Overview:

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

This Invitation to Tender Document is issued by the Authority pursuant to Regulation 13(2) of the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, and applies to the first round of tenders for the grant of Offshore Electricity Transmission Licences

Date of publication: 22 December 2009



Document type: Invitation to Tender Document

Invitation to Tender Document

2009 Transitional Tenders

**NOTE TO READERS**

This is the ITT document related to the ITT Stage for the first transitional tender round (TR1), which commenced in December 2009. Note that the references to Greater Gabbard are superceded by a re-run of the ITT Stage for that project, for which the date for submissions expired on 9 Feburary 2011. The ITT re-run document for Greater Gabbard will be published in due course upon completion of the ITT Stage for that project.

**IMPORTANT NOTICE**

**Introduction**

This Invitation to Tender (ITT) Document is issued by the Authority pursuant to regulation 13(2) of the Tender Regulations and applies to the first Tender Round for the grant of Offshore Transmission Licences under the Transitional Regime.

By accepting and participating in the Tender Process each Qualifying Bidder agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the ITT Document and the Tender Rules, issued by the Authority.

A material breach of the Tender Regulations, ITT Document or the Tender Rules would give Ofgem the right, under the Tender Regulations, to disqualify a Qualifying Bidder from the Tender Process.

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

It is the responsibility of each Qualifying Bidder to ensure that it has all of the information it needs to prepare its ITT Submission.

While information provided by Ofgem and/or its Related Parties in this ITT Document or otherwise in relation to the Tender Round has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified.

Neither Ofgem nor any of its Related Parties makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Related Parties in this ITT Document or otherwise in relation to the Tender Round or any information provided by Ofgem or Developers through Sale and Purchase Agreements, Data Rooms or otherwise. All such persons or entities expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by a Qualifying Bidder /or any other interested party.

**Use of information**

This ITT Document has been prepared and issued to set out the requirements for ITT Submissions.

This ITT Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Related Parties. Each Qualifying Bidder and any other interested party must make its own independent assessment of the Qualifying Project after making such investigation and taking such professional advice as it deems necessary.

The material in this ITT Document is not and should not be regarded as legal or professional advice.  Qualifying Bidders should seek their own legal or other professional advice where appropriate.

**Copyright**

The information contained within this ITT Document is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in this ITT Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

**Freedom of information**

The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities.

The Environmental Information Regulations 2004 provides a general right of access to environmental information held by public authorities.

Ofgem is subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. Qualifying Bidders will be invited in their ITT Submission to identify which parts, if any, of their ITT 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 if a request for disclosure is subsequently received by Ofgem. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.

Although Ofgem is not under any statutory obligation to consult with a Qualifying Bidder 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 Qualifying Bidder of requests wherever it is reasonably practicable to do so. However, all decisions about disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Qualifying Bidder has identified any information as being in its opinion eligible for exemption.

For further information and guidance, Qualifying Bidders' attention is drawn to the Lord Chancellor's Code of Practice issued under Section 45 of the Freedom of Information Act 2000 (see <http://www.dca.gov.uk/foi/codesprac.htm>).

**Data protection**

In participating in the Tender Round, Qualifying Bidders 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 Qualifying Bidders and, in order to participate in the Tender Round, Qualifying Bidders must agree to such data being collected, held and used.

**Information provided by Qualifying Bidders**

Ofgem is relying on the information provided by Qualifying Bidders before and during the Tender Round (including but not limited to information concerning the members and structure of their consortia where relevant).

If, at any time following the making of any ITT Submission and before Ofgem publishes the name of the Preferred Bidder, there are any material changes or proposed changes to the information provided in the ITT Submission, or a Qualifying Bidder becomes aware that information previously submitted is no longer true or accurate, such Qualifying Bidder must advise Ofgem as soon as is reasonably practicable.

For the avoidance of doubt, where a Qualifying Bidder informs Ofgem of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Qualifying Bidder's ITT Submission in light of that material change or proposed change.

