


Offshore Electricity Transmission: Tender Rules for the Second Transitional Tender Round



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Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant Offshore Transmission Licences on the basis of a competitive tender process. Ofgem is responsible for managing this process.

This document sets out the Tender Rules relating to the second transitional Tender Round, which will lead to the granting of Offshore Transmission Licences.

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Document Version History

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1	November 2010	Tender Rules for the Second Transitional Tender Round published

Context

Electricity generated from offshore renewable sources is expected to make an important contribution towards the UK achieving its renewable energy targets by 2020. Fit for purpose offshore electricity transmission infrastructure is required to transfer the electricity generated offshore to the onshore network and ultimately to consumers. It is important that this infrastructure is developed in a timely, secure and cost-effective manner. It should also provide best value to present and future electricity consumers, while reflecting the requirements of generators and ensuring that, as far as possible, offshore infrastructure develops in a co-ordinated manner.

The Department for Energy and Climate Change (DECC¹) and Ofgem have developed a regulatory regime for offshore electricity transmission. It was consulted on extensively and refined over four years, culminating in a final statement published in June 2009².

A key part of the regime is that Offshore Transmission Licences can be granted following a competitive tender process run by Ofgem, with the Successful Bidder becoming the Offshore Transmission Owner ('OFTO'). The result will be that the generating assets (offshore wind farms) will be owned and operated by the generator, whilst the Offshore Transmission System, which connects the offshore wind farms to the onshore transmission system, will be owned and operated by the OFTO Licensee.

The Offshore Transmission Licences will place certain rights and responsibilities on OFTOs, including the right to a regulated revenue stream for a period of 20 years in return for the provision of Transmission Services.

These Tender Rules apply to Qualifying Projects included within the second transitional Tender Round for the granting of Offshore Transmission Licences to Successful Bidders, which will commence in November 2010.

¹ And its predecessors, the Department for Trade and Industry and the Department of Business, Enterprise and Regulatory Reform

² This can be found via the following link:

www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf

Associated Documents

Documents Directly Associated with the Second Transitional Tender Round

These Tender Rules should be read in conjunction with the following documents which are directly associated with the second transitional Tender Round:

- [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2010³](#) (the 'Tender Regulations')
- [Cost Recovery Methodology for the Second Transitional Tender Round, September 2010, Ofgem ref: 124/10⁴](#) (the 'Cost Recovery Methodology')

The Tender Regulations also require Ofgem to publish rules particular to the Pre-Qualification (PQ), Qualification to Tender (QTT), Invitation to Tender (ITT) and, if applicable, Best and Final Offer (BAFO) stages of a Tender Exercise. Ofgem will publish the stage-specific rules in advance of the start of each of these stages.

In the event of any conflict between these Tender Rules and the Tender Regulations, the Cost Recovery Methodology, or any of the stage-specific rules, those documents take precedence.

Other Documents Referenced for Information

The below non-exhaustive list of documents provides additional information Ofgem would expect Developers and Participants to be aware of. Many of these documents also include references to other useful documentation not listed below.

- [Joint DECC/Ofgem Statement on the Offshore Transmission Regulatory Regime, June 2009⁵](#)
- [Final Statement on the Competitive Tender Process, June 2009, Ofgem ref: 71/09⁶](#)
- [Transmission Licence Standard Conditions⁷](#)
- [Draft Generic Offshore Transmission Owner Licence \(version 0.7\), October 2010⁸](#)
- [Offshore Transmission Tender Guidance Note: Generic Offshore Transmission Owner \(OFTO\) Licence, September 2010⁹](#)

³http://www.opsi.gov.uk/si/si2010/uksi_20101903_en_1

⁴<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=3&refer=Networks/offtrans/rttt>

⁵<http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf>

⁶<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=85&refer=Networks/offtrans/pdc/cdr/cons2009>

⁷Available via the electronic public register on the Ofgem website: <http://epr.ofgem.gov.uk/>

⁸<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=52&refer=Networks/offtrans/pdc/cdr/Cons2010>

⁹<http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/Cons2010/Documents1/Guidance%20Note%20Generic%20OFTO%20licence.pdf>

- [Guidance on the Offshore Transmission Owner \(OFTO\) of Last Resort Mechanism, February 2010](#)¹⁰

Developers and Participants should also be familiar with the standard industry framework documents that underpin the GB transmission market, for example the industry codes¹¹ and technical standards.

Where any documents that amend the above topics are published subsequent to the publication of these Tender Rules, those documents shall replace the documents referenced above.

¹⁰ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=24&refer=Networks/offtrans/rott>

¹¹ The codes establish detailed rules for industry that govern market operation, the terms for connection and access to energy markets. Further details in relation to the codes relevant to offshore transmission can be found at <http://www.ofgem.gov.uk/NETWORKS/OFFTRANS/SF/Pages/sf.aspx>

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Executive Summary

This document, in conjunction with the Tender Regulations, sets out the rules that Developers and Participants should comply with in participating in the second transitional Tender Round for the granting of Offshore Transmission Licences. A material breach of these Tender Rules or the Tender Regulations by a Developer or Participant could result in disqualification from a Tender Exercise.

Electricity generated from offshore renewable sources is expected to make an important contribution towards the UK achieving its renewable energy targets by 2020. As part of the regulatory regime introduced by government in June 2009 to ensure cost effective development of offshore transmission infrastructure, licences for offshore electricity transmission are granted by means of a competitive tender process, run by Ofgem.

This document outlines the context for Ofgem running the second transitional Tender Round for the granting of Offshore Transmission Licences. It sets out Ofgem's role in running the competitive tender process and provides an overview of the legal framework underpinning the process. This document also summarises key changes from the Tender Rules for the first transitional Tender Round.

This document provides an overview of the key stages within a Tender Exercise and explains how Ofgem expects to run two tranches of Tender Exercises within the second transitional Tender Round. This includes provisional timelines for the two tranches and the dates of key stages within the first tranche of Tender Exercises.

This document outlines the main involvement of Developers and Participants within the second transitional Tender Round and sets out rules for parties participating in, and exchanging information during, the second transitional Tender Round. This includes detailed rules in relation to making Submissions, clarifications and using the Portal. This document sets out the consequences of not adhering to the rules and highlights throughout where certain events of disqualification and cancellation apply.

Finally, this document provides an overview of each stage of a Tender Exercise in the second transitional Tender Round, including the purpose of each stage, the key activities and outcomes and the stage-specific requirements on Developers and Participants.

1. Introduction

1.1. This document sets out the Tender Rules that apply to the second transitional Tender Round¹², which will commence in November 2010 and will lead to the granting of Offshore Transmission Licences.

1.2. These Tender Rules are published by Ofgem pursuant to regulation 9(4) of the Tender Regulations.

1.3. These Tender Rules supplement the Tender Regulations and have been prepared in order to inform Developers, Participants and other interested parties about how Ofgem will run the second transitional Tender Round. They set out the requirements, expectations and obligations on Developers and Participants involved in the second transitional Tender Round. In reading these Tender Rules, Developers and Participants should be aware of the important disclaimers and notices within Appendix 1. Definitions of terms used within these Tender Rules are detailed within the Glossary in Appendix 4.

1.4. These Tender Rules are based on the Tender Rules for the first transitional Tender Round but have been amended to reflect feedback gathered from Developers and Participants and to reflect developments over the course of the first transitional Tender Round. The key changes are:

- restructuring of some sections (eg 'Ofgem's role' and 'Information exchange');
- rationalisation of some content (eg on 'clarifications' and 'Submissions');
- amendments to some areas in relation to changes from the Tender Regulations 2009; and
- removal of the 'Cost Recovery Methodology' Appendix, which has now been published separately by Ofgem.

1.5. In participating in the second transitional Tender Round, each Developer and Participant should comply with the Tender Regulations and these Tender Rules. A material breach of these Tender Rules or the Tender Regulations by a Developer or Participant could result in disqualification from a Tender Exercise.

The Offshore Transmission Regime and the First Transitional Tender Round

1.6. The regulatory regime for offshore transmission encompasses both a transitional and an enduring regime. Section 2 sets out further details on the legal framework for the regime and paragraphs 1.16 to 1.19 below provide details on the development of the enduring regime.

¹² Note that these Tender Rules do not apply to the first transitional Tender Round. The tender rules applicable to the first transitional Tender Round are available at: <http://www.ofgem.gov.uk/Networks/offtrans/rott/Documents1/Offshore%20Electricity%20Transmission%20Tender%20Rules.pdf>

1.7. Under the Transitional Regime Developers are able to construct Transmission Assets which are then transferred to an OFTO appointed through the competitive tender process run by Ofgem. The Developer will transfer ownership of the completed Transmission Assets to a licensed OFTO at a transfer value set by Ofgem following an assessment of costs. OFTOs will then maintain the asset in accordance with the requirements of the Offshore Transmission Licence. For transitional projects, the role of the OFTO is therefore to finance, own and operate an asset that has been constructed by the Developer.

1.8. In June 2009 the Secretary of State for Energy and Climate Change commenced powers to enable modifications to be made to the industry codes and licences for the purposes of offshore transmission ('Go Active'). Following Go Active, Ofgem launched the first transitional Tender Round, which commenced on 22 July 2009, in accordance with the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (the 2009 Tender Regulations¹³).

1.9. Ofgem is currently in the final stages of running Tender Exercises for the first transitional Tender Round, for Transmission Assets valued at £1.1bn across nine projects. Ofgem expects to grant Offshore Transmission Licences for these projects in 2011.

1.10. The Secretary of State has now commenced the remaining statutory provisions ('Go Live') for the Transitional Regime. The government expects to fully commence the relevant provisions of the Energy Acts 2004 and 2008 on an enduring basis following the conclusion of the consultation on the enduring regime, including implementation of the changes required to the standard framework (see paragraph 1.18).

The Second Transitional Tender Round

1.11. These Tender Rules cover the second round of competitive Tender Exercises run by Ofgem under the Transitional Regime in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects.

1.12. Ofgem expects to run two tranches of Tender Exercises within the second transitional Tender Round.

1.13. The first tranche ('tranche A') of Tender Exercises will commence in mid November 2010. This will be for projects that satisfy all Qualifying Project requirements (and subsequently satisfy the necessary tender entry conditions) before tender commencement.

1.14. Ofgem expects that the second tranche ('tranche B') of Tender Exercises will commence in Spring 2012. This will be for projects the Authority has deemed to be Qualifying Projects where it is satisfied that the Developer will use its reasonable endeavours to meet certain outstanding Qualifying Project requirements within a reasonable time period, and by no later than 31 March 2012 (and where the projects subsequently satisfy the necessary tender entry conditions).

¹³ SI 2009/1340

1.15. Further details on the requirements, process and timescales for the second transitional Tender Round are provided within Section 2. Further details on Qualifying Project requirements, tender entry conditions and tender commencement are provided within section 5.

The Enduring Regime

1.16. Alongside the first transitional Tender Round, Ofgem has consulted further on the enduring regulatory framework. This included publication of an open letter on 5 November 2009¹⁴, a consultation document on 18 December 2009¹⁵ and a further open letter on the clarification of transmission losses on 26 January 2010¹⁶.

1.17. Ofgem and DECC published a joint statement in July 2010¹⁷ which set out the intention to consult further on the enduring regime. This was followed in August 2010 by a further consultation on the enduring regime¹⁸, which among other things, sought views on allowing a 'generator build' option to provide offshore generators with additional flexibility and considered the issues associated with implementation of this option. The consultation closed on 29 September 2010.

1.18. On 21 October 2010, Ofgem and DECC published a joint statement announcing the decision to include an enduring generator build option¹⁹. This has been followed by a consultation on changes to the standard framework, which is due to conclude in late November 2010. The consultation will be followed by a decision document, which is likely to be published in December 2010.

1.19. For the avoidance of doubt, Ofgem expects to publish a separate set of Tender Rules that will apply to any Tender Exercises carried out under the enduring regime.

¹⁴ Offshore Electricity Transmission: An Open Letter on the Enduring Regime, November 2009

¹⁵ Offshore Electricity Transmission: Consultation on the Enduring Regime, December 2009

¹⁶ Offshore Electricity Transmission: Open Letter on the Enduring Regime – Clarification of transmission losses, January 2010

¹⁷ Providing additional flexibility in the enduring regulatory regime for offshore electricity transmission: Ofgem/DECC open letter, July 2010

¹⁸ Offshore Electricity Transmission: Further consultation on the Enduring Regulatory Regime, August 2010

¹⁹ Providing additional flexibility in the enduring regulatory regime for offshore electricity transmission: Initial joint decision statement, October 2010

2. Ofgem's role

2.1. The Gas and Electricity Markets Authority (the 'Authority') is the regulator of gas and electricity markets in Great Britain. Ofgem is the Office of Gas and Electricity Markets, which supports the Authority in performing its statutory duties and functions. Whilst the terms 'Ofgem' and 'the Authority' are used interchangeably in these Tender Rules, it is the Authority which is responsible for exercising the relevant statutory powers.

