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10 March 2010

Dear Diana

Offshore electricity transmission: response to consultation on draft tender regulations 2010

Further to our letter of 24th February 2010, National Grid Offshore offers the following feedback with regard to proposals for the tender regulations for the enduring regime.

Broadly, we support and agree with the proposals which we consider are a sensible evolution based on the experience of the first Transitional tender process and will be useful to subsequent tender processes. We particularly support the inclusion of provisions that help to ensure the full, transparent, accurate, and timely provision of tender information.

In your reading of this response please do consider that as a bidder in current and subsequent tender processes National Grid Offshore does feel that a contestable enduring regime would benefit from further qualification provisions in Schedule 1 and 2 which seek to ensure that the scope and specification of tenders have broad consensus on their suitability for current and future purposes prior to tender commencement. We welcome the opportunity for early collaborative engagement between Ofgem, Developers, the NETSO and prospective OFTOs to ensure that the possibility for widely variant bids and difficult evaluation processes is minimised.

Not least this is relevant to the reimbursement of a Developer's pre-construction costs referred to in Regulation 6. If, as is intended, the OFTO does have responsibility for design and construction of the offshore transmission works, without early engagement between Developers and prospective OFTOs there can be no guarantee that a Developer's pre-construction works are appropriate. National Grid Offshore strongly encourages Developers to engage with prospective OFTOs as early as possible to ensure that development works are considered collaboratively to achieve consensus on their appropriateness.

We also propose that the Tender Regulations could be used as a means to allow a successful bidder to contribute to the provision of securities that a Developer normally has to provide under the CUSC. This may be especially relevant and beneficial for a Developer with a complex or phased development and is something National Grid Offshore would be interested to explore.

Additional comments in respect of specific regulations are set out in the attached appendix.

We welcome the opportunity to discuss any of these matters further.

Yours sincerely,

Morris Bray

Appendix

Regulation 6

It is not clear if and when a bidder enters into a pre-construction works transfer agreement. This may in itself be a useful test of the relevance of pre-construction works to a bidder. For example, a successful bidder willingly entering into the agreement would suggest the works were efficient. It may be the case, however, that the successful bid does not require the same pre-construction works given that different organisations may have different approaches. This certainly underlines the need for Developers and prospective OFTOs having early engagement to ensure the appropriateness of early works and eliminating any chance of stranded or inefficient works.

It is worth considering the possibility of a bidder reasonably disputing pre-construction works and costs as being most effective and efficient as part of the overall value of a bid. In such a circumstance, a pre-construction works, or other such, disputes process may be appropriate.

Regulations 11, 13 and 14

As set out in our letter of 24th February, we support streamlining of the qualification processes in order to afford more time to tendering and, ultimately, delivery. It may be practicable to consider some form of combined pre-qualification questionnaire and confidentiality agreement to ensure that process requirements are fulfilled as efficiently as possible.

Regulation 20

With respect to paragraphs 20-(2) and 20-(3) please clarify if they are intended to be different in treatment of re-admission to single or multiple qualifying projects. In regulation 20-(2) we noted the reference in the last sentence is to “that and any other qualifying project” whereas in regulation 20-(3) the reference is to “that particular qualifying project” only.

Regulation 23

Similarly to Regulation 20, please clarify if in 23-(1) disqualification is intended to be for a single or multiple qualifying projects. In regulation 23(l) paragraph (4) the reference in the last sentence is to “that particular qualifying project”. Should the reference be to “that and any other qualifying project”?

Regulation 29

It is unclear whether there was meant to be a difference between 29-(1) and 29-(2) (b); the current drafting appears to create an inconsistency. If paragraph 29-(2)(b) is meant to apply when a qualification to tender stage is not to be held, this could be clarified by amending the drafting to “where a qualification to tender stage is not to be held, after a pre-qualification questionnaire has been submitted to the Authority”.

Schedule 2

With respect to paragraphs 1(g) & (h), when the Developer provides a written statement in respect of its connection requirements and pre-construction works we would welcome the Developer’s rationale for these and would welcome consistency of form of the information provided.

With respect to paragraph 1(i), and as mentioned earlier in relation to Regulation 6, it is not clear when a bidder is to become a party to a pre-construction works transfer agreement.

With respect to paragraphs 1(k) and 2(h) we welcome the improvements to the provision of information requirements. We would welcome further definition of what “a reasonable period” would be and particularly where that definition would be found on a project-by-project basis if not in the Regulations themselves.

With respect to paragraph 1(l) we support “X” being as long a timeframe as is practicable whilst appreciating that this will vary dependent on the provisions of the Crown Estate lease.

Schedule 8

With respect to paragraph 1(a) we welcome further clarification regarding the expression an “agreement to collude” and the scope of this provision.

We also make the following suggestion:

Indicatively priced bids

In respect of any indicative pricing that depends upon a supplier mini tender process to obtain firm prices for a final bid, it would be helpful if Ofgem clarified whether it is envisaged that Regulation 18 and Schedule 6 include this process.