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

**Grounds for cancellation or disqualification**

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

**Confidentiality and publicity**

The Confidentiality Agreements signed by the Qualifying Bidder at the QTT stage will cover information received during the ITT stage and any subsequent stage of the Tender Process. Qualifying Bidders and Developers must comply with their obligations under such agreements and procure compliance by their directors, employees, advisers, subcontractors, etc, as provided for under such agreements.

Qualifying Bidders shall not undertake (or permit to be undertaken) at any time during the Tender Process, any publicity activity with any section of the media in relation to any Project other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet and e-mail accessible by the public at large and the representatives of such media.

**Right to vary Tender Process**

Subject to the provisions of the Tender Regulations and EU public procurement law, Ofgem reserves the right to vary any element of the Tender Process, issue supplementary documentation (including rules particular to each stage of the Tender Process) or make additional arrangements at any time during the Tender Process to clarify any issue or amend any aspect of the Tender Process.

All supplementary documentation issued by Ofgem during the Tender Round will be deemed to form part of this ITT Document to the extent indicated in the amendment. Subject to the provisions of the Tender Regulations, Ofgem may extend the Tender Process and postpone any submission date.

**Costs**

Each Qualifying Bidder will bear its own costs of participating in the Tender Process and will be responsible for meeting the costs incurred by Ofgem in administering the Tender Process in accordance with the Tender Regulations.

Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Qualifying Bidder, including without limitation any unsuccessful Qualifying Bidder, for any costs, expenses, damages or losses incurred in connection with the Tender Process.

**Miscellaneous**

Ofgem is not bound to accept any ITT Submission made by a Qualifying Bidder.

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

Nothing in this ITT Document is intended to, or shall be deemed to, establish any partnership or joint venture between Ofgem and any Qualifying Bidder.

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

The Tender Rules and this ITT Document inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules and this ITT Document are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Qualifying Bidders are strongly encouraged to become conversant with the Tender Regulations in addition to reading the Tender Rules and this ITT Document.

In the event of any conflict between this ITT Document and the Tender Regulations, the Tender Regulations take precedence.

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# INTRODUCTION TO THE Tender Process

## Introduction

### Ofgem launched the first round of competitive tenders for offshore electricity transmission owner (OFTO) licences on 22 July 2009. The purpose of these tenders is to identify new offshore transmission licensees to own and manage transmission assets which have been, or are being, constructed by the Developers of the relevant offshore wind generation projects, known as Qualifying Projects.

### Successful Bidders in this process will be granted an offshore transmission licence and an entitlement to an associated 20 year revenue stream in return for purchasing the transmission assets from the offshore wind generator and operating them in accordance with the obligations of this licence.

### This ITT Document sets out the requirements which Qualifying Bidders for each Qualifying Project in this Tender Round are required to demonstrate to Ofgem’s satisfaction to identify a Preferred Bidder for each Qualifying Project.

## Tender Framework

### The Tender Regulations and Tender Rules set out the rules and requirements that govern the Tender Process and are available on the Ofgem website and via the Portal.

## Amendments to the Tender Rules

### This ITT Document does not amend anything in the Tender Rules, but provides a greater level of detail in relation to the specific requirements for the ITT Stage. It also provides a more detailed timetable for the ITT stage.

## Information on Qualifying Projects

### Qualifying Bidders were provided detailed Information Memoranda for each Qualifying Project they entered into confidentiality agreements with at the Qualification to Tender (QTT) stage. More significantly, Qualifying Bidders now have access to the Data Rooms for each Qualifying Project for which they have been shortlisted. Further information on the Data Room is provided in Section 3 of this document.

## Overview of Tender Process

### **Outcome of the Qualification to Tender Stage**

Following the completion of the QTT stage, Ofgem announced the Qualifying Bidder shortlist for each Qualifying Project. These shortlists were published on Ofgem’s website [www.ofgem.gov.uk](http://www.ofgem.gov.uk/).

### **ITT Document and Response**

### Qualifying Bidders are now invited to submit an ITT Submission for each Qualifying Project for which they were shortlisted. This ITT Document sets out the requirements and rules for this stage of the Tender Process.