2.2. Appendix 2 summarises the principal powers and duties of the Authority, including the Authority's principal objective to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.

2.3. Under section 6(1)(b) of the Electricity Act, the Authority can grant a licence authorising a person to participate in the transmission of electricity. This extends to include offshore transmission²⁰. (Ofgem also has an ongoing role to ensure compliance of licensees with the provisions of the Offshore Transmission Licence).

2.4. Section 6C of the Electricity Act allows Ofgem to make regulations to run a competitive tendering process in order to determine Successful Bidders who will be granted Offshore Transmission Licences. Ofgem will have regard to its principal objectives and general duties when running the tender process.

2.5. The Energy Act 2008 amended Schedule 2A of the Electricity Act to give Ofgem the ability to make a property transfer scheme (in respect of the Transitional Regime) and the ability to recover its costs for running a competitive tender process. See the Cost Recovery Methodology for details of how Ofgem intends to recover its costs for the second transitional Tender Round. See paragraphs 2.40 to 2.43 for further details on the Schedule 2A Property Transfer Scheme.

²⁰ Section 4(4) of the Electricity Act (as amended by section 89 of the Energy Act 2004) and section 91 of the Energy Act 2004

The Competitive Tender Process

2.6. Ofgem has, where practicable, developed the competitive tender process in accordance with best practice principles. The key objectives of the competitive tender process are:

- the delivery of fit for purpose transmission infrastructure to connect offshore generation;
- the provision of certainty and best value to consumers through the competitive process; and
- attracting new entrants to the sector.

The Tender Regulations and the Tender Rules

2.7. The Tender Regulations, which were made on 22 July 2010 and came into force on 29 July 2010, provide the legal framework for the competitive tender process²¹. The Tender Regulations require Ofgem to publish the Tender Rules and the Cost Recovery Methodology for the second transitional Tender Round in advance of the date on which the first Tender Exercise is to be commenced. Ofgem published the Cost Recovery Methodology for the second transitional Tender Round in September 2010.

2.8. The Tender Regulations also require Ofgem to publish rules particular to the PQ, QTT, ITT and, if applicable, BAFO Stages of a Tender Exercise. Ofgem will publish the stage-specific rules in advance of the start of each of these stages. In the event of any conflict between these Tender Rules and any of the stage-specific rules, the stage-specific rules take precedence.

2.9. These Tender Rules may be updated in documents issued subsequently by Ofgem as part of the second transitional Tender Round, such as the stage-specific rules referenced above. Ofgem also reserves the right to publish revisions to these Tender Rules during the course of the second transitional Tender Round, including before the commencement of tranche B of Tender Exercises.

2.10. These Tender Rules inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Developers, Participants and other interested parties are strongly encouraged to become thoroughly familiar with the Tender Regulations in addition to these Tender Rules. In the event of any conflict between the Tender Rules and the Tender Regulations, the Tender Regulations take precedence.

²¹ The Tender Regulations revoke in their entirety the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, which were in force at the start of the first transitional Tender Round.

2.11. The Tender Regulations set out Ofgem's main role in relation to the second transitional Tender Round, which is to:

- determine the projects (ie Transmission Assets) that qualify for the Tender Round;
- run competitive Tender Exercises in order to determine Successful Bidders who will be granted Offshore Transmission Licences for each Qualifying Project; and
- calculate the economic and efficient costs incurred in connection with developing and constructing the Transmission Assets for each Qualifying Project.

Determining Qualifying Projects

2.12. Section 5 sets out how Ofgem determines Qualifying Projects for the second transitional Tender Round.

2.13. Projects which do not qualify for the second transitional Tender Round will have the opportunity to be considered as part of the enduring regime.

Overview of a Tender Exercise

2.14. The principal stages involved in a Tender Exercise for a Qualifying Project in the second transitional Tender Round will be as shown below (these stages are described in more detail in sections 6 to 11).

2.15. Principal stages involved in a Tender Exercise:



Provisional Timelines

2.16. Below are provisional timelines for tranche A of Tender Exercises within the second transitional Tender Round. Ofgem reserves the right (as detailed within paragraph 2.19 below) to amend the timelines at its discretion and at any time.

2.17. Provisional timelines for tranche A of Tender Exercises:

Stage	Date documentation issued by Ofgem	Date for Submissions to Ofgem
PQ	17 November 2010	10 December 2010
QTT	24 January 2011	25 February 2011
ITT	Mid April 2011 ¹	Late May 2011 ¹
Preferred Bidder announced	Late July 2011 ¹	N/A

¹ Based on the circumstances of the Gwynt-y-Môr project, Ofgem do not expect to commence the ITT Stage for that project at the same time as the other projects within tranche A. Ofgem will seek to commence the ITT Stage for the Gwynt-y-Môr project at a later date, which Ofgem would expect to determine within six months of the identification of the Qualifying Bidder shortlist at the end of the QTT Stage. Ofgem expect to announce the Preferred Bidder for the Gwynt-y-Môr project approximately three months after the start of the ITT Stage.

2.18. Tender Exercises for Qualifying Projects in tranche B are likely to commence in Spring 2012. Ofgem will publish timelines for tranche B of Tender Exercises at a later date.

Ofgem Right to Vary a Tender Exercise

2.19. Subject to the provisions of the Tender Regulations, Ofgem reserves the right to vary any element of a Tender Exercise (including the timelines referred to above), issue supplementary documentation or make additional arrangements at any time during a Tender Exercise in order to clarify any issue or amend any aspect of the Tender Exercise. Any such variation shall only take effect so as to actually vary the Tender Exercise if subsequently confirmed in writing. This includes where Ofgem determines that it is impracticable to complete any action, or to deliver or publish any document or notice, by the time, date or in the manner specified within the Tender Regulations. Ofgem may decide to extend a Tender Exercise and postpone any Submission date in the event of any such amendment.

2.20. Further rules (in addition to those stage-specific rules detailed within paragraph 2.8) may be issued at each stage of a Tender Exercise or in any supplementary

documentation. Where this occurs, those rules should be read in conjunction with these Tender Rules.

2.21. Where the above paragraphs apply, Ofgem will notify Developers and Participants within a reasonable time period.

Cost Estimate/Assessment

2.22. Ofgem must calculate, based on all relevant information available to it at the time, the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project. This process will enable Ofgem to determine the final transfer value (defined below) for these Transmission Assets when they are transferred from the Developer to the Successful Bidder in respect of a Qualifying Project.

2.23. Where the construction of the Transmission Assets has not reached the stage when those Transmission Assets are available for use for the transmission of electricity, this calculation will take the form of an estimate of the costs which ought to be incurred in connection with the development and construction of those Transmission Assets.

2.24. For the purposes of commencing a Tender Exercise for a Qualifying Project, Ofgem will include the cost information that Developers have provided in respect of their Qualifying Projects within the PQ Documentation as the 'initial transfer value' for a Qualifying Project for the purpose of Bidders' PQ Submissions. Use of this information at the PQ Stage is not an endorsement by Ofgem of the basis on which the Developer derived their estimated costs or any assumptions or methodology that the Developer used in their calculations; it will simply be used for the purpose of commencing the Tender Exercise.

2.25. During the PQ Stage, Ofgem will review and analyse this cost information and may request further information from Developers to calculate, for each Qualifying Project, our estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets. This estimate is the 'indicative transfer value' which will be included in the QTT Documentation for the purposes of Bidders' QTT Submissions.

2.26. Ofgem may request further information for the purposes of enabling Bidders to take into account the most accurate estimate of costs in respect of a Qualifying Project in order to meet the requirements of a particular stage. We may therefore update the indicative transfer value for a Qualifying Project as a result of any further information provided by Developers and our continuing analysis. The most up-to-date indicative transfer value for each Qualifying Project will be included in the ITT Documentation. This value will be used for the purposes of the Tender Revenue Stream bids submitted by Qualifying Bidders at the ITT Stage within their ITT Submissions. Similarly, Ofgem may provide further updates to the indicative transfer value during the Preferred Bidder Stage for the purposes of inclusion within the Preferred Bidder's Tender Revenue Stream.

2.27. The Developer must pay the costs associated with the estimate of costs (including any updates to it), as set out within the Cost Recovery Methodology.

2.28. Where the construction of the Transmission Assets has reached the stage when those Transmission Assets are available for use for the transmission of electricity, Ofgem shall assess the costs which ought to have been incurred in connection with the

development and construction of those Transmission Assets. The assessment of costs shall be used by Ofgem to determine the value of the Transmission Assets to be transferred to the Successful Bidder in respect of a Qualifying Project (the 'final transfer value').

2.29. Ofgem intends to commence the process for the assessment of costs during the Preferred Bidder Stage of a Tender Exercise for a Qualifying Project.

2.30. It is expected that Ofgem's assessment of costs and determination of the final transfer value for a Qualifying Project will not be concluded until after the grant of an Offshore Transmission Licence to a Successful Bidder. Ofgem will therefore determine what proportion of the indicative transfer value the Developer should receive on transfer of the Transmission Assets (which, subject to certain matters, will not be less than 75% of the indicative transfer value included in the ITT Documentation). On conclusion of Ofgem's assessment, the deferred consideration (being the difference between the final transfer value and the proportion of the indicative transfer value received by the Developer on transfer) will then be paid by the OFTO to the Developer and the Post Tender Revenue Adjustment mechanism in the Offshore Transmission Licence will be used to reflect the final transfer value.

2.31. The Successful Bidder must pay the costs associated with Ofgem's assessment of costs, as set out within the Cost Recovery Methodology.

Cancellation and Disqualification

2.32. These Tender Rules highlight where certain events of cancellation and disqualification apply. However, this is a non-exhaustive list and Developers and Participants are strongly advised to fully familiarise themselves with the sections on disqualification and cancellation within the Tender Regulations (including the events of cancellation and disqualification²²).

Consequences of Cancellation

2.33. If Ofgem cancels the Tender Exercise for a Qualifying Project it may decide to either:

- re-run the Tender Exercise for the relevant Qualifying Project from the beginning (ie PQ Stage);
- re-run the Tender Exercise for the relevant Qualifying Project from a particular stage (eg ITT Stage); or
- decide that the Tender Exercise for that Qualifying Project has failed.

²² Schedules 7 and 8 respectively to the Tender Regulations

2.34. If Ofgem re-runs the Tender Exercise for a Qualifying Project but is unable to identify a Preferred Bidder, Reserve Bidder or Successful Bidder then Ofgem may either:

- re-run a further Tender Exercise for the relevant Qualifying Project (either from the beginning or from a particular stage); or
- decide that the Tender Exercise for that Qualifying Project has failed.

2.35. Where Ofgem decides that the Tender Exercise for a Qualifying Project has failed, Ofgem may seek to appoint an OFTO through the OFTO of Last Resort mechanism referenced within paragraph 2.44.

2.36. The cost consequences of cancellation for Developers and Participants are set out in the Cost Recovery Methodology.

Consequences of Disqualification

2.37. If a Participant is disqualified, Ofgem will not consider any Submission from that Participant for the purpose of determining the Successful Bidder for the relevant Qualifying Project.

2.38. Upon request, Ofgem will provide feedback to any disqualified Participant or Developer. Any request for feedback must be made within one month of a Participant or Developer receiving notification that it has been disqualified.

2.39. The cost consequences of disqualification for Developers and Participants are set out in the Cost Recovery Methodology.

Schedule 2A Property Transfer Scheme

2.40. The Energy Act 2008 introduced the ability for Ofgem to make a property transfer scheme (in respect of the Transitional Regime), to expedite the transfer of property, rights and liabilities required by an OFTO to perform its functions, for example in situations where commercial agreement has not been reached.

2.41. A Preferred Bidder or Successful Bidder (as applicable) and/or Developer may at any time apply to Ofgem for a property transfer scheme pursuant to paragraph 3 of Schedule 2A to the Electricity Act. If the application were successful, Ofgem would make a scheme to transfer property rights and liabilities from the Developer to the Successful Bidder.

2.42. Ofgem would only expect these property transfer scheme powers to be exercised as a last resort, with parties exhausting all possibilities to negotiate commercial arrangements before applying.

2.43. The process, timing, terms and other matters in relation to property transfer schemes are set out fully in Schedule 2A to the Electricity Act.

OFTO of Last Resort

2.44. There may be instances, including following cancellation of a Tender Exercise, where Ofgem would appoint an OFTO of Last Resort. Developers and Participants should familiarise themselves with [Ofgem's guidance on this matter](#)²³.

