders through the Portal;

"**Debt Finance**" means non-recourse or limited recourse senior debt finance;

"**Developer**" means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act which has developed or is developing an offshore generating station which requests that Ofgem commences a Tender Process in respect of a proposed project;

"**Electricity Act**" means the Electricity Act 1989 as amended from time to time;

"**Equity Finance**" means any direct equity and mezzanine finance;

"**Information Commissioner**" has the meaning given to that term in the Data Protection Act 1998 as amended from time to time;

"**ITT Document**" means, in respect of a particular Qualifying Project, the document, which will be made available to each Qualifying Bidder invited to submit a Bid for that Qualifying Project, and which sets out the rules and requirements of the ITT Stage;

**"ITT Stage"** means the period starting from the distribution of the ITT Document to Qualifying Bidders by Ofgem, and including Bid preparation, submission and evaluation, and ending when either a Preferred Bidder is selected or a BAFO Stage is commenced;

**"Offshore Transmission Licence"** means a licence granted pursuant to section 6(1)(b) of the Electricity Act in relation to the transmission of electricity offshore, where offshore 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
- (c) waters within an area designated under section 84(4) of the Energy Act 2004.

**"Offshore Transmission System"** means the onshore and offshore transmission system in respect of which an Offshore Transmission Licence is (or is to be) granted or anything which forms part of that system;

**"Ofgem"** means the office of Gas and Electricity Markets;

**"OFTO"** means the holder of an Offshore Transmission Licence;

**"Participant"** means an Applicant, a Qualifying Applicant, a Qualifying Bidder, a Preferred Bidder, a Reserve Bidder and/or a Successful Bidder (as applicable);

**"Portal"** means the Offshore Transmission Electronic Tendering Portal described in section 4 of the Tender Rules;

**"Preferred Bidder"** means, in relation to a Qualifying Project, the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the Qualifying Bidder to which it intends (subject to the satisfaction of the conditions specified by Ofgem) to grant the Offshore Transmission Licence;

**"Preliminary Information Memorandum"** means the preliminary information memorandum provided to via the Portal which contains high level information in relation to a Qualifying Project;

**"Pre-Qualification Document"** means this document prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Applicants to progress to the Qualification to Tender Stage and which sets out the rules and requirements of the Pre-Qualification Stage;

**"Pre-Qualification Questionnaire"** means the Pre-Qualification questionnaire made available at the Pre-Qualification Stage, as part of the Pre-Qualification Document, to entities which have registered on the Portal;

**"Pre-Qualification Stage"** means the period starting from the publication of the Pre-Qualification Document, including the preparation, submission and evaluation of Pre-Qualification Submissions and ending once Ofgem has published the longlist of Qualifying Applicants who have prequalified for the Qualification to Tender Stage;

**"Pre-Qualification Submission"** means an Applicant's response to the Pre-Qualification Document;



**"Qualifying Applicant"** means an entity invited to submit a Qualification to Tender Submission;

**"Qualifying Bidder"** means an entity invited to submit a Bid to Ofgem in response to the ITT Document;

**"Qualifying Project"** means any offshore generating project in respect of which Ofgem determines that the Developer has satisfied the pre-conditions described in section 5 of the Tender Rules or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will satisfy the relevant pre-conditions within a period specified by Ofgem;

**"Qualification to Tender Document"** means the document prepared and issued by Ofgem for the purpose of selecting Qualifying Bidders to progress to the ITT Stage and which sets out the rules and requirements of the Qualification to Tender Stage;

**"Qualification to Tender Stage"** means the period starting from Ofgem publishing the longlist of Qualifying Applicants who have prequalified, including the preparation, submission and evaluation of Qualification to Tender Submissions and ending once Ofgem has notified the Qualifying Applicants of its selection of Qualifying Bidders for the Qualifying Projects;

**"Qualification to Tender Submission"** means a Qualifying Applicant's response to the Qualification to Tender Document;

**"Related Party"** or **"Related Parties"** means in relation to Ofgem, a Participant or a Developer (as applicable) its employees, officers, directors, officials, funders, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates and in relation to a Participant the employees officers, directors, officials, funders, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates of any entity which is a member of the Participant's consortium;

**"Reserve Bidder"** means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the second choice Qualifying Bidder 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;

**"Successful Bidder"** means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence;

**"Tender Process"** means the competitive process run by Ofgem in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in relation to a particular Qualifying Project;

**"Tender Regulations"** means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009;

**"Tender Round"** means the Tender Processes run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects;

**"Tender Rules"** means the rules relating to the Tender Round published by Ofgem pursuant to regulation 7(4) of the Tender Regulations (as amended by documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Process); and

**"Transitional Regime"** means a Tender Round for the grant of Offshore Transmission Licences where the transmission assets have been or are being constructed by Developers and where the Developer meets certain pre-conditions to the satisfaction of the Authority.