### Qualifying Bidders are required to upload their ITT Submissions into the Portal by no later than 12 noon on 4 March 2010. The Portal will be closed at this time and no late submissions will be accepted.

### Ofgem will evaluate all compliant ITT Submissions in accordance with the process described in Section 7 of this ITT Document, with the intent to identify a Preferred Bidder for each Qualifying Project.

### **Timetable**

The timetable for the ITT Stage is set out below. This updates the timetable contained in the Tender Rules.

Ofgem reserves the right to vary this timetable at its discretion. Qualifying Bidders will be informed of any such changes.

|  |  |
| --- | --- |
| **Requirement** | **Date** |
| ITT Document and Data Room made available to Qualifying Bidders | From 21 December onwards |
| Project Briefing Days | 13 and 15 January 2010[[1]](#footnote-1) |
| Qualifying Bidder SPA Mark Up | 21 January 2010 |
| Qualifying Bidder Comments and Clarifications to Developer Commercial Offers (e.g. O&M, insurance) | 21 January 2010 |
| Ofgem Issues Final Project SPA | 17 February 2010 |
| Clarification Questions to Ofgem (if required) | Up until 22 February 2010 |
| Deadline for ITT Submissions (12 noon) | 4 March 2010 |
| Clarification of ITT Submissions by Ofgem (if required) | 5 March 2010 onwards |

# REgulatory framework

## Overview

### The regulatory framework for the GB electricity industry is provided for in a number of instruments including primary legislation, secondary legislation, licences issued by the Authority, industry codes and technical standards.

### The regulatory framework is summarised in the following diagram:



### A more detailed explanation of both the regulatory and contractual framework is provided in the First Transitional Tender Information Memorandum, which was made available at the commencement of the Qualification to Tender (QTT) stage of this tender process. This document is also available in the Data Room.

## Third Package

### A package of European legislation on the liberalisation of EU gas and electricity markets (the “Third Package”) entered into force on 3 September 2009. 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”)). Ofgem will be consulting on the various issues associated with the unbundling requirements in the Third Package in early 2010, including issues arising if the unbundling provisions apply to offshore transmission projects.

### The Third Package requires that, between March 2011 and March 2013, the Authority, as the national regulatory authority responsible for certification of Transmission System Operators in Great Britain, certify all Transmission System Operators as compliant with full ownership unbundling, or *potentially* one of the alternative models set out below, 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. This certification process will necessarily be run separately from the first Tender Round for the Transitional Regime and will follow different timescales. Importantly, if offshore lines in respect of the relevant Qualifying Project are considered to be part of the transmission system and the definition of Transmission System Operator therefore includes the OFTO for the relevant Qualifying Project, decisions by the Authority as to certification or otherwise, including decisions to withdraw certification after it has been granted, may take place after the Authority has selected, and granted a licence to, the Preferred Bidder for each project.

### All Qualifying Bidders should be aware of the relevant provisions of the Third Package and are strongly advised to consider the requirements of the Third Package as necessary. Ofgem is not advising Qualifying Bidders as to the provisions and impact of the Third Package and encourages Qualifying Bidders to seek appropriate independent legal advice in this respect.

### It is important to note that the decisions to shortlist and select the Qualifying Bidders for the ITT Stage, select the Preferred Bidder or grant a licence at the end of the Tender Process are taken by the Authority in its role as manager of the Tender Process under section 6(C) Electricity Act 1989 (as amended) and the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009. These decisions are not taken in relation to the Authority’s certification responsibilities as the national regulatory authority responsible for certification of Transmission System Operators in Great Britain (under the requirements of the Electricity Directive). Any such decision the Authority takes in relation to the Tender Process should not be taken as a decision, or any indication of what decision may be taken, on certification. It is for all Qualifying Bidders to satisfy themselves that they are able to comply with one of the models set out below.