²³<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=24&refer=Networks/offtrans/rott>

3. Participation Rules

3.1. This section sets out the main involvement of Developers and Participants in the second transitional Tender Round and also sets out rules regarding contact between Developers and Participants and contact with Ofgem. It also sets out rules regarding Bidder Groups and changes to Bidder Groups and other participation rules that Developers and Participants should be aware of, for example with regards costs and withdrawal from a Tender Exercise, and with regards to the Third Package of European legislation.

Developers

3.2. The main involvement of a Developer within the tender process is to:

- satisfy the Qualifying Project requirements and tender entry conditions for their project – see section 5 for further details;
- provide necessary information to enable Ofgem to estimate and then assess the costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project - as detailed within paragraphs 2.22 to 2.31;
- make payments and provide Security to Ofgem as detailed within the Cost Recovery Methodology; and
- provide all relevant information to, and resolve all relevant matters with, the Preferred Bidder / Successful Bidder for the transfer of Transmission Assets for that Qualifying Project - see sections 10 and 11 for further details.

3.3. Developers should organise themselves internally, for example, by ensuring that they obtain board approvals, to meet any deadlines set out by Ofgem in relation to the above activities.

3.4. Developers may also participate in a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group. However, as detailed within paragraph 5.31, in the event that the Developer decides to participate in any stage of a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group, in respect of any Qualifying Project for which it is the Developer, it must put in place and maintain appropriate internal information barriers, to the satisfaction of Ofgem, to prevent information passing between the Developer and the Bidder, Qualifying Bidder or Bidder Group, as the case may be.

3.5. Developers should note that the following are included as events of disqualification under the Tender Regulations:

- offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem or a Participant (or any related party of these) in relation to any actions or omissions;
- engaging in any anti-competitive behaviour with any Developer or Participant; and
- contacting a Participant outside the requirements of the Tender Rules.

3.6. As detailed earlier, Developers are however strongly advised to fully familiarise themselves with all the events of disqualification and cancellation detailed within the Tender Regulations.

Participants

3.7. The main involvement of a Participant within the tender process is to:

- make submissions to Ofgem where and when required at each stage of a Tender Exercise – see sections 6 to 11 for further details;
- respond to clarification requests from Ofgem regarding submissions within a reasonable period – see sections 6 to 11 for further details;
- make payments to Ofgem at each relevant stage of a Tender Exercise, as detailed within the Cost Recovery Methodology – see sections 6 to 11 for further details; and
- provide all relevant information to, and resolve all relevant matters with, the Developer and any other relevant parties for the transfer of Transmission Assets for a Qualifying Project for which they are the Preferred Bidder / Successful Bidder - see sections 10 and 11 for further details.

3.8. Participants should note that the following are included as events of disqualification under the Tender Regulations:

- offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem, NETSO, a Developer or another Participant (or any related party of these) in relation to any actions or omissions;
- collusion between two or more Participants in relation to their Submissions;
- engaging in any anti-competitive behaviour with any Developer or Participant;
- contact by a Participant with Ofgem outside the requirements of the Tender Rules; and
- contact by a Participant with NETSO outside the requirements of the Tender Rules.

3.9. As detailed earlier, Participants are however strongly advised to fully familiarise themselves with all the events of disqualification and cancellation detailed within the Tender Regulations.

Bidder Groups

3.10. Participants may be a single person or may wish to collaborate with other persons to form a Bidder Group.

3.11. Where a Bidder or Qualifying Bidder is acting on behalf of a Bidder Group, it must have express authority to act in this regard.

3.12. Bidder Groups are expected to be finalised at the QTT Stage.

3.13. If a Bidder Group is chosen as the Preferred Bidder for a Qualifying Project, Ofgem would expect a special purpose vehicle or similar, to be established prior to the grant of the Offshore Transmission Licence. This is because Ofgem is required to identify the person to whom an Offshore Transmission Licence is to be granted (see paragraph 2.3).

Changes to a Bidder Group

3.14. Where a Bidder Group wishes to change its membership it must notify Ofgem as soon as reasonably practicable. Ofgem will not recognise any change to the membership of a Bidder Group until Ofgem has given its permission for the change.

3.15. Where a Bidder Group seeks to change its membership between the PQ and QTT Stages, Ofgem will reassess whether the revised Bidder Group meets the criteria set out in the PQ Documentation as part of its QTT Submission. Ofgem will permit that change provided that the new membership meets the selection criteria set out in the PQ Documentation.

3.16. Where a Bidder Group has progressed through the PQ Stage, the single entities within the Bidder Group are not deemed by Ofgem to be separate Qualifying Bidders for the purposes of a Submission at any future stage of a Tender Exercise.

3.17. Ofgem expects the membership of, and the respective interests in, a Bidder Group to be finalised when they make their QTT Submission. However, should unexpected or unforeseen circumstances arise leading to the need for a change to a Bidder Group after this point, Ofgem will determine on a case-by-case basis whether permitting the change to the Bidder Group would be fair and equitable to all other Qualifying Bidders participating in the Tender Exercise in respect of that particular Qualifying Project. Ofgem will set out in the stage specific documentation the requirements that need to be met in relation to a change in a Bidder Group.

3.18. Ofgem may refuse permission to a change in a Bidder Group where it fails to demonstrate that it is able to fulfil the criteria which led to its inclusion at the previous stage of a Tender Exercise.

3.19. Participants should note that any change to the membership of a Bidder Group that has not been approved by Ofgem, or any breach of the Tender Rules in respect of a Bidder Group, may result in disqualification from a Tender Exercise, as detailed within the Tender Regulations.

3.20. Where Ofgem has permitted any change to the membership of a Bidder Group, it may give notice to the Bidder Group of the amount of any relevant payment payable to Ofgem as calculated in accordance with the Cost Recovery Methodology.

Developer/Participant Contact

3.21. Developers and Participants are reminded that collusion or anti-competitive behaviour between a Developer and a Participant, or between Participants, is an event of disqualification under the Tender Regulations.

3.22. Participants are not allowed to contact Developers, or vice versa, in relation to any aspect of the Tender Round, a Tender Exercise or any Qualifying Project. The exception to this is where otherwise specified in these Tender Rules (or as otherwise directed by Ofgem) – see paragraphs 3.23 and 3.24 below. Additionally, a Participant should not attempt to contact another Participant in relation to any aspect of a Tender Exercise or a Qualifying Project.

3.23. If, in advance of the Preferred Bidder Stage of a Tender Exercise, Ofgem decides to hold an event to which Developers and Participants are both invited (for example to provide Developers with an opportunity to pitch their commercial proposals on operations and maintenance and/or insurance to Qualifying Bidders), Participants and Developers may not discuss or raise questions in relation to aspects of the Qualifying Project or Tender Exercise other than those specified in the agenda / event papers.

3.24. Developers will be provided with the contact details of the Preferred Bidder for their Qualifying Project once the Preferred Bidder is appointed. Contact between the Developer and Preferred Bidder for a Qualifying Project is therefore permitted at that stage in order to finalise the commercial agreements for asset transfer. See section 10 for further details.

Contact with Ofgem

3.25. Ofgem operates a team whose role is to liaise with Developers both before and during the Tender Round. The contact details for the relevant point of contact from this team have been notified to all Developers and any change to these contact details will be notified. A Developer should not attempt to make contact with any member of Ofgem staff or any of its Advisers in respect of its Qualifying Project or the Tender Round, except through this point of contact (unless Ofgem specifically instructs otherwise).

3.26. If a Participant wants to contact Ofgem in relation to any aspect of a Tender Exercise or the Tender Round, it must do so via the Portal (see section 4). A Participant must not attempt to contact Ofgem or any of its Advisers in relation to any aspect of a Tender Exercise in any other way (unless Ofgem specifically instructs otherwise).

3.27. Ofgem may, at the start of each stage, issue a schedule of meetings (which may include briefing events, workshops, etc.) to Participants and/or Developers which they should attend. This schedule will set out the purpose and required attendees for each meeting.

3.28. Ofgem may send notices to Developers and/or Participants at the commencement of each stage of a Tender Exercise setting out what Ofgem requires of them in relation to that stage. This does not prejudice Ofgem's discretion to issue additional instructions to Developers and/or Participants at any other time in relation to a Tender Exercise.

Costs

3.29. Each Developer and Participant will bear its own costs of participating in a Tender Exercise and will be responsible for meeting the costs incurred by Ofgem in administering that Tender Exercise in accordance with the Tender Regulations. Details of costs and payments are set out separately in the Cost Recovery Methodology.

3.30. Failure by a Developer to make a payment or provide Security as required by Ofgem (in line with the Cost Recovery Methodology) pursuant to the Tender Regulations, unless Ofgem has permitted that payment or Security to be made or provided within a further period notified by Ofgem (which will be no later than the tender commencement date), is an event of cancellation under the Tender Regulations.

3.31. Failure by a Participant to pay any amount required by Ofgem (in line with the Cost Recovery Methodology) pursuant to the Tender Regulations, unless that failure has been remedied within a period not exceeding ten days notified to the Participant, is an event of disqualification under the Tender Regulations.

3.32. Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Developer or Participant, including without limitation any unsuccessful Participant, for any costs, expenses, damages or losses incurred in connection with a Tender Exercise.

3.33. The cost consequences for a Developer or Participant of withdrawal or disqualification from a Tender Exercise, or cancellation of a Tender Exercise, are detailed within the Tender Regulations and the Cost Recovery Methodology for the second transitional Tender Round. Developers and Participants are strongly advised to make themselves familiar with the relevant sections of those documents.

Withdrawal from a Tender Exercise

3.34. The paragraphs below summarise the rights which Developers and Participants have to withdraw from a Tender Exercise.

Developers

3.35. A Developer may withdraw its Qualifying Project from a Tender Exercise at any time by giving written notice to Ofgem. Under the Tender Regulations, withdrawal by a Developer would give Ofgem the right to cancel the Tender Exercise for the relevant Qualifying Project.

Participants

3.36. A Participant who decides to withdraw from a Tender Exercise at any stage must give written notice to Ofgem as soon as possible after it has made the decision to withdraw.

3.37. If a Bidder or Qualifying Bidder withdraws from a Tender Exercise in respect of a particular Qualifying Project, it may only be re-admitted to the Tender Exercise for that Qualifying Project or another Qualifying Project if:

- it joins a Bidder Group which is an existing Bidder or Qualifying Bidder; and
- Ofgem consents to its addition to such Bidder Group.

3.38. If a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from a Tender Exercise in respect of a particular Qualifying Project, it will not be re-admitted to the Tender Exercise for that Qualifying Project.

Third Package of European Legislation

3.39. A package of European legislation on the liberalisation of EU gas and electricity markets (the 'Third Package') entered into force on 3 September 2009. Transposition of the Third Package is the responsibility of the Secretary of State for DECC and is required to happen by March 2011. One of the areas covered by the Third Package is the unbundling of Transmission System Operators which essentially involves the structural separation of electricity generation and/or supply activities from transmission activities (set out in Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 (the 'Electricity Directive')).

3.40. On 23 September 2010 Ofgem completed a consultation on the certification of Transmission System Operators under the Third Package, including issues arising based on an initial view that the unbundling provisions apply to offshore transmission projects. The Authority is continuing to liaise with DECC on how these provisions will be implemented in Great Britain.

3.41. The Third Package requires that, between 3 March 2011 and 3 March 2012²⁴, the Authority, assuming it will be designated as the national regulatory authority, certifies all Transmission System Operators as compliant with either the full ownership unbundling model²⁵, or with one of the alternative models set out in the Third Package²⁶, in accordance with Article 10 of the Electricity Directive and Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council.

3.42. DECC, which is responsible for setting out the process for certification, and the Authority will, as the transposition process for the Third Package becomes clearer, clarify how the certification process as outlined in Article 10 will apply for the second transitional Tender Round. This will be important if offshore electricity transmission systems are considered to be part of the transmission system and the definition of Transmission System Operator therefore includes the OFTO for each Qualifying Project.

3.43. All Participants should make themselves aware of the relevant provisions of the Third Package and are strongly advised to consider the requirements of the Third Package as necessary. In addition to the requirements for unbundling, Participants should make themselves aware of any other obligations that will need to be satisfied by all transmission owners and Transmission System Operators. Ofgem is not able to advise Participants as to the provisions and impact of the Third Package and encourages Participants to seek appropriate independent legal advice in this respect. Each Participant will be required to provide an undertaking during a Tender Exercise confirming that it has considered and understands the implications of the Third Package.

3.44. It is important to note that any decisions the Authority takes in relation to the second transitional Tender Round (eg to select Qualifying Bidders for the QTT Stage, shortlist and select the Qualifying Bidders for the ITT Stage, select the Preferred Bidder or grant an Offshore Transmission Licence at the end of a Tender Exercise) are taken by the Authority in its role as manager of the Tender Process under section 6(C) of the Electricity Act and the Tender Regulations.