## **APPENDIX B: PRE-QUALIFICATION QUESTIONNAIRE**

This Appendix sets out the detailed questions that Applicants are required to answer at the Pre-Qualification stage of the process. The purpose of this stage is to identify those Applicants that meet Ofgem's evaluation criteria. Those that meet the criteria will be longlisted and invited to participate in the Qualification to Tender stage of the process.

Applicants are required to demonstrate through their responses to certain questions that they satisfy meet the criteria on a pass/fail basis. Applicants are also required to provide information in response to certain questions which will be used for information purposes only, although this may be used to contextualise a wider evaluation.

The Pre-Qualification Questionnaire contains the following sections:

1. Identification data
2. Organisational structure
3. Economic and financial standing
4. Management and operational capability
5. Legal standing, pending litigation and potential conflict issues
6. Certificate
7. Confidentiality

### **Section 1 Identification data**

Please provide the following:

- A) the full name, registered address, telephone and fax numbers of the Applicant (and each member of the consortium, if the Applicant is a consortium);
- B) the name, position, address, e-mail address, telephone and fax numbers for the principal contact for the Applicant. Where the address provided is not an address in Great Britain, please provide an address in Great Britain for the service of documents; and
- C) details, if applicable, of the Applicant's legal, financial, technical, communications or other key professional advisers in relation to the Tender Process(es) and Qualifying Project(s).

### **Section 2 Organisational structure**

Please provide the following:

- A) details of the Applicant's full registered name and, if applicable, number or other identification, the full names and address of the Applicant's current directors (including any shadow directors within the meaning of section 251 of the Companies Act 2006), authorised signatories, principal shareholders, registered office and place of incorporation (or equivalent) stating whether the Applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (in which case it should give details of its legal status) and where the Applicant is a consortium, those details for each consortium member and, if applicable, the consortium vehicle itself.

- B) details of the Applicant's (and if a consortium each of its members) holding company or parent undertaking (if applicable) including details of such Applicant's and consortium member's position in the relevant group structure and (if not provided above) such Applicant's and consortium member's name, registered number and registered office (or equivalent), place of incorporation, the names of such Applicant's and consortium member's current directors, principal shareholders and, if different, owners of the ultimate holding company or parent undertaking.
- C) where any person (other than a person whose name is given in response to question (B) holds 20% or more of any class of shares of an Applicant (or if a consortium any of its members), the name and address of each such person, specifying in each case the number of shares held and the percentage of the aggregate number of shares of that class represented by such shareholding.
- D) where the Applicant (or if a consortium any of its members) is neither a body corporate nor a sole trader, the Applicant shall provide the name(s) and address(es) of the person or persons in whom effective control of the Applicant or consortium member rests.
- E) particulars of any licences under the Electricity Act 1989 (as amended) or Gas Act 1986 (as amended) held, applied for (whether or not successfully), or intended to be applied for by the Applicant, any member of its consortium or (so far as is known to the Applicant) by any Related Party to the Applicant or consortium members.

### **Section 3 Economic and financial standing**

Please provide the following:

- A) details of the Qualifying Project(s) for which the Applicant wishes to be invited to tender and a calculation, based on Ofgem's figures as published in the Preliminary Information Memorandums, of the aggregate of Ofgem's estimated transfer values of the Qualifying Project(s) for which it wishes to be invited to tender;
- B) where the Applicant proposes to fund the Qualifying Project(s) using Corporate Finance, evidence to demonstrate that the net assets of the Applicant (or if a consortium, the net assets of the consortium members as a whole) are equal to or more than 120% of the aggregate of Ofgem's estimated transfer values of the Applicant's preferred Qualifying Project(s);
- C) where the Applicant proposed to fund the Qualifying Project(s) using external finance, the debt or equity split which the Applicant is assuming across the Qualifying Project(s) for which it wishes to be invited to tender, based on 120% of Ofgem's estimated transfer values of these Qualifying Project(s), together with evidence of the following for the proposed total expenditure for each of Debt Finance and Equity Finance in the proposed financing structure:

#### **Equity Finance**

That the Applicant has either:

- i) net assets of at least 100% of its projected equity investment; or
- ii) a proven track record of raising equity totalling at least 100% of its projected Equity Finance in the last five years; or

- iii) a comfort letter from a sufficiently robust financial institution stating their intent to provide to the Applicant the projected Equity Finance.

in each case based on 120% of the aggregate of Ofgem's estimated transfer values of the Applicant's preferred Qualifying Project(s).

#### **Debt Finance**

That the Applicant has:

- i) a proven track record in the last five years of raising debt totalling at least 100% of its projected Debt Finance; or
- ii) a proven track record in the last five years of investing in infrastructure assets or businesses with existing debt totalling at least 100% of its projected Debt Finance; or
- iii) A comfort letter from a sufficiently robust financial institution stating their willingness to lend the projected Debt Finance to the Applicant.

in each case based on 120% of the aggregate of Ofgem's estimated transfer values of the Applicant's preferred Qualifying Project(s);

- D) where the applicant proposes a combination of Corporate Finance and external financing, it should provide answers to B) and C) above.
- E) copies of the last three years' audited financial accounts (or equivalent), or for the period that is available if trading for less than three years, of the Applicant (and if a consortium, of each of the members of the consortium) and (if applicable) the ultimate holding company/parent entity (or equivalent legal body) of each such entity;
- F) a statement, as at the date of the Applicant's most recent annual report and accounts of any contingent liability or loss (where not otherwise reported) that would require disclosure in accordance with International Accounting Standard 10 (and if a consortium, the same information in relation to each of the consortium members); and
- G) if the Applicant's most recent audited balance sheet is more than ten months out of date, a copy of the Chairman's half-yearly statement (if available) and a statement signed by the director responsible for financial matters setting out any known significant changes in the current financial position from the last available audited balance sheet (and if a consortium, the same information in relation to each relevant consortium member).

#### **Section 4 Management and operational capability**

Please provide the following (the response to this section in aggregate (excluding any policies uploaded in response to question (E) should be no more than 10 sides of A4):

- A) up to five examples of the Applicant's (and if a consortium any of its members) experience obtained in the past five years in infrastructure ownership and/or management. The response should include details of the assets owned or managed, including type and value, period over which the asset has been in ownership and/or under management and the managerial roles and responsibilities undertaken by the Applicant (or relevant consortium member as applicable);

- B) using the examples in A) above, details of the experience that the Applicant (and if a consortium any of its consortium members) has of managing infrastructure to specified operational performance standards;
- C) using the examples in A) above, details of the experience that the Applicant (and if a consortium any of its members) has in obtaining and managing the necessary resources and/or contracts to undertake infrastructure operation and maintenance;
- D) using the examples in A) above, details of the experience that the Applicant (and if a consortium any of its members) has in engaging with external stakeholders to undertake the infrastructure management; and
- E) using the examples in A) above, details of the experience that the Applicant (and if a consortium any of its members) has in the implementation of business systems that ensure compliance with regulatory and statutory requirements (including health and safety and environmental). Copies of relevant main policy documents should be uploaded to the Portal to support this response.

**Section 5      Legal standing, pending litigation and potential conflict issues**

Please provide the following:

- A) a statement identifying any existing conflicts of interest of which the Applicant or any consortium member is aware or any potential conflicts of interest which could arise if the Applicant (or if a consortium any of its members) is selected as a Qualifying Applicant, Qualifying Bidder, Preferred Bidder, Reserve Bidder or Successful Bidder, including with respect to:
  - i) the business separation requirements set out in the standard and special conditions of the Offshore Transmission Licence,
  - ii) the requirements of the EU Second Package (Directive 2003/54/EC of the European Parliament and the Council), and
  - iii) any conflicts of interest arising as a result of any Developer bidding for its own assets,

to the extent that these are applicable.