### Each Qualifying Bidder is required to provide an undertaking in the form set out in the Qualifying Bidder ITT Certificate set out in Appendix 3 confirming that it has considered the implications of the Third Package and understands that, if selected as Preferred Bidder or Reserve Bidder and if the provisions of the Third Package or, when appropriate, the relevant provisions of the relevant implementing legislation, apply to the relevant Qualifying Project, it will be required to comply with specified provisions of the Third Package, or where appropriate, the relevant provisions of the relevant implementing legislation relating to unbundling.

### The Third Package envisages a number of options for unbundling. The default position is that of full ownership unbundling, the requirements of which are set out in Article 9.1 of the Electricity Directive. One element of this model is that the same person or persons cannot “directly or indirectly exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly exercise control or exercise any right over a transmission system operator or over a transmission system” (and vice versa). The concept of “any right” is set out in Article 9.2 and includes the power to exercise voting rights, to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking or holding of a majority share. Alternatively where, on 3 September 2009, the transmission system belongs to a vertically integrated undertaking, Article 9.8 of the Electricity Directive allows a Member State not to apply Article 9.1 and to comply instead with the Independent System Operator (ISO) model or the Independent Transmission Operator (ITO) model (set out in Article 13 and Chapter V of the Electricity Directive respectively). Both of these models require certain structural, functional, administrative and other arrangements to be put in place to ensure the effective independence of the Transmission System Operator from production and supply activities. Finally, a Transmission System Operator may be eligible to apply for a derogation to full ownership unbundling if it can be demonstrated that there are arrangements in place on 3 September 2009 which guarantee more effective independence of the Transmission System Operator than those provided for by the ITO model.

### In addition to the requirements for unbundling, Qualifying Bidders should be aware of other obligations that will need to be satisfied by all transmission owners.

# instructions to qualifying Bidders

## Documents and Correspondence

### All documents relating to the ITT Stage will be made available to Qualifying Bidders via the Portal, unless explicitly advised otherwise by Ofgem.

### All correspondence to Qualifying Bidders, including variations to this or any other any document produced by Ofgem and clarifications, will be made via the Portal, unless explicitly advised otherwise by Ofgem.

### All correspondence from Qualifying Bidders to Ofgem, including clarifications, the mark up of the Draft Project SPA and Submissions, must be made via the Portal, unless explicitly advised otherwise by Ofgem.

## Information Available to Qualifying Bidders

### **Data Room**

Ofgem has established electronic Data Rooms for each Qualifying Project at [www.ofgem.bravosolution.co.uk](http://www.ofgem.bravosolution.co.uk). Qualifying Bidders will have access to those Data Rooms for which it has been shortlisted. These have primarily been populated with information from Developers although information from other third parties is also included, as well as information from Ofgem. This comprises information made available previously during the Tender Process and new information.

### Each Data Room is fully indexed. Any changes to the Data Rooms will be communicated to Qualifying Bidders by making available updated indexes.

### **Information Provided by Developers**

A significant volume of information has been provided by Developers, which is collated into a number of different folders within each Data Room. Detailed indexes are provided in the “Read Me First” folder of each Data Room, which are accessible at the top level of the folder structure.

Developers have also populated the Model SPA to produce the Draft Project SPAs, which are project specific agreements for each Qualifying Project. These Draft Project SPAs are provided in the relevant Data Rooms both as clean MS Word documents and as versions showing changes against the Model SPA.

Developers have also provided other ancillary documentation associated with the Sale and Purchase Agreement and interface issues.

### **Information from Third Parties**

Information from other third parties has also been uploaded to the Data Room. An overview of this is set out below:

#### National Electricity Transmission System Operator – The NETSO has provided a number of documents into the Data Room, including the Offshore Transmission Construction Agreement (TOCA), upstream network data and standard documentation from the industry codes.

#### The Department for Energy and Climate Change[[2]](#footnote-2) –Decommissioning Guidance

#### The Crown Estate – The Draft Crown Estate Seabed Lease

#### Her Majesty’s Revenue and Customs (HMRC) – a letter to Ofgem regarding the VAT treatment for the transfer of the transmission assets from Developers.