3.45. Unless notified otherwise by Ofgem once the transposition process becomes clearer, any such decision the Authority takes in relation to the second transitional Tender Round should not be taken as a decision, or any indication of what decision may be taken, on certification.

²⁴ Or by 3 March 2013 if, as provided for under Article 9(4) of the Electricity Directive, the Member State approves and the transmission system operator is not part of a vertically integrated undertaking

²⁵ Article 9 of the Electricity Directive

²⁶ Article 13 and Chapter V of the Electricity Directive

4. Information exchange

4.1. This section sets out the types of information to be exchanged between Developers and Ofgem and between Participants and Ofgem (and vice versa). It sets out the rules and processes for exchanging this information and the systems used by Ofgem to facilitate the secure exchange of information.

Information Provided by Developers and Participants

4.2. Developers and Participants are required to provide information to Ofgem during the second transitional Tender Round. Developers and Participants are reminded that it is an event of disqualification under the Tender Regulations to submit any information to Ofgem which is false or misleading, unless the provision of further information is acceptable to Ofgem.

4.3. For Developers this includes, but is not limited to:

- information related to a proposed project or Qualifying Project for the purposes of satisfying the Qualifying Project requirements and tender entry conditions;
- information related to establishing a Data Room;
- providing sufficient information to enable Ofgem to issue both a Preliminary Information Memorandum (PIM) and Information Memorandum (IM);
- responding to clarification requests from Ofgem; and
- information in relation to Ofgem's estimate and assessment of costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project (see paragraphs 2.22 to 2.31).

4.4. For Participants this includes, but is not limited to:

- information included within Submissions to Ofgem (including concerning the members and structure of their Bidder Group, where relevant); and
- responding to clarification requests from Ofgem in relation to Submissions.

4.5. By participating in the Tender Round each Participant and Developer shall be deemed to consent to the disclosure by Ofgem to its Advisers of any information given to Ofgem, either before or during the Tender Round by that Developer or Participant.

Tender Submissions

4.6. Ofgem will detail within the documentation made available to Participants at the start of each stage of a Tender Exercise what information is required to be submitted, in what form/manner, and by when, by Participants.

4.7. Only one Submission is permitted per Bidder per Qualifying Project and all Submissions must be made via the Portal (see paragraph 4.32 and Appendix 3).

4.8. Bidders and Qualifying Bidders must ensure that:

- the information they submit is true, accurate and complete; and
- they act as the principal in the Tender Exercise in making their Submission and not as an agent for any undisclosed party.

4.9. Submissions may be made by a single person or by a Bidder Group. Bidder Groups are required to appoint a lead member or organisation authorised to make Submissions on behalf of the Bidder Group. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with the relevant requirements of the stage documentation.

4.10. Where Ofgem provide templates for Submissions on the Portal, all Submissions must be made in the templates provided and Ofgem will not accept Submissions in any other form.

4.11. All Submissions must be made by the specified deadline for each stage. Ofgem will not accept any late Submissions. If any unforeseen issue (eg technical issues with the Portal) prevents a Submission from being made by the specified deadline, then the Bidder or Qualifying Bidder must notify Ofgem of any such issue within a reasonable period before the specified deadline.

4.12. Ofgem is not bound to accept any Submission made by a Participant.

4.13. Once a Submission has been made, the Bidder or Qualifying Bidder will receive confirmation that it has been received. Ofgem will not open any Submission until after the applicable deadline for making the Submission has expired.

4.14. Ofgem will check if each Submission is complete. If Ofgem identifies any omission(s) from the information required to be provided, it will notify the Participant. That Participant will then have a period of time (to be notified by Ofgem) in which to rectify the omission(s). In this event, Ofgem will only commence evaluation of the Submission following receipt of the requested information. Ofgem reserves the right to disqualify a Participant's Submission if any omitted information requested is not provided within the required time.

4.15. If, at any time following the making of a Submission, there are any material changes or proposed changes to the information provided in the relevant Submission, or a Participant becomes aware that information previously submitted is no longer true or accurate, such Participant must advise Ofgem as soon as is reasonably practicable. Where a Participant informs Ofgem, or if Ofgem otherwise becomes aware, of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Participant's Submission in light of that material change or proposed change.

Clarifications and Responses

4.16. All clarifications and responses must be made via the Portal (see paragraph 4.32 and Appendix 3).

Clarification requests from Participants

4.17. If a Participant needs clarification in respect of a stage or document in a Tender Exercise, it may request clarification from Ofgem. Ofgem will endeavour to provide a

response as soon as reasonably possible, although it is likely that the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested. Ofgem will endeavour to provide responses prior to the Submission deadline to those clarifications received up to two weeks prior to the deadline for Submissions to be made. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the Submission deadline.

4.18. Ofgem may, where appropriate, forward a Participant's clarification request to a Developer, to NGET or to the Crown Estate for a response. Where it does so, the identity of the Participant that raised the clarification will remain confidential. In such an instance Ofgem will act as the intermediary in any clarification request, ie the details of the clarification and the response to it, will be managed and provided by Ofgem. No direct interface is permitted between a Participant and a Developer, NGET or the Crown Estate (or vice versa) in respect of a clarification.

4.19. Ofgem's default position is, for reasons of transparency and fairness, to make responses to Participants' clarifications available to all Participants involved at the relevant stage of a Tender Exercise, although the identity of the Participant that raised the clarification will remain confidential. However, if Ofgem considers that a Participant's clarification is sufficiently specific and confidential to that Participant, Ofgem may at its discretion opt to provide its response solely to that Participant.

Clarification requests from Ofgem

4.20. Ofgem may issue a clarification request to a Participant or a Developer, for example where information is unclear. Developers and Participants must respond to clarification requests issued by Ofgem within the period specified by Ofgem. Failure by a Participant to respond to a clarification request within the period specified by Ofgem risks any clarification response from the Participant not being considered as part of Ofgem's evaluation of their Submission at that stage of the Tender Exercise. Failure by a Developer to respond to a query from Ofgem within a reasonable period during a Tender Exercise is an event of cancellation under the Tender Regulations.

Evaluation of Submissions

4.21. Ofgem will publish details on evaluation criteria and process within the documentation issued at each stage of a Tender Exercise.

4.22. Ofgem will evaluate Submissions made by Participants at each stage of a Tender Exercise against evaluation criteria in the following broad areas (although evaluation will not necessarily be limited to these areas):

- economic and financial standing;
- technical capability; and
- legal standing.

Confidentiality and Publicity

4.23. Qualifying Bidders will be required to sign a Confidentiality Agreement with the Developer of each relevant Qualifying Project prior to receiving the relevant Information Memoranda at the QTT Stage. Qualifying Bidders and Developers must comply with their obligations under such an agreement and ensure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.

4.24. The Confidentiality Agreement signed by the Qualifying Bidder will cover information received during the QTT Stage and all subsequent tender stages.

4.25. Developers and Participants 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 the Tender Exercise for 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.

Transfer Agreement

4.26. Under the Tender Regulations, the Developer must fill in a Transfer Agreement, as far as possible, with all relevant information available to it, for their Qualifying Project. Ofgem intend to share Developers' project-specific Transfer Agreements with Qualifying Bidders at the QTT Stage in order to inform their QTT Submissions, provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at the time. The project-specific Transfer Agreements will also inform Qualifying Bidders' ITT Submissions and discussions on asset transfer between Preferred Bidders and Developers during the Preferred Bidder Stage of a Tender Exercise.

4.27. In the first transitional Tender Round, a model Sale and Purchase Agreement was published on 22 July 2009. However, for the second transitional Tender Round, Ofgem will provide Developers with guidance on what Ofgem might expect to see and not see in Transfer Agreements for the second transitional Tender Round. This guidance is intended to assist Developers in the development of the Transfer Agreement for their Qualifying Project.

The Portal

4.28. Ofgem operates the Portal to provide access to information on the second transitional Tender Round and to enable interested parties to participate in the second transitional Tender Round. It provides a channel for both communication and data exchange at all stages of the Tender Round. The Portal is provided by BravoSolution and is compliant with Office of Government Commerce standards.

4.29. Ofgem will use the Portal to circulate to relevant Participants the documentation, instructions and information relating to the different stages of a Tender Exercise. The table below illustrates the parties that will have access to particular documents via the Portal at specific stages of a Tender Exercise.

Document/Information relating to a Qualifying Project	Access given to
PIM	Participants and other interested parties registered on the Portal
PQ Documentation	Participants and other interested parties registered on the Portal
IM	Qualifying Bidders who have signed the relevant Confidentiality Agreements(s)
QTT Documentation	Longlisted Qualifying Bidders
ITT Documentation	Shortlisted Qualifying Bidders
BAFO Documentation (if applicable)	Selected Qualifying Bidders
Data Room(s)	Qualifying Bidders (Bidder view) Developers (Developer view)

4.30. Developers will be required to upload any information or data relating to their Qualifying Project into the Data Room. The Data Room is a secure electronic data storage area, which will be made available to relevant Qualifying Bidders through the Portal. Each Qualifying Project will have its own separate Data Room, which will be populated and maintained by Ofgem with information provided by the relevant Developer.

4.31. Participants will be required to submit any information or data relating to a Tender Exercise by uploading it via the Portal.

4.32. As detailed earlier, all Submissions, clarifications and responses must also be made via the Portal.

4.33. Further details on the Portal, including how it can be accessed and how it should be used, are set out within Appendix 3.

5. Qualifying Projects and Tender Entry

Introduction

5.1. Ofgem can only run a Tender Exercise for Qualifying Projects. This section describes what the Tender Regulations specify as the requirements for being a Qualifying Project. This section also sets out the other requirements that must be satisfied before Ofgem can commence a Tender Exercise.

5.2. The paragraphs below summarise the key activities associated with this stage.

Request to Commence a Tender Exercise

5.3. A Developer who wishes Ofgem to commence a Tender Exercise for their project must submit a written request to Ofgem to that effect.

5.4. Where a Developer requests that Ofgem commence a Tender Exercise for their project, Ofgem will determine whether that project is a Qualifying Project. This will require the Developer to provide Ofgem with evidence demonstrating that the project meets the Qualifying Project requirements set out in Schedule 1 of the Tender Regulations (and summarised below).

5.5. In practice, Ofgem and the Developer of a potential Qualifying Project are likely to have held a number of informal discussions before a Developer formally requests that Ofgem commence a Tender Exercise for their project. These up-front discussions, whilst not mandatory, provide a valuable opportunity for both parties to share information regarding the project and manage expectations in terms of whether a project is likely to qualify. The prior sharing of information also helps Ofgem expedite the formal evaluation of a project against the Qualifying Project requirements, as detailed below.

Qualifying Project Requirements

5.6. The Qualifying Project requirements in respect of a transitional Tender Exercise are detailed in paragraph 2 of Schedule 1 to the Tender Regulations, and are that a Developer has:

- (a) entered into a bilateral agreement with NGET in its capacity as NETSO, or entered into an agreement or accepted an offer of an agreement, with the relevant electricity Distribution Network Owner (DNO) to which the Transmission Assets are or are intended to be connected;
- (b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners;
- (c) obtained all necessary consents and property rights for the Transmission Assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the Successful Bidder are so assignable;
- (d) completed construction of, or entered into all necessary contracts for the construction of the Transmission Assets and ensured that any such contracts are assignable to the Successful Bidder; and
- (e) secured financing to construct the Transmission Assets.

Determination of Qualifying Projects

5.7. Where a Developer can demonstrate in respect of its proposed project that it has satisfied all the Qualifying Project requirements set out above, then Ofgem will determine such project to be a Qualifying Project for the second transitional Tender Round.

5.8. If Ofgem determines that a Developer has not satisfied the requirements in paragraph 5.6 (c), (d) or (e) above, Ofgem may nonetheless deem a project to be a Qualifying Project for the second transitional Tender Round if it is satisfied that the Developer will use its reasonable endeavours to meet those requirements within a reasonable time period, by a date specified by Ofgem, and to be no later than 31 March 2012.

5.9. As detailed within section 1, Ofgem expects to run two tranches of Tender Exercises within the second transitional Tender Round. Tranche (A) of Tender Exercises will commence in mid November 2010. This will be for projects that satisfy all Qualifying Project requirements (and subsequently satisfy the necessary tender entry conditions) before mid November 2010.

5.10. Ofgem expects that tranche B of Tender Exercises will commence in Spring 2012. This will be for projects the Authority has deemed to be Qualifying Projects where it is satisfied that the Developer will use its reasonable endeavours to meet certain outstanding Qualifying Project requirements within a reasonable time period, and by no later than 31 March 2012 (and where the projects subsequently satisfy the necessary tender entry conditions).