As part of this, please also provide a methodology statement setting out the procedures adopted to manage these conflicts during the Tender Process and the procedures which would be adopted if the Applicant was selected as an OFTO;

- B) details of any actual, pending or threatened regulatory enforcement action taken against the Applicant (and if a consortium any of its members) in any sector;
- C) either:
  - i) particulars of any criminal convictions of the Applicant, any consortium member and any person specified by the Applicant or any consortium member in response to questions A) to D) in section 2 above (other than offences under the Road Traffic Offenders Act 1988 or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974); or

- ii) a statement signed by a duly authorised officer of the Applicant that there are no such convictions; and
- D) to the extent not already disclosed as part of the Applicant' answers to the Pre-Qualification Questionnaire, particulars of whether during the last six years, any prosecutions have been instigated or threatened, cautions given, notices served or other action taken against the Applicant or individuals related to the Applicant (and if a consortium any of its members) for whom any details are required to be provided in response to the questions under section 2 of this Pre-Qualification Questionnaire for contraventions of environmental legislation (including town and country planning legislation) including in the case of prosecutions details of charges, dates and venues of hearings, verdicts of the court and penalties, if found guilty.

## **Section 6 Certificate**

Each Applicant must have a duly authorised officer of the Applicant indicate his or her confirmation of statements A) to E) below by initialling next to those statements and signing where indicated below. Initialled and signed copies must then be uploaded on to the Portal as part of an Applicant's Pre-Qualification Submission. In relation to statement C) only, if the duly authorised officer is not able to confirm this statement then he or she need not initial this statement provided that the Applicant provides a written description of the reasons why the duly authorised officer cannot give such confirmation.

"I, acting as a duly authorised officer of [*insert name of Applicant (if a consortium application, the lead member of the consortium)*] and on behalf of [*insert name of Applicant and each of the consortium members if applicable*], hereby confirm that:

- A) the information provided in this Pre-Qualification Submission is true, accurate and complete;
- B) neither [*insert name of Applicant*], [*insert the names of each of the other consortium members if applicable*] nor any of [*its / their*] Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Financial Services and Markets Act 2000, the Tender Regulations, the Tender Rules or the Pre-Qualification Document in preparing or making this Pre-Qualification Submission;
- C) the Applicant is not aware of any application to place the Applicant, any other consortium member or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced;
- D) the Applicant is acting as a principal in the Tender Process and not as an agent for any undisclosed person and the Applicant and each of the other consortium members (if applicable) have expressly authorised me to act on their behalf in making this Pre-Qualification Submission;
- E) the Applicant and each of the other consortium members (if applicable) hereby consent to the disclosure by Ofgem to Ofgem's Related Parties for the purposes of the Tender Round of any information given to Ofgem either before or during the Tender Process(es) by such Applicant or consortium member; and

- F) the Applicant understands the obligations of an OFTO to comply with the standard and special conditions in the Transmission Offshore Licence (including standard licence condition E7 relating to ring-fencing of the OFTO).

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: \_\_\_\_\_

### **Section 7 Confidentiality**

The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Applicant should identify which part(s) of its Pre-Qualification Submission are provided in confidence and provide reasons why it considers the information is eligible for exemption under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should therefore be kept confidential. However, Ofgem is not bound by any such statement but will take them into account in considering whether an exemption applies.



## APPENDIX C: APPLICANT'S CHECKLIST

Applicants should tick the appropriate box for each question or provide a brief explanation where indicated.

Question	Yes	No	If no provide a brief explanation
<b>Has the Applicant made the non-refundable payment of £5,000 such that Ofgem has received it in cleared funds?</b>			
<b>Has the Applicant answered the following questions (and provided required evidence)?</b>			
Identification data	1(A)		
	1(B)		
	1(C)		
Organisational structure	2(A)		
	2(B)		
	2(C)		
	2(D)		
	2(E)		
Economic and financial standing	3(A)		
	3(B)		
	3(C)		
	3(D)		
	3(E)		
	3(F)		
	3 (G)		
Management and operational capability	4(A)		
	4(B)		
	4(C)		
	4 (D)		
	4 (E)		
Legal standing, pending litigation and potential conflict issues	5(A)		
	5(B)		
	5(C)		
	5(D)		
Certificate	6(A)		
	6(B)		
	6(C)		
	6(D)		
	6(E)		
	6(F)		
Confidentiality statement	7		