

Annex 1 – Table of detailed proposed changes to Tender Regulations 2009

Proposed changes to regulations relating to enduring projects

2009 Regulations No.	Proposed 2010 Regulations No.	Proposed change	Rationale
N/A	6 – Assessment of costs incurred in connection with pre-construction works	New regulation to enable us to assess the economic and efficient costs incurred by developers for pre-construction works and for this value to be used in the transfer of these works to the successful bidder. The regulation also enables us to recover the costs associated with this assessment.	To implement the 'minded to' position in December document to allow developers to be remunerated for efficiently incurred pre-construction works costs.
N/A	11 – Stages of a tender exercise	New regulation setting out stages of a tender exercise and which inserts optional QTT stage to the enduring tender process.	i) To improve clarity of the stages in a transitional and enduring tender process. ii) The December document set out a 'minded to' position to move to a single stage qualification for the enduring regime. However, after further consideration, we consider it would be prudent to provide for an optional QTT stage. This change is also reflected in regulation 13.
Schedule 2 – Entry Conditions, paragraph 1(a)	Schedule 2 – Entry Conditions, paragraph 1(a)	Strengthened requirement on developers to provide information to enable us to issue an information memorandum	To clarify that the provision of information is to our satisfaction. This will assist the smooth operation of the

		and establish a data room.	tender process by ensuring that the information provided must be to a particular standard.
N/A	Schedule 2 – Entry Conditions, paragraph 1(b)	New requirement for developers to provide an undertaking that where information provided for the information memorandum and data room has changed, to update this accordingly.	To enable us to provide accurate information to bidders at key stages of the tender process.
Schedule 2 – Entry Conditions, paragraph 1(b)	Schedule 2 – Entry Conditions, paragraph 1(c)	Drafting change to extend warranty provided to cover any updated information.	To reflect change in 1(b).
N/A	Schedule 2 – Entry Conditions, paragraph 1(d)	Requirement for developers to sign the confidentiality agreement in advance of tenders commencing.	To facilitate the release confidential information to qualifying bidders, once qualifying bidders have counter-signed the agreement.
N/A	Schedule 2 – Entry Conditions, paragraph 1(e)	Requirement for developers to demonstrate that the consents and property rights for the pre-construction works that are capable of being assignable to the successful bidder are so assignable.	To facilitate the smooth transfer of relevant consents and property rights for any pre-construction works from developer to successful bidder.
N/A	Schedule 2 – Entry Conditions, paragraph 1(f)	Requirement for developers to demonstrate that the contracts for any pre-construction works are assignable to the successful bidder.	To facilitate the smooth transfer of relevant contracts for any pre-construction works from developer to successful bidder.
N/A	Schedule 2 – Entry Conditions, paragraph 1(g)	Requirement for developers to provide a statement setting out details of their connection requirements.	To enable us to clearly set out the developer’s specification for the tender in tender documentation. This should help to ensure a more effective tender process.

N/A	Schedule 2 – Entry Conditions, paragraph 1(h)	Requirement for developers to provide a statement setting out the scope of pre-construction works and an undertaking to update this statement where such works change.	To enable us to clearly set out the developer’s specification for the tender in the tender documentation. This should help to ensure a more effective tender process.
N/A	Schedule 2 – Entry Conditions, paragraph 1(i)	Requirement that in instances where a developer is or will undertake pre-construction works, it must populate the standard pre-construction works transfer agreement, and an undertaking to update this agreement	To provide an appropriate and standard mechanism for the transfer of pre-construction works from the developer to the successful bidder.
N/A	Schedule 2 – Entry Conditions, paragraph 1(j)	Requirement for developers to undertake to provide information to us during the evaluation process.	To assist the smooth running of the tender process.
N/A	Schedule 2 – Entry Conditions, paragraph 1(k)	Requirement for developers to respond to queries during the tender process within a reasonable time period.	To ensure that Ofgem and bidder clarifications during the tender process are responded to within a reasonable time period.
N/A	Schedule 2, paragraph 1(l)	Requirement for developers to confirm that their qualifying project is at least [X] years prior to connection date provided set out in the bilateral connection agreement with the NETSO.	To implement the ‘minded to’ position in December document. The underlying rationale behind this is that we run a tender process in order to identify an OFTO at the appropriate time for each qualifying project.