Notification of Qualifying Projects

5.11. Where Ofgem has determined that a project satisfies all the Qualifying Project requirements (ie where paragraph 5.7 applies), Ofgem shall notify the Developer that their project is a Qualifying Project for the second transitional Tender Round and shall also notify them of the tender entry conditions they must satisfy, and the level of payment and Security required before Ofgem can commence a Tender Exercise for their Qualifying Project – see paragraphs 5.17 and 5.20. Ofgem will also notify the Developer of the expected date of the commencement of the Tender Exercise for their Qualifying Project.

5.12. If Ofgem determines that a proposed project is not a Qualifying Project, then it will notify the Developer, giving reasons for its decision. If the Developer disagrees with such decision, it may write to Ofgem within seven days specifying the grounds on which it disagrees. Ofgem will consider such representations and will notify the Developer of its decision and provide reasons for its decision.

Reasonable endeavours

5.13. Where Ofgem has determined a proposed project to be a Qualifying Project subject to the reasonable endeavours test detailed within paragraph 5.8, Ofgem shall notify the Developer that their request to commence a Tender Exercise relates to a Qualifying Project for the second transitional Tender Round and shall also notify the Developer of the outstanding Qualifying Project requirements and of the reasonable time period within which these outstanding requirements must be satisfied. This time period shall extend no later than 31 March 2012.

5.14. Ofgem will also notify the Developer of the requirement to provide written updates every two months summarising progress towards meeting each of the outstanding Qualifying Project requirements. This will include a request that the Developer continue to provide new and updated information to populate the Data Room for their Qualifying Project as and when it becomes available. Ofgem will also notify the Developer of the expected date of the commencement of the Tender Exercise for their Qualifying Project (subject to the Developer satisfying the outstanding Qualifying Project requirements).

5.15. Once the Developer considers they have fully satisfied the outstanding Qualifying Project requirements, they should notify Ofgem in writing. If Ofgem determines that their Qualifying Project has satisfied the outstanding Qualifying Project requirements, it will notify the Developer accordingly, and will also notify them of the tender entry conditions they must satisfy, and the level of payment and Security required before Ofgem can commence a Tender Exercise for their Qualifying Project – see paragraphs 5.17 and 5.20.

5.16. If a Developer fails to satisfy the outstanding Qualifying Project requirements within the period specified by Ofgem, Ofgem may cancel the Tender Exercise in line with the provisions of the Tender Regulations.

Developer Payment and Security

5.17. Prior to the commencement of a Tender Exercise for a Qualifying Project, Ofgem will notify the Developer of the payment required in relation to Ofgem's costs for running the Tender Exercise (and the date by which this payment must be made). Further details are provided within the Cost Recovery Methodology.

5.18. Ofgem will also notify the Developer of the Security that must be provided to Ofgem, as described in the Cost Recovery Methodology.

5.19. Details of the consequences of not making payment or providing Security to the timelines specified by Ofgem are detailed in section 2 of these Tender Rules. In addition to those consequences, Ofgem cannot commence a Tender Exercise for a Qualifying Project until the Developer pays Ofgem the specified amount, and provides the specified level of Security, to cover Ofgem's tender costs.

Tender Entry Conditions

5.20. Once Ofgem is satisfied that a Qualifying Project has met all Qualifying Project requirements, it will notify the Developer of the entry conditions that must be satisfied before a Tender Exercise can commence for their Qualifying Project. The notification will include a request for specific information that a Developer must submit, by specified deadlines, in order that Ofgem can determine whether each tender entry condition has been met.

5.21. Qualifying Projects must satisfy all the tender entry conditions prior to the date notified by Ofgem. Some of these tender entry conditions must be satisfied prior to commencement of the Tender Exercise for a Qualifying Project, whereas Ofgem may permit others to be satisfied by a later date. Where this is the case, Ofgem will notify Developers accordingly.

5.22. Developers should be aware that if they do not meet the tender entry conditions by the specified date, Ofgem may cancel the Tender Exercise for their project.

5.23. The tender entry conditions are summarised below; however, please refer to paragraph 2 of Schedule 2 to the Tender Regulations for the definitive list.

Information Memorandum (IM)

5.24. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to issue an IM for the Qualifying Project. The IM is the document released by Ofgem to Qualifying Bidders at the QTT Stage (once they have entered into the Confidentiality Agreement referred to in paragraph 5.28) containing detailed information in relation to a Qualifying Project. Developers will satisfy this condition by completing the IM template provided by Ofgem to a standard that Ofgem are satisfied with.

5.25. Although its completion is not a tender entry condition, Ofgem will also be releasing a PIM at the PQ Stage. The PIM is meant to contain high level information only in relation to a Qualifying Project. The PIM will be released via the Portal once the Tender Exercise has commenced, and will also be available on Ofgem's website for interested parties to consider when responding to the PQ Documentation. In order to enable Ofgem to produce the PIM, each Developer will be provided with a standard form template and instructions for completion.

5.26. Ofgem will need to be satisfied that the information provided for both documents is appropriate and adequate and Ofgem may request further information from the Developer as necessary.

Data Room

5.27. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to establish a Data Room for the Qualifying Project. The Developer will have provided information about their Qualifying Project which Ofgem used to assess their Qualifying Project status; however, further information will be required in order to fully establish the Data Room. To this end, Ofgem will provide Data Room Guidelines (published separately by Ofgem), which Developers should adhere to when populating the Data Room over the course of the Tender Exercise for their Qualifying Project.

Confidentiality Agreement

5.28. The Developer must return a signed copy of the Confidentiality Agreement provided to them by Ofgem. This is an agreement to be made between the Developer and each Qualifying Bidder for their Qualifying Project and must be signed by Qualifying Bidders at the QTT Stage. The Confidentiality Agreement provided by Ofgem should not be amended.

Transfer Agreement

5.29. The Developer must fill in a Transfer Agreement, as far as possible, with all relevant information available to it. Ofgem will provide Developers with guidance to assist

them in the development of the Transfer Agreement for their Qualifying Project – as detailed within paragraph 4.26.

Transferability of Phased Assets

5.30. The Developer must demonstrate to Ofgem's satisfaction that if the Transmission Assets for their Qualifying Project are being constructed in phases, the assets for each phase can be transferred to the Successful Bidder separately once they are available for use for transmission. Ofgem will require Developers to return a signed statement to this effect.

Undertakings

5.31. The Developer must give Ofgem a written undertaking that it will:

- provide information updates to Ofgem where information has changed, been updated, or where new information has become available in relation to their Qualifying Project, to enable Ofgem to update the Data Room;
- respond to all queries from Ofgem (whether arising from Ofgem or from a third party) within a reasonable period;
- continue to update the Transfer Agreement with all relevant information available to it; and
- in the event that the Developer decides to participate in any stage of a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group, in respect of any Qualifying Project for which it is the Developer, put in place and maintain appropriate internal information barriers, to the satisfaction of Ofgem, to prevent information passing between the Developer and the Bidder, Qualifying Bidder or Bidder Group, as the case may be.

5.32. A breach of any undertaking provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations.

Information Warranty

5.33. The Developer must provide Ofgem with a written warranty stating that any information it provides in relation to the IM and Data Room for its Qualifying Project is to the best of its knowledge and belief, having made reasonable enquiries, true, accurate and complete and is not misleading in any material respects.

5.34. A breach of any warranty provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations.

Other Conditions

5.35. Ofgem is able to specify other tender entry conditions which Developers must satisfy before commencing a Tender Exercise where it deems it necessary. This could include a condition that the Developer must return a signed copy of the Confidentiality Consent provided by Ofgem. This is a consent that the Developer signs consenting to Ofgem using information provided to it in respect of the Tender Exercise.

Notification of Meeting Tender Entry Conditions

5.36. Ofgem will evaluate the information submitted by the Developer in order to determine whether each tender entry condition has been met. In evaluating whether the tender entry conditions have been met, the Developer may be required to provide additional information.

5.37. Ofgem will notify the Developer if it is satisfied that all tender entry conditions have been met.

5.38. If a Developer fails to satisfy any of the tender entry conditions by the date specified by Ofgem, Ofgem may notify the Developer and publish a notice stating that the Tender Exercise for that Qualifying Project has been cancelled.

Commencement of Tenders

5.39. As soon as reasonably practicable after:

- Ofgem has determined the Qualifying Projects (as specified in paragraphs 5.7 and 5.8);
- the relevant Developer has provided the appropriate payment and Security (as specified in paragraph 5.17 and 5.18); and
- the relevant Developer has satisfied those tender entry conditions required to be satisfied prior to the publication of the commencement notice,

Ofgem will publish a notice stating its intention to commence a Tender Exercise for these Qualifying Projects.

5.40. The notice will specify the Qualifying Projects included and the date on which the Tender Exercise will commence.

5.41. Ofgem may amend the commencement date of a Tender Exercise in respect of a particular Qualifying Project (to a date which may be earlier or later than that specified within the paragraph above) following consultation with the Developer.

5.42. Where Ofgem considers it impracticable to commence a Tender Exercise on the date specified, it shall publish a further notice specifying a revised date for tender commencement.

Tender Commencement Notice

5.43. Ofgem shall publish its Tender Commencement Notice on its website, in accordance with the Tender Regulations. In addition, Ofgem expects to publish a voluntary notice in the Official Journal of the European Union, as well as notices of the Tender Exercises in other relevant publications.

6. Pre-Qualification Stage

Introduction

6.1. PQ is the first stage of the Tender Exercise following tender commencement. This stage involves a generic assessment of a Bidder's suitability based on its track record, rather than a specific assessment of its suitability as a potential OFTO for a particular Qualifying Project. At the end of this stage Ofgem will identify a longlist of Qualifying Bidders to progress to the QTT Stage. It is anticipated that the PQ Stage will take approximately two months to complete.

6.2. The paragraphs below summarise the key activities associated with this stage.

PQ Documentation Published

6.3. Ofgem will publish the PQ Documentation on the Portal and also on the Ofgem website.

6.4. The documentation will include:

- the rules particular to the PQ Stage;
- the timeline for the stage, including an overview of the key activities and steps;
- the PQ Questionnaire;
- the instructions that apply to the questionnaire (including an indication of the Qualifying Project(s) for which Bidders wish to be invited to tender), and the date, time and manner in which a completed questionnaire should be submitted to Ofgem;
- other information available to Bidders (see below);
- the criteria against which Ofgem will evaluate each PQ Submission; and
- details of how and when to make the payment for this stage.

Information Available to Bidders

Preliminary Information Memorandum (PIM)

6.5. A PIM for each Qualifying Project will be published on the Portal and on the Ofgem website. This will set out high level, project specific information provided by Developers in respect of the relevant Qualifying Project. In addition, Ofgem will publish a generic PIM, which will provide background to the offshore transmission regime (including the regulatory framework) and other relevant information.

Bidder Clarifications

6.6. If a Bidder has a clarification in relation to any aspect of the PQ Documentation, it may submit such clarification to Ofgem. For further information on Bidder clarifications, see paragraphs 4.17 to 4.19.

Bidder Payment

6.7. A PQ Submission will not be considered by Ofgem until it has received the required payment from the relevant Bidder in cleared funds. This is a flat charge and is not dependent on the number of Qualifying Projects the Bidder signals its interest in.

6.8. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in section 2 of these Tender Rules.

PQ Submission

6.9. At the PQ stage, Bidders will be required to indicate which Qualifying Project(s) they wish to be invited to tender for. This indication is not binding however and can be changed at the QTT Stage – see paragraphs 7.12 to 7.14.

6.10. Bidders will only be required to submit one completed PQ Questionnaire, irrespective of how many Qualifying Projects they wish to be invited to tender for (ie Bidders are not required to complete separate PQ Questionnaires for each Qualifying Project for which they wish to be invited to tender).

6.11. Bidders must make their completed PQ Submissions by the stated deadline, in accordance with the detailed instructions set out in the PQ Documentation. These instructions will include details of how and in what form PQ Submissions should be made.

Ofgem Clarifications of PQ Submissions

6.12. Ofgem may ask Bidders to clarify their PQ Submissions. Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of PQ Submissions

6.13. Ofgem will evaluate each completed PQ Submission on a pass/fail basis in accordance with the evaluation criteria and process set out in the PQ Documentation in order to determine the longlist of Qualifying Bidders that will be invited to participate in the QTT Stage.

6.14. Ofgem may decline to consider a PQ Submission made to it where Ofgem determines that the PQ Submission does not comply in any material respect with the requirements specified in the PQ Documentation.

Notification to Bidders and Publication of Qualifying Bidder Longlist

6.15. Ofgem will notify each Bidder (via the Portal) as to whether its PQ Submission has been successful or unsuccessful, and will give reasons for its determination.

