

Tender Guidance Note on Process to Asset Transfer: Addendum

Document type: Guidance

Date of publication: February 2010

Target audience: Qualifying Bidders, wind farm developers and other interested parties.

Overview:

This document is an addendum to the Tender Guidance Note on Process to Asset Transfer previously published in October 2009. Ofgem may update this addendum from time to time or produce further addenda.

Email: offshoretransmission@ofgem.gov.uk

Team: Offshore Transmission Regime Development Team, E-Serve Commercial.

Document Revision History

Version	Date	Description
V1.0	February 2010	Addendum to Tender Guidance Note on Process to Asset Transfer

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Addendum

Finalisation of transaction documents

1.1. Ofgem issued a Tender Guidance Note on Process to Asset Transfer at the Qualification to Tender (QTT) stage for the First Round Transitional Projects. The initial Guidance Note set out that Ofgem would issue further guidance at the Invitation to Tender (ITT) stage. This document provides further detail on specific aspects of the process to asset transfer.

1.2. In accordance with The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (the Tender Regulations) following selection of a Preferred Bidder Ofgem will publish in a notice the matters to be resolved by the Preferred Bidder before that Preferred Bidder becomes Successful Bidder, how they are to be resolved and by what date. Ofgem may discontinue the tender exercise with the Preferred Bidder and, where a Reserve Bidder has been appointed, may determine to treat the Reserve Bidder as if it were the Preferred Bidder where (amongst other things) the Preferred Bidder does not resolve such matters to Ofgem's satisfaction.

1.3. Following selection of a Preferred Bidder, the Preferred Bidder will be expected to move promptly to finalise all transaction documents alongside securing final credit approvals, in accordance with the timescales set out in the Tender Guidance Note on Process to Asset Transfer.

1.4. In the case of the Sale and Purchase Agreement (SPA) and other ancillary legal documents governing the transfer of the assets and ongoing interfaces, the Preferred Bidder and windfarm developer will jointly work to finalise the relevant documents. Ofgem will set out subsequently the details of its role in this process to each relevant Preferred Bidder and windfarm developer. As set out in the ITT document, the ITT submission provided by the Preferred Bidder will be fully reflective of the final project SPA made available by wind farm developers. Ofgem acknowledge that in certain areas however, developers may be in a position to provide updates to the final project SPA and that this could lead to a reduction in the tender revenue stream previously submitted by the selected Preferred Bidder. Ofgem would consider permitting such a specified reduction in the Tender Revenue Stream through a tender revenue confirmation process. Details of this process would be provided to the Preferred Bidder. Subject to paragraphs 1.10 – 1.11, no other changes in the tender revenue stream are anticipated as a result of the finalisation of the SPA and other ancillary legal documents.

1.5. In the case of O&M agreements, insurance and any other subcontracting arrangements, it is currently anticipated that the Preferred Bidder would conclude negotiation of these documents independently with relevant counterparties.

1.6. The windfarm developer is required under the Connection and Use of System Code (CUSC) to enter into an interface agreement with the OFTO in a form to be

agreed between them but based substantially on the form set out in Exhibit O to the CUSC (a similar requirement on the OFTO is contained in the System Operator Transmission Owner Code). The Preferred Bidder and the windfarm developer will work independently to finalise the interface agreement and, in doing so, are referred to the matters set out in the Clarification on Form of Interface Agreement(s) released by Ofgem in December 2009.

1.7. In the case of the Crown Estate Lease, Ofgem will arrange for the Preferred Bidder to engage directly with the Crown Estates to finalise the lease and other relevant documents (such as crossing agreements). We understand that Crown Estates do not anticipate any changes to this document save for finalisation of minor drafting.

1.8. In the case of the Special Licence Conditions Ofgem will engage with the Preferred Bidder to make them aware of any finalisation being undertaken by Ofgem.

1.9. In the case of the Preferred Bidder's financing documents, the Preferred Bidder will be required to complete finalisation of these in accordance with the timescales set out in the Tender Guidance Note on Process to Asset Transfer.

Changes to Transmission Assets following ITT Submission

1.10. Following the release of the final project SPA and the freezing of the data room prior to ITT submissions, there may be changes in respect of the transmission assets that may lead to a material change in the submission made by Qualifying Bidders. This is more likely to be the case for projects which are still in the final stages of construction.

1.11. Where possible, such new information may be released to Qualifying Bidders prior to selection of a Preferred Bidder for incorporation into revised ITT submissions. Where this is not possible, Ofgem recognise that such factors may need to be incorporated into relevant transaction documents (including but not limited to the SPA) following selection of a Preferred Bidder. In certain cases parties may consider that this should also result in a change (positive or negative) to the submitted tender revenue stream. Ofgem would consider permitting such a change in the tender revenue stream through the tender revenue confirmation process.