Proposed changes to regulations relating to transitional projects

2009 Regulations	Proposed 2010 Regulations	Proposed change	Rationale
3 – Calculation of costs	4 – Calculation of costs incurred in connection with transmission assets for a transitional tender exercise	<p>Amendments to require developers to provide cost information relating to their projects on an ongoing basis up until the assets are available for use.</p> <p>Amendments to enable us to use this information to calculate updated cost estimates during the tender process.</p>	To enable us to update the cost of the transmission assets during the tender process. This will enable us to provide this information to bidders at key stages of the tender process.
4 – Payment of costs	5 – Payment of costs	Where we undertake one or more estimates, we shall recover the costs of this from the developer in accordance with our cost recovery methodology.	To enable us to recover the additional costs associated with these activities in accordance with our cost recovery methodology.
11 – Qualification to tender	14 – Qualification to Tender	Amended to enable us to make the Confidentiality Agreement available earlier in the process.	To enable developers and qualifying bidders to enter into the confidentiality agreement prior to the commencement of the QTT stage, rather than during. This will enable qualifying bidders to access the relevant information about the qualifying project slightly earlier in the process.
Schedule 1 – Qualifying Projects, paragraph 2(b) –	Schedule 1 – Qualifying Projects, paragraph 2(b)	Amended to require developers to ensure that all consents and property rights that are capable of being assigned to successful bidder are assignable.	To assist the smooth running of the tender process.

Schedule 1 – Qualifying Projects, paragraph 2(c)	Schedule 1 – Qualifying Projects, paragraph 2(c)	Amended to require developers to ensure that all contracts are capable of being assigned to successful bidder.	To assist the smooth running of the tender process.
Schedule 2, paragraph 2(a)	Schedule 2, paragraph 2(a)	Strengthened requirement on developers to provide information to enable us to issue an information memorandum and establish a data room.	To clarify that the provision of information is to our satisfaction. This will assist the smooth operation of the tender process by ensuring that the information provided must be to a particular standard.
N/A	Schedule 2 – Entry Conditions, paragraph 2(b) -	New requirement for developers to provide an undertaking that where information provided for the information memorandum and data room has changed, to update this accordingly.	To enable us to provide accurate information to bidders at key stages of the tender process.
Schedule 2 – Entry Conditions, paragraph 2(b) -	Schedule 2 – Entry Conditions, paragraph 2(c) -	Drafting change to extend warranty provided to cover any updated information.	To reflect above change.
N/A	Schedule 2 – Entry Conditions, paragraph 2(d)	Requirement for developers to sign the confidentiality agreement in advance of tenders commencing.	To enable us to release confidential information to qualifying bidders at the start of the QTT stage, once qualifying bidders have counter-signed the agreement.
Schedule 2 – Entry Conditions, paragraph 2(c)	Schedule 2 – Entry Conditions, paragraph 2(e)	Drafting amendments.	To improve the clarity of the requirement on developers to populate the transfer agreement and to update this on an ongoing basis during the tender process.

Schedule 2 – Entry Conditions, paragraph 2(d)	N/A	Deleted requirement to provide undertaking to transfer assets to the successful bidder.	The transfer agreement will be used for the purpose of transferring the assets from the developer to the successful bidder. This condition is no longer needed.
N/A	Schedule 2 – Entry Conditions, paragraph 2(f)	Requirement to ensure that where assets are constructed in phases, these can be separately transferred to successful bidder.	To facilitate a smooth transfer process from developer to successful bidder.
N/A	Schedule 2 – Entry Conditions, paragraph 2(g)	In the event that the developer decides to participate as a bidder in the tender process for the transmission assets it is constructing for its project, this is a new requirement for it to put in place and maintain appropriate internal information barriers.	To insert business separation requirement explicitly into the regulations.
N/A	Schedule 2 – Entry Conditions, paragraph 2(h)	Requirement for developers to respond to queries during the tender process within a reasonable time period.	To ensure that Ofgem and bidder clarifications during the tender process are responded to within a reasonable time period.

Other proposed changes to regulations relating to both transitional and enduring projects

Original regulation No.	New Regulation No.	Proposed change	Rationale
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N/A	2 - Revocation	Insert revocation regulation	To revoke the existing Tender Regulations.
2 - Interpretation	3 - Interpretation	<p>Number of new definitions added to the regulations including; confidentiality agreement and pre-construction works transfer agreement.</p> <p>Removal of Qualifying Applicant and Qualifying Bidder definitions. These participants will be known as Bidders at the PQ stage and Qualifying Bidders at the QTT and ITT stages.</p>	<p>These changes reflect other changes to the regulations.</p> <p>We have simplified the terms used in relation to bidders.</p>
8 – Entry conditions in respect of qualifying projects	9 – Entry conditions in respect of qualifying projects	Sequencing of tender process amended to enable Ofgem to send tender entry conditions letter to developers before tender commencement notice is issued.	To provide developers with more time to meet tender entry conditions.
7 – Commencement of a tender exercise	10 – Commencement of a tender exercise	Requirement on developers to meet certain tender entry conditions prior to publication of the tender commencement notice.	To ensure that developers meet tender entry conditions according to tender process requirements.
9(2) – Pre-qualification stage	12(1)Pre-qualification	Change "qualification documentation" to "pre-qualification documentation".	To permit the QTT document to be released at a later stage for a transitional tender process or where appropriate, an enduring tender process.