6.16. The notices given to Qualifying Bidders will set out the next steps they will need to take in order to participate in the QTT Stage.

6.17. Once all Bidders have been notified, the longlist of Qualifying Bidders will be published on the Portal and on the Ofgem website. The longlist of Qualifying Bidders will not vary by Qualifying Project, ie it will be a generic longlist across all Qualifying Projects.

Bidder Feedback

6.18. Ofgem expects to offer confidential feedback to any Bidder following completion of the PQ Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 6.15.

7. Qualification to Tender Stage

Introduction

7.1. The purpose of the QTT Stage is to identify a suitable shortlist of Qualifying Bidders in respect of each Qualifying Project to proceed to the ITT Stage. It is anticipated that the QTT Stage will take approximately three months to complete.

7.2. The paragraphs below summarise the key activities associated with this stage.

Enter Confidentiality Agreements

7.3. Ofgem will publish (via the Portal) a Confidentiality Agreement in respect of each Qualifying Project, along with instructions that apply to that document, including the date, time and manner in which the Confidentiality Agreement should be submitted to Ofgem by a Qualifying Bidder. The Confidentiality Agreement will already have been signed by the relevant Developer (as detailed within paragraph 5.28) and should not be amended.

7.4. Each Qualifying Bidder must submit a signed Confidentiality Agreement to Ofgem in respect of each Qualifying Project it is bidding for. The return of the Confidentiality Agreement will enable Ofgem to release more detailed project-specific information to the Qualifying Bidder to assist completion of the QTT requirements.

QTT Documentation Published

7.5. Ofgem will issue the QTT Documentation to Qualifying Bidders (via the Portal) once Ofgem receives the signed Confidentiality Agreements referred to above.

7.6. The documentation will include:

- the rules particular to the QTT Stage;
- the timeline for the stage, including an overview of the key activities and steps;
- the QTT Questionnaire;
- the instructions that apply to the questionnaire, and the date, time and manner in which a completed questionnaire should be submitted to Ofgem;
- other information available to Qualifying Bidders (see below); and
- the criteria against which Ofgem will evaluate each QTT Submission.

Information Available to Qualifying Bidders

Information Memorandum ('IM')

7.7. Each Qualifying Bidder that has entered into a Confidentiality Agreement will be granted access (on the Portal) to the IM prepared in respect of each of the relevant Qualifying Project(s).

Project-Specific Transfer Agreements

7.8. In addition to the QTT Documentation, Ofgem intends to make available project-specific Transfer Agreements, as provided by Developers, provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at that time²⁷ (see paragraph 4.26). These will only be made available to those Qualifying Bidders that have submitted signed Confidentiality Agreement(s) to Ofgem, as detailed within paragraph 7.4.

7.9. Qualifying Bidders will be notified within the QTT Documentation of what they are required to do in relation to these project-specific Transfer Agreements (if provided).

Qualifying Bidder Clarifications

7.10. Ofgem may ask Qualifying Bidders to clarify their QTT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

Qualifying Bidder Payment

7.11. Qualifying Bidders are not required to make any payments to Ofgem at the QTT Stage.

QTT Submission

7.12. Qualifying Bidders will be required to specify within their QTT Submission which Qualifying Project(s) they wish to be considered for. Qualifying Bidders must complete a separate QTT Submission for each Qualifying Project for which they wish to be considered.

7.13. A Qualifying Bidder may at the QTT Stage alter the Qualifying Project(s) it wishes to be considered for from those it expressed a preference for at the PQ Stage, provided it can demonstrate that it still meets the evaluation criteria set out in the PQ Documentation.

7.14. Where a Qualifying Bidder wishes to make QTT Submission(s) for a total value of Qualifying Project(s) beyond the total value for which it qualified at the PQ Stage then it must demonstrate that it meets the economic and financial standing evaluation criteria set out in the PQ Documentation.

7.15. Qualifying Bidders must make their completed QTT Submissions by the stated deadline, in accordance with the detailed instructions set out in the QTT Documentation. These instructions will include details of how and in what form QTT Submissions should be made.

²⁷ If the project-specific Transfer Agreement is not sufficiently advanced at the QTT Stage, then it will be provided at the ITT Stage.

Ofgem Clarifications of QTT Submissions

7.16. Ofgem may ask Qualifying Bidders to clarify their QTT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of QTT Submissions

7.17. Ofgem will evaluate each completed QTT Submission on a scored basis in accordance with the evaluation criteria and process set out in the QTT Documentation in order to determine the shortlist of Qualifying Bidders in respect of each Qualifying Project that will be invited to participate in the ITT Stage.

7.18. Ofgem may decline to consider a QTT Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the QTT Documentation.

Notification to Qualifying Bidders and Publication of Qualifying Bidder Shortlist

7.19. Ofgem will notify each Qualifying Bidder (via the Portal) as to whether its QTT Submission has been successful or unsuccessful, and will give reasons for its determination.

7.20. The notices given to successful Qualifying Bidders will set out the next steps they will need to take in order to participate in the ITT Stage (including the amount payable to Ofgem in relation to the ITT Stage, as calculated in accordance with the Cost Recovery Methodology – see paragraph 8.3).

7.21. Once all Qualifying Bidders have been notified, the shortlist of Qualifying Bidders in respect of each Qualifying Project will be published on the Portal and on the Ofgem website. Ofgem may also make a general public announcement.

Qualifying Bidder Feedback

7.22. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the QTT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 7.19.

8. Invitation to Tender Stage

Introduction

8.1. The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) in respect of each Qualifying Project. It is anticipated that the ITT Stage will take approximately four months to complete.

8.2. The paragraphs below summarise the key activities associated with this stage.

Qualifying Bidder Payment

8.3. Each Qualifying Bidder must, before the ITT Documentation is issued, make a payment to Ofgem in respect of each Qualifying Project for which it is invited to tender (this is the payment notified in paragraph 7.20).

8.4. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in section 2 of these Tender Rules.

ITT Documentation Published

8.5. Ofgem will issue the ITT Documentation to a Qualifying Bidder (via the Portal) in respect of each Qualifying Project for which it has been invited to tender.

8.6. The documentation will include:

- the rules particular to the ITT Stage;
- the timeline for the stage, including an overview of the key activities and steps;
- a description of the information required by Ofgem for the making of an ITT Submission, and the date, time and manner in which this Submission should be made to Ofgem;
- other information available to Qualifying Bidders (see below); and
- the criteria against which Ofgem will evaluate each ITT Submission.

Information Available to Qualifying Bidders

Access to Data Room

8.7. On receipt of the ITT payment, Qualifying Bidders will be granted access to the Data Room(s) relating to the Qualifying Project(s) for which they have been invited to tender. Each Data Room will be accessed via the Portal.

Project-Specific Transfer Agreements

8.8. The project-specific Transfer Agreements, as provided by Developers, will also be included in the Data Room. Qualifying Bidders will be notified within the ITT Documentation of what they are required to do with the project-specific Transfer Agreement.

Qualifying Bidder Clarifications

8.9. If a Qualifying Bidder has a clarification in relation to any aspect of the ITT Documentation, it may submit such clarification to Ofgem. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

ITT Submission

8.10. Qualifying Bidders will be invited to make an ITT Submission only for each Qualifying Project for which they have been shortlisted.

8.11. Qualifying Bidders must make their completed ITT Submissions by the stated deadline, in accordance with the detailed instructions set out in the ITT Documentation. These instructions will include details of how and in what form ITT Submissions should be made.

8.12. If a Qualifying Bidder decides not to make an ITT Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision.

Ofgem Clarifications of ITT Submissions

8.13. Ofgem may ask Qualifying Bidders to clarify their ITT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of ITT Submissions

8.14. Ofgem will evaluate each completed ITT Submission on a scored basis in accordance with the evaluation criteria and process set out in the ITT Documentation in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.

8.15. As a result of this evaluation, Ofgem may also determine which Qualifying Bidder shall become the Reserve Bidder in respect of a Qualifying Project.

8.16. If as a result of this evaluation Ofgem considers that it is unable to determine the Preferred Bidder for a particular Qualifying Project, it may decide to hold a BAFO Stage.

8.17. Ofgem may decline to consider an ITT Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the ITT Documentation.

Notification to Qualifying Bidders

8.18. Ofgem will notify each Qualifying Bidder as to whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project, or whether its ITT Submission has been unsuccessful, and will give reasons for its determination.

8.19. Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project and may also publish the name of the Reserve Bidder (if applicable).

Notification of a BAFO Stage

8.20. If applicable, Ofgem will notify each shortlisted Qualifying Bidder as to whether they have or have not been invited to participate in a BAFO Stage for a Qualifying Project.

Qualifying Bidder Feedback

8.21. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the ITT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 8.18.

9. Best and Final Offer Stage

Introduction

9.1. The purpose of the optional BAFO Stage is to determine a Preferred Bidder (and possibly a Reserve Bidder) for a Qualifying Project where Ofgem has been unable to determine the Preferred Bidder at the end of the ITT Stage. It is anticipated that, where it is required, the BAFO Stage will take approximately two months to complete.

9.2. The paragraphs below summarise the key activities associated with this stage.

BAFO Documentation Published

9.3. Ofgem will issue the BAFO Documentation to a Qualifying Bidder (via the Portal) in respect of each Qualifying Project for which it has been invited to participate in the BAFO Stage.

9.4. The documentation will include:

- the rules particular to the BAFO Stage;
- the timeline for the stage, including an overview of the key activities and steps;
- a description of the information required by Ofgem for the making of a BAFO Submission, and the date, time and manner in which this Submission should be submitted to Ofgem; and
- the criteria against which Ofgem will evaluate each BAFO Submission.

Qualifying Bidder Clarifications

9.5. If a Qualifying Bidder has a clarification in relation to any aspect of the BAFO Documentation, it may submit such clarification to Ofgem. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

Qualifying Bidder Payment

9.6. Qualifying Bidders are not required to make any payments to Ofgem at the BAFO Stage.

BAFO Submission

9.7. Qualifying Bidders must make their BAFO Submissions by the stated deadline, in accordance with the detailed instructions set out in the BAFO Documentation. These instructions will include details of how and in what form BAFO Submissions should be made.

9.8. If a Qualifying Bidder decides not to make a BAFO Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision.

Ofgem Clarifications of BAFO Submissions

9.9. Ofgem may ask Qualifying Bidders to clarify their BAFO Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of BAFO Submissions

9.10. Ofgem will evaluate each completed BAFO Submission on a scored basis in accordance with the evaluation criteria and process set out in the BAFO Documentation in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.

9.11. As a result of this evaluation, Ofgem may also determine which Qualifying Bidder shall become the Reserve Bidder in respect of a Qualifying Project.

9.12. Ofgem may decline to consider a BAFO Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the BAFO Documentation.

Notification to Qualifying Bidders

9.13. Ofgem will notify each Qualifying Bidder as to whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project, or whether its BAFO Submission has been unsuccessful, and will give reasons for its determination.

9.14. Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project that is the subject of a BAFO, and may also publish the name of the Reserve Bidder (if applicable).

Qualifying Bidder Feedback

9.15. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the BAFO Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 9.13.

10. Preferred Bidder Stage

Introduction

10.1. The purpose of the Preferred Bidder Stage is to resolve certain matters to the Authority's satisfaction before that Preferred Bidder becomes the Successful Bidder in respect of a Qualifying Project. It is anticipated that this stage will take approximately four months to complete.

10.2. Preferred Bidders will be provided with the contact details of the Developer of the relevant Qualifying Project at this stage so that both parties may engage in order to finalise all relevant documentation.

10.3. Ofgem's key role during this stage is to determine the Tender Revenue Stream to be incorporated in the Offshore Transmission Licence in respect of a Qualifying Project. Ofgem expects that most of the issues arising during this stage will be for resolution on a commercial basis between the Preferred Bidder, the Developer and any other relevant parties. Ofgem does not propose to review or participate in the development of documents to which it is not a party, or to act as an arbiter of disputes between the parties.

10.4. The paragraphs below summarise the key activities associated with this stage.

Public Notice

10.5. At the start of the Preferred Bidder Stage Ofgem will publish a public notice for each relevant Qualifying Project:

- confirming the name and address of the Preferred Bidder; and
- describing, in general terms, the matters to be resolved by the Preferred Bidder (to Ofgem's satisfaction) before that Preferred Bidder becomes the Successful Bidder. These shall include that the Preferred Bidder has:
 - a) established the necessary arrangements to provide offshore Transmission Services for the Qualifying Project, including having all relevant contractual, funding, regulatory and operational arrangements ready for the transfer of the Transmission Assets and the grant of the Offshore Transmission Licence;
 - b) put in place a bilateral Transmission Owner Construction Agreement with NETSO;
 - c) acceded to the System Operator – Transmission Owner Code; and
 - d) resolved any other matters which Ofgem determines are necessary in relation to the Qualifying Project.

Notification to Preferred Bidders

10.6. Ofgem will separately notify each Preferred Bidder of:

- a) the name of the Reserve Bidder (if applicable);
- b) a draft of the matters they will need to resolve (to the Authority's satisfaction) before becoming the Successful Bidder (the draft 'Preferred Bidder Matters'), to include the matters referenced within paragraph 10.5; and

- c) details of the process and indicative timelines to asset transfer, financial close, the process for finalising the Tender Revenue Stream and the grant of the Offshore Transmission Licence.

10.7. Ofgem may notify the Preferred Bidder at this point of the details of any on-hold period, where that applies for the Qualifying Project for which they are Preferred Bidder - see paragraphs 10.12 to 10.14.

10.8. Preferred Bidders will be provided with an opportunity to discuss the draft Preferred Bidder Matters with Ofgem and to also provide written comments. Ofgem will consider any comments received in determining the Preferred Bidder Matters and may amend the draft Preferred Bidder Matters where it is satisfied that it is appropriate to do so.

PB Matters Notification

10.9. As soon as reasonably practicable following completion of the activity set out within paragraph 10.8 Ofgem will provide each Preferred Bidder with a notice under regulation 18(5) of the Tender Regulations setting out:

- the final Preferred Bidder Matters;
- how, and by when, the Preferred Bidder Matters should be satisfied; and
- the amount payable to Ofgem in relation to the Preferred Bidder Stage, as calculated in accordance with the Cost Recovery Methodology – see paragraph 10.10.

Preferred Bidder Payment

10.10. Each Preferred Bidder must make a payment to Ofgem in respect of each Qualifying Project for which it has been identified as the Preferred Bidder.

10.11. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in section 2 of these Tender Rules.

On-Hold Period

10.12. Where there is a significant time period from appointment of Preferred Bidder until the completion of construction of Transmission Assets for a Qualifying Project, Ofgem may decide to apply an 'on-hold' period for that Qualifying Project until a point at which the Transmission Assets are closer to being completed and ready for transfer. This on-hold period would occur following the issue of the notice referred to in paragraph 10.9 and the Preferred Bidder making the payment referred to in paragraph 10.10.

10.13. Where it decides to apply an on-hold period for a Qualifying Project, Ofgem will notify the Preferred Bidder and Developer. This notification will include details of the expected duration of the on-hold period. The duration of the on-hold period will be defined with reference to the estimated asset transfer date for the relevant Qualifying Project and the time required to go through the remaining steps prior to asset transfer.

10.14. Ofgem will notify the Preferred Bidder and Developer of the date on which the on-hold period ends. Following the end of the on-hold period, the process will continue as described from paragraph 10.15 onwards.

Information Available to Preferred Bidders

Information in Relation to Tender Process and Offshore Transmission Licence

10.15. Ofgem will continue to provide information in relation to the tender process via the Portal, including any updated versions of the Offshore Transmission Licence, any further guidance notes and any information in connection with the Preferred Bidder Stage, the assessment of costs and the transfer value of the Qualifying Project.

Access to the Developer's Data Room

10.16. To assist in performing their confirmatory due diligence, the Preferred Bidders will be granted access to the Data Room which is maintained and updated by the Developer for the relevant Qualifying Project(s). This will allow a direct flow of information to be provided by the Developer to the Preferred Bidder. Each Data Room will be accessible via the Portal.

10.17. Ofgem will take no responsibility for the content of documents in the Developer Data Room and will not review or comment upon documents in the developer Data Room, other than as required in connection with Ofgem's assessment of costs and determination of the final transfer value.

Section 8A Licence Consultation

10.18. Once Ofgem has received certain confirmations from the Preferred Bidder required under the Preferred Bidder Matters, and once Ofgem has determined the final Tender Revenue Stream for the Qualifying Project, it intends to commence a Section 8A Licence Consultation process for that particular Qualifying Project.

10.19. Ofgem will issue a public notice, in accordance with section 8A of the Electricity Act, to propose a modification to the standard conditions of each Offshore Transmission Licence in order to incorporate the OFTO-specific provisions²⁸ in the Offshore Transmission Licence at the time of Offshore Transmission Licence grant. This notice is subject to a statutory public 28 day consultation period.

Notification to Preferred Bidders

10.20. Following the Section 8A Licence consultation process and once Ofgem is satisfied that the Preferred Bidder has resolved all the Preferred Bidder Matters, then the Preferred Bidder shall become the Successful Bidder for that particular Qualifying Project, and Ofgem will notify the Successful Bidder accordingly.

10.21. Where Ofgem is not satisfied that the Preferred Bidder has resolved the Preferred Bidder Matters, or where the Preferred Bidder fails to make the payment specified within paragraph 10.10, it may publish a notice discontinuing the Tender Exercise with the

²⁸ In the Offshore Transmission licence, these are Amended Standard Conditions E12-A1 to E12-J10

Preferred Bidder and may determine to treat the Reserve Bidder (if it has determined one) as if it were the Preferred Bidder for that particular Qualifying Project – see below.

Next Steps in the Event that the Preferred Bidder Does Not Become the Successful Bidder

10.22. Where paragraph 10.21 applies, Ofgem will notify the Reserve Bidder that it has become the Preferred Bidder. The Preferred Bidder Stage will then start again with the new Preferred Bidder, in line with the rules and activities set out from paragraph 10.5 onwards.

10.23. Where Ofgem has not determined a Reserve Bidder, then Ofgem will cancel the Tender Exercise for that particular Qualifying Project, if either:

- a) the Preferred Bidder does not satisfy Ofgem that it has resolved the Preferred Bidder Matters; or
- b) the Preferred Bidder withdraws, or is disqualified from a Tender Exercise.

11. Successful Bidder Stage

Introduction

11.1. The purpose of the Successful Bidder Stage is for the Authority to grant an Offshore Transmission Licence to the Successful Bidder so that they become the OFTO for that Qualifying Project.

11.2. The paragraphs below summarise the key activities associated with this stage.

Notification to Successful Bidders

11.3. As soon as possible after Ofgem has notified the Preferred Bidder that they have become the Successful Bidder (as referred to in paragraph 10.20), it shall publish a notice that:

- confirms its determination to grant an Offshore Transmission Licence to the Successful Bidder; and
- specifies the name and address of the Successful Bidder.

11.4. Ofgem will also notify the Successful Bidder as to the amount payable to Ofgem in relation to the Successful Bidder Stage and by when the payment should be made – see paragraph 11.9.

Notification to each Qualifying Bidder

11.5. At the same time as notifying the Successful Bidder, Ofgem will notify each Qualifying Bidder in relation to the relevant Qualifying Project of its determination to grant an Offshore Transmission Licence to the Successful Bidder. This notice will include:

- confirmation of the criteria used by Ofgem to evaluate ITT Submissions during the ITT Stage;
- the reasons for Ofgem's determination, including the characteristics and relative advantages of the successful tender;
- the result obtained by that Qualifying Bidder and by the Successful Bidder;
- the name of the Successful Bidder; and
- the date when the standstill period (referred to below) is expected to end.

11.6. Note that Ofgem may withhold any information to be provided in accordance with paragraph 11.5 where the disclosure of such information would be contrary to law or public interest, or would prejudice fair competition between Qualifying Bidders (in line with Regulation 24(3) of the Tender Regulations).

Standstill Period

11.7. Where Ofgem notifies Qualifying Bidders as described in paragraph 11.5, a standstill period will be regarded for that Qualifying Project.

11.8. The standstill period will not end before midnight at the end of the tenth working day after the date on which the notification described in paragraph 11.5 is given to Qualifying Bidders.

Successful Bidder Payment

11.9. Each Successful Bidder must make a payment to Ofgem in respect of each Qualifying Project for which it has been identified as the Successful Bidder.

11.10. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in section 2 of these Tender Rules.

Notice of Determination to Grant an Offshore Transmission Licence

11.11. As soon as reasonably practicable after the end of the standstill period Ofgem will confirm its determination whether or not to grant an Offshore Transmission Licence to the Successful Bidder in respect of a particular Qualifying Project and shall publish a notice to that effect.

11.12. Ofgem will also publish various directions under the conditions of the Offshore Transmission Licence. Each direction will be accompanied by a Section 49A Notice of reasons.

11.13. Where Ofgem publishes the notice referred to in paragraph 11.11, then the Tender Exercise is finished in respect of that Qualifying Project.

Financial Close and Asset Transfer

11.14. The Successful Bidder should undertake all relevant process to close activities (eg execute all final form documents, draw down funds, etc.) in order to allow for the simultaneous financial close, asset transfer and grant of the Offshore Transmission Licence for the Transmission Assets for that particular Qualifying Project.

Appendices

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Appendix 1 – Disclaimer and Notices

Non-reliance, Accuracy of Information and Exclusion of Liability

1.1. It is the responsibility of each Developer to ensure that it has all of the information it needs to satisfy the Qualifying Project requirements and tender entry conditions and the responsibility of each Participant to ensure that it has all of the information it needs to prepare its Submissions.

1.2. While information provided by Ofgem and/or its Advisers in these Tender Rules 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 Advisers make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Advisers in these Tender Rules or otherwise in relation to the Tender Round or any information provided by Developers through Data Rooms or otherwise. Ofgem and its Advisers 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 a Participant, a Developer and/or any other interested party.

Use of Information

1.3. These Tender Rules are not intended to provide the basis of any investment decision, nor are they intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Participant, Developer 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.

1.4. The material in the Tender Rules is not and should not be regarded as legal or professional advice. Participants, Developers and other interested parties should seek their own legal or other professional advice where appropriate.

1.5. Nothing in the Tender Rules is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Participant or any Developer.

1.6. Advisers acting for Ofgem in relation to the Tender Round will not regard any Developer or Participant 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.

Freedom of Information

1.7. The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Developers should identify which parts, if any, of the information which they provide to Ofgem, either before or during the Tender Round, are provided 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. Participants should identify which parts, if any, of their 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.

1.8. Although Ofgem is not under any statutory obligation to consult with a Participant or Developer in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Participant or Developer of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Participant or Developer has identified any information as being in its opinion eligible for exemption. For further information and guidance, Participants' and Developers' attention is drawn to the [Lord Chancellor's Code of Practice](#) issued under Section 45 of the Freedom of Information Act 2000²⁹.

Data Protection

1.9. In participating in the Tender Round, Developers and Participants 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. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Developers and Participants. In order to participate in the Tender Round, Developers and Participants must agree to such data being collected, held and used.

Copyright

1.10. The information contained within these Tender Rules 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 these Tender Rules is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

²⁹see <http://www.dca.gov.uk/foi/codesprac.htm>

Appendix 2 – The Authority’s Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ('the Authority'), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008 and 2010) as well as arising from directly effective European Community legislation.

1.3. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of those Acts³⁰. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly.³¹

1.4. The Authority's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.

1.5. The Authority is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with,

- the shipping, transportation or supply of gas conveyed through pipes;
- the generation, transmission, distribution or supply of electricity; and
- the provision or use of electricity interconnectors.

1.6. Before deciding to carry out its functions in a particular manner with a view to promoting competition, the Authority will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner (whether or not it would promote competition) in which the Authority could carry out those functions which would better protect those interests.

³⁰ Entitled 'Gas Supply' and 'Electricity Supply' respectively.

³¹ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

1.7. In performing these duties, the Authority must have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them³²; and
- the need to contribute to the achievement of sustainable development.

1.8. In performing these duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.³³

1.9. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed³⁴ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and secure a diverse and viable long-term energy supply, and shall, in carrying out those functions, have regard to the effect on the environment.

1.10. In carrying out these functions the Authority must also have regard to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.11. The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to any interests of consumers in relation to communications services and electronic communications apparatus or to water or sewerage services (within the meaning of the Water Industry Act 1991), which are affected by the carrying out of that function.

1.12. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation³⁵ and therefore part of the European Competition Network. The Authority also has concurrent powers with the

³² Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act functions.

³³ The Authority may have regard to other descriptions of consumers.

³⁴ Or persons authorised by exemptions to carry on any activity.

³⁵ Council Regulation (EC) 1/2003.

Office of Fair Trading in respect of market investigation references to the Competition Commission.

Appendix 3 – The Portal

Portal User Agreement and ID/Password

Developers

1.1. Ofgem will create a log-on for each Developer on the Portal homepage so that they are able to upload information in relation to their Qualifying Project. Each Developer must agree to the terms of the Portal User Agreement before the commencement of a Tender Exercise.