13 – Invitation to tender	16(1) – Invitation to tender	Amended to enable us to make the Confidentiality Agreement available at the ITT stage where no QTT is held in the enduring regime.	To enable developers and qualifying bidders to enter into the confidentiality agreement prior to the commencement of the ITT stage, rather than during.
16(4)- Matters to be satisfied by preferred bidder	19(4) - Matters to be satisfied by preferred bidder	Splitting out of matters to be satisfied in enduring and transitional tenders	To provide clarity regarding process.
16(6)- Withdrawal of preferred bidder notice	19(6)- Withdrawal of preferred bidder notice	Added the event of preferred bidder disqualification to allow us to withdraw the preferred bidder notice	To allow us to withdraw the preferred bidder notice in the event that the preferred bidder is disqualified.
17(2) - Withdrawal	20(3)- Withdrawal	Change “may” to “shall” and delete "or any other" in the final sentence.	Where a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from participating in the tender for a particular qualifying project, at our discretion, it may remain in the tender process for a different project. This change accurately reflects our intention and removes ambiguity.
20(1)- Disqualification	23(1)- Disqualification	To extend disqualification events to the preferred bidder, reserve bidder and successful bidder	To facilitate running of tender process.

20(1) - Disqualification	23(1)- Disqualification	To clarify that disqualification is from the whole tender exercise	Where a Preferred Bidder, Reserve Bidder or Successful Bidder is disqualified from participating in a tender exercise for a particular qualifying project, it is not permitted to remain in the tender process for that or any other project. This change accurately reflects our intention and removes ambiguity.
22 – Information in respect of successful bidder	25– Information in respect of successful bidder	Amendment of standstill provisions to require reasons to be given upfront.	Change required to reflect best practice in EC legislation. No change to effect of the provision.
26- Changes to bidder groups	29- Changes to bidder groups	Amendment to reflect that changes to bidder groups in the enduring regime will be at our discretion	To reflect intended process
Schedule 3 - Qualification	Schedule 3 – Pre-Qualification	Amendment to reflect that PQ questionnaire will be released first, then QTT questionnaire	To enable us to issue the QTT questionnaire at the appropriate stage in the process.
Schedule 3 - Qualification, paragraph 1(f)	N/A	Delete paragraph.	This information is not required because it is provided in the Preliminary Information Memorandum, released at PQ.

N/A	Schedule 4 – Qualification to tender	New schedule inserted for qualification to tender stage.	To reflect process change that qualification tender document is released at that stage (rather than at PQ stage).
Schedule 5 – Best and final offer stage	Schedule 6 – Best and final offer stage	To issue rules relating to the best and final offer stage.	To accurately reflect intended process for best and final offer stage.
Schedule 6, paragraphs 1(f),(h) and (i)- Events of cancellation	Schedule 7, paragraphs 1(f),(h) and (i)- Events of cancellation	To include disqualification of the preferred bidder as a cancellation event	To facilitate running of tender process.
N/A	Schedule 7, paragraph 1(j) – Events of cancellation	To make successful bidder withdrawal from tender exercise an event of cancellation.	To facilitate running of tender process.
N/A	Schedule 7, paragraph 1(n) – Events of cancellation	Failing to use reasonable endeavours, to meet Schedule 2, paragraphs 2(b) and (c) is an event of cancellation	To facilitate running of tender process.
Schedule 7- Events of disqualification paragraph 1(a)	Schedule 8 - Events of disqualification paragraph 1(a)	Minor drafting amendment.	To provide clarity.

N/A	Schedule 8 - Events of disqualification paragraph (2)(c)	To make developer breach of any warranties or undertakings provided in accordance with Schedule 2 a disqualification event.	This is implied elsewhere in the regulations and this change is envisaged to provide clarity.
N/A	Schedule 8 - Events of disqualification paragraph (2)(d)	To make the failure to provide information to us in order to estimate or assess costs an event of disqualification.	To help ensure that we obtain the necessary information to undertake cost estimates and assessments.
Schedule 7 – Events of disqualification, paragraph 3(g)	Schedule 8 - Events of disqualification, paragraph 3(g)	Change “the tender exercise in question” to “a tender exercise in respect of a particular qualifying project”	Change required for clarity.