1.2. Following acceptance of the terms of the User Agreement, Developers will be issued with a user ID. Each Developer is required to appoint a named individual to act as a point of contact to be issued with the user ID and password (if the Developer subsequently wishes to create additional User(s), they must request authorisation from Ofgem via this point of contact). This user ID and password can only be used by the Developer to access the Developer view of the Data Room for their Qualifying Project. It cannot be used to access the Participant view of the Portal. Where a Developer wishes to participate in the Tender Round as a Participant, it must register separately as a Participant.

Participants and Other Interested Parties

1.3. In order to access more detailed information about tenders or to participate in the Tender Round, Participants or other interested parties will first need to create a log-on by clicking the 'Register here' link on the Portal homepage: <https://ofgem.bravosolution.co.uk/web/login.shtml>. Each Participant and interested party must agree to the terms of the User Agreement in order to access any information provided through the Portal.

1.4. Following acceptance of the terms of the User Agreement, Participants or other interested parties must register any and each of their proposed User Agents by providing the required registration data and specifying a user ID for each of them in accordance with the requirements as specified on the Portal. Each User Agent will then be provided with an initial password, which it will be required to change. Once this process has been completed, the User Agent will be able to access the relevant sections of the Portal.

1.5. Each Participant or other interested party must designate a User Agent to manage access to the Portal by that Participant's or interested party's other Users (if applicable).

Data Room Uploading and Updating

1.6. Each Developer is required to upload on to the Portal, in accordance with the Data Room Guidelines, the relevant documents for the Data Room for its Qualifying Project. Ofgem will then confirm the content against the Data Room Guidelines and transfer the documents into the relevant Data Room on the Portal for Qualifying Bidders to view. The Data Room in respect of each Qualifying Project will be made available to relevant Qualifying Bidders at the ITT Stage.

1.7. In accordance with the Tender Regulations, a Developer (having regard to the instructions in the Data Room Guidelines) is required to update the Data Room where there has been any change to the information previously provided or where new information is available and relevant. Developers must notify Ofgem via email whenever

they update the Data Room. Qualifying Bidders will be automatically notified if any updates are made to information on the Portal.

Security requirements

1.8. The BravoSolution system is compliant with Office of Government Commerce standards.

1.9. A Developer, Participant or other interested party must immediately inform the Helpdesk in the event that any registered Portal User or User Agent ceases to be a representative of the Developer, Participant or other interested party or no longer requires access to the Portal for the purpose of the Tender Round.

1.10. User IDs and passwords are strictly personal to the Portal User to which they are given and non-transferable (including to other Portal Users of the same Developer or Participant). Each Developer and Participant must ensure that its User Agent(s) do not divulge or disclose their user ID or password to third parties (including to other Portal Users of the same Developer or Participant). In the event that a Developer or Participant or a User becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they must immediately notify the Helpdesk.

1.11. Any Submission by a Participant using the user ID and password of any of its User Agents will be deemed to be a valid Submission and will be binding on that Participant. A Participant will be responsible for any unauthorised, false or fraudulent Submission that is submitted using the user ID and password of one of its User Agents.

1.12. Developers, Participants and interested parties and their User Agents will not be able to view or find out the identity of other Developers, Participants or interested parties or their User Agents on, or through the use of, the Portal.

Portal Information and Helpdesk

1.13. A workshop for Participants and other interested parties will be held to provide an overview of how the Portal works.

1.14. Help guides are available on the Portal that provide further information about how to use the Portal in relation to the Tender Round. These will be updated where appropriate.

1.15. BravoSolution UK Ltd will provide a Helpdesk facility to handle technical support in respect of queries raised by users of the Portal. Helpdesk are instructed only to supervise and maintain the operation of the Portal and Users are not permitted to ask any questions of Helpdesk in relation to the Tender Round or in respect of information available through the Portal.

1.16. The Portal Helpdesk will be open between 8am and 6pm (Monday to Friday, excluding public holidays in England) and can be contacted as follows:

Telephone: + 44 (0)800 011 2470

Fax: +44 (0)20 7060 0480

Email: help@bravosolution.co.uk

Appendix 4 - Glossary

'Advisers' means in relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates.

'Authority' means the Gas and Electricity Markets Authority³⁶.

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

'BAFO Documentation' means, in respect of a particular Qualifying Project, the documentation which will be delivered to each Qualifying Bidder invited to make a BAFO Submission, which sets out the rules and requirements of the BAFO Stage.

'BAFO Stage' means the period starting from the distribution by Ofgem of the BAFO Documentation to selected Qualifying Bidders, including BAFO preparation, Submission and evaluation, and ending when a Preferred Bidder is selected and notified.

'BAFO Submission' means a selected Qualifying Bidder's response to the BAFO Documentation.

'Bidder' means any person who makes a PQ Submission.

'Bidder Group' means two or more persons acting together as a consortium for the purposes of any Submission to Ofgem in accordance with the Tender Regulations.

'Competition Act' means the Competition Act 1998 as amended from time to time.

'Confidentiality Agreement' means the standard form agreement between a Developer and a Qualifying Bidder in respect of confidential information disclosed in connection with a Tender Exercise.

'Confidentiality Consent' means a consent that the Developer signs consenting to Ofgem using information provided to it in respect of the Tender Exercise.

'Cost Recovery Methodology' means the Cost Recovery Methodology for recovering Ofgem's tender costs relating to the second transitional Tender Round, published separately by Ofgem.

'Crown Estate' means the body responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or licence with the Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed.

'Data Room' means, in respect of a Qualifying Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Qualifying Bidders through the Portal.

³⁶ The terms 'Ofgem' and 'the Authority' are used interchangeably in these Tender Rules

'Data Room Guidelines' means the document published by Ofgem to assist Developers to provide information to Ofgem to enable the population of the Data Room.

'DECC' means the government department responsible, among other things, for the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations.

'Developer' means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act, that has developed or is developing an offshore generating station who requests that Ofgem commences a Tender Exercise in respect of a proposed project.

'Distribution Network Owner' or **'DNO'** means a body which operates an electricity distribution network which includes all parts of the network from 132kV down to 230V in England and Wales. In Scotland 132kV is considered to be a part of transmission rather than distribution so their operation is not included in the DNOs' activities.

'Electricity Act' means the Electricity Act 1989 as amended from time to time.

'Estimated transfer value' means Ofgem's estimate of the efficient and economic costs which ought to be incurred in connection with the development and construction of the transmission assets for each Qualifying Project.

'Final transfer value' means Ofgem's assessment of the efficient and economic costs which ought to have been incurred in connection with the development and construction of the transmission assets for each Qualifying Project.

'Government' means Her Majesty's Government in the United Kingdom.

'Helpdesk' means the facility provided by BravoSolution UK Ltd to handle technical support queries raised by Users of the Portal.

'Information Commissioner' has the meaning given to that term in the Data Protection Act 1998 as amended from time to time.

'Information Memorandum' or **'IM'** means the document issued by Ofgem to a Qualifying Bidder at the QTT stage containing detailed information in relation to a Qualifying Project.

'ITT' means Invitation to Tender under Regulation 15 of the Tender Regulations.

'ITT Documentation' means, in respect of a particular Qualifying Project, the documentation, which will be made available to each Qualifying Bidder invited to make an ITT Submission 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 Documentation to Qualifying Bidders by Ofgem, and including the preparation, Submission and evaluation of ITT Submissions, and ending when either a Preferred Bidder is selected and notified, or a BAFO Stage is commenced.

'ITT Submission' means a Submission by a Qualifying Bidder to Ofgem in response to the ITT Documentation.

'Licence grant' means the grant of the Offshore Transmission Licence by the Authority to the Successful Bidder, pursuant to section 6C of the Electricity Act.

'NETSO' means the National Electricity Transmission System Operator (formally known as the GB System Operator). This role is fulfilled by NGET in accordance with its Electricity Transmission Licence. Under its standard licence conditions, NGET is required to provide Ofgem with certain information and assistance in relation to any Tender Exercise and the Offshore Electricity Transmission System to which it relates.

'NGET' means National Grid Electricity Transmission PLC.

'Offshore Transmission Licence' means an Offshore Transmission Licence granted pursuant to section 6(1)(b) of the Electricity Act in relation to the transmission of electricity in offshore waters, where offshore waters 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; and
- (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.³⁷

'OFTO' or **'Offshore Transmission Licensee'** means the holder of an Offshore Transmission Licence.

'Participant' means a Bidder, a Bidder Group, a Qualifying Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

'Portal' means the Offshore Transmission Electronic Tendering Portal described in section 4 and Appendix 3 of these Tender Rules.

'Post Tender Revenue Adjustment mechanism' means the mechanism used by the Authority to determine any adjustments to the revenue stream that may be required as a result of the difference between the Authority's estimated transfer value and the final transfer value.

'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 submissions received, as the Qualifying Bidder to which it intends (subject to the satisfaction of the conditions specified by Ofgem) to grant the Offshore Transmission Licence.

'Preferred Bidder Matters' has the meaning stated in paragraph 10.6b).

'Preferred Bidder Stage' means the period starting at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date of Ofgem's notice to the Preferred Bidder that it has been become the Successful Bidder.

³⁷ The terms 'Ofgem' and 'the Authority' are used interchangeably in these Tender Rules

'Preliminary Information Memorandum' or **'PIM'** means the document issued by Ofgem via the Portal at the PQ stage containing high level information in relation to a Qualifying Project.

'PQ Documentation' means the documentation prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage.

'PQ Questionnaire' means the PQ Questionnaire published by Ofgem at the PQ Stage, as part of the PQ Documentation, to entities that have registered on the Portal.

'PQ Stage' means the period starting from the publication of the PQ Documentation, including the preparation, Submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Qualifying Bidders who are invited to participate in the QTT Stage.

'PQ Submission' means a Bidder's response to the PQ Documentation.

'Qualifying Bidder' means a Bidder or Bidder Group invited to make a QTT Submission or an ITT Submission, or if applicable, a BAFO Submission.

'Qualifying Project' means an offshore generating project in respect of which Ofgem determines that the Developer has satisfied the Qualifying Project requirements described in paragraph 2 of Schedule 1 to the Tender Regulations or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem.

'QTT' means Qualification to Tender.

'QTT Documentation' means the documentation 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 QTT Stage.

'QTT Questionnaire' means the QTT Questionnaire published by Ofgem at the QTT Stage, as part of the QTT Documentation, to entities that have registered on the Portal.

'QTT Stage' means the period starting from the distribution of the QTT Documentation to Qualifying Bidders to Ofgem, including the preparation, Submission and evaluation of QTT Submissions and ending once Ofgem has published the shortlist of Qualifying Bidders for Qualifying Projects who are invited to participate in the ITT Stage.

'QTT Submission' means a Qualifying Bidder's response to the QTT Documentation.

'Reserve Bidder' means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received, as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem determine not to grant the Offshore Transmission Licence to the Preferred Bidder.

'Section 8A Licence Consultation' has the meaning stated in paragraph 10.19.

'Section 49A Notice' means a notice given by the Authority under Section 49A of the Electricity Act.

'Security' includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.

'Submission(s)' means a PQ Submission, a QTT Submission, an ITT Submission or a BAFO Submission (if applicable).

'Successful Bidder' means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence.

'Successful Bidder Stage' means the period starting at the date of Ofgem's notice to a Preferred Bidder that it has become the Successful Bidder and ending at the date when the Successful Bidder is granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

'Tender Commencement Notice' means the notice issued by the Authority under Regulation 9(1) of the Tender Regulations confirming its intention to commence a Tender Exercise.

'Tender Exercise' 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 2010.

'Tender Revenue Stream' means a constant revenue stream in real terms submitted by the Qualifying Bidder for the relevant Qualifying Project.

'Tender Round' means the Tender Exercises run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects.

'Tender Rules' means these rules published by Ofgem pursuant to regulation 9(4) of the Tender Regulations (as amended by any documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Exercise).

'Transfer Agreement' means the agreement to transfer any property interests, rights or liabilities in or relating to Transmission Assets from a Developer to a Successful Bidder in respect of a Qualifying Project subject to a transitional Tender Exercise.

'Transitional regime' means Tender Rounds 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 Qualifying Project requirements and tender entry conditions to the satisfaction of the Authority.

'Transmission Assets' has the meaning given in paragraph 1(3)(a) of Schedule 2A to the Electricity Act.

'Transmission Services' has the meaning given in the standard conditions of an Offshore Transmission Licence.

'Transmission System Operators' means Transmission System Operators across the European Union. In Great Britain this means the NETSO.

'User' means any person who is granted access to and use of the Portal.

'User Agent' means any person authorised by the User to access and use the Portal and/or acting as a representative or agent of the User in accessing and using the Portal.

'User Agreement' means an agreement governing the access and use of the Portal by Users.