It is the responsibility of each Qualifying Bidder to ensure that it has all of the information it needs to prepare its ITT Submission.

While information provided by Ofgem and/or its Related Parties in the Data Rooms has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified.

Neither Ofgem nor any of its Related Parties makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Related Parties in the Data Rooms or otherwise. All such persons or entities expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by a Qualifying Bidder /or any other interested party.

### **Information Provided by Ofgem**

### In addition to the above, Ofgem has made or will shortly make available additional information in the Data Room, summarised below:

### (i) Standard Licence Conditions of the Electricity Transmission Licence, which are applicable to all transmission owners in Great Britain;

### (ii) Draft Special Licence Conditions of the Electricity Transmission Licence applicable to OFTOs[[3]](#footnote-3);

### (iii) Guidance Note on the Special Licence Conditions;

### (iv) Tender Guidance Document on OFTO of Last Resort;

### (v) Tender Guidance Document on Process to Asset Transfer;

(vii) Tender Guidance Document for Ofgem Proforma Input Sheets;

(viii) Ofgem Proforma Input Sheets;

### (ix) Cost Reconciliation Report for each Qualifying Project and associated KEMA reports.

### Ofgem reserves the right to make available additional information in the Data Room during the ITT Stage as appropriate.

## Engagement and Dialogue

### **Dialogue with Ofgem**

### Appendix 1 contains the schedule of meetings during the ITT Stage. Ofgem will update this schedule on a weekly basis during the ITT Stage.

### **Qualifying Bidder Clarifications**

### Qualifying Bidders may seek clarifications from Ofgem in relation to any aspect of this ITT Document or the information provided in the Data Room. All such clarifications must be made by no later than 22 February 2010 using the standard clarification proforma, via the Portal.

### Ofgem will endeavour to provide responses as soon as reasonably possible, although the timeframe within which Ofgem will respond will vary on a case-by-case basis depending on the nature of the clarification requested. This will also depend on whether Ofgem needs to seek the response from the Developer or another relevant third party. Qualifying Bidders are reminded that the Tender Rules preclude them from contacting the Developer during the Tender Process.

### Ofgem's response to an individual Qualifying Bidder's query may be made available to all Qualifying Bidders. However, in such cases the identity of the Qualifying Bidder that raised the query will remain confidential.

### Where Ofgem considers that a Qualifying Bidder's query is sufficiently specific and confidential to that Qualifying Bidder, Ofgem may, at its discretion, provide its response solely to that Qualifying Bidder.

### Qualifying Bidders must not attempt to contact Ofgem for clarification other than via the Portal. Where a Qualifying Bidder considers it necessary to contact Ofgem via telephone, it must contact Dan Baker, Ofgem’s Tender Coordinator, on 020 7901 7102 in the first instance.

### **Ofgem Clarifications**

### During the evaluation process, Ofgem may require Qualifying Bidders to clarify their ITT Submission. Qualifying Bidders must respond to clarifications issued by Ofgem and within a reasonable time. Failure to do so may risk the response being excluded from consideration in the evaluation process.

## Changes Arising Since QTT Submission

### Each Qualifying Bidder is required to confirm in its ITT Submission that the information provided in its PQ and QTT Submissions is unchanged. This confirmation is required as part of the ITT Qualifying Bidder Certificate provided in Appendix 3.

### In instances where there have been changes, the Qualifying Bidder is required to identify these to Ofgem as part of the ITT Submission. Ofgem will evaluate these changes in accordance with the evaluation criteria set out in the Pre-Qualification (PQ) and QTT Documents. Depending on the extent of the change, the Qualifying Bidder may be required to resubmit the relevant sections of the PQ and QTT Documents to enable this re-evaluation.

### Should unexpected or unforeseen circumstances arise leading to the need for a Qualifying Bidder to amend its consortia, where applicable, following the commencement of the ITT Stage, it must inform Ofgem as soon as reasonably practicable of this. Ofgem will determine on a case by case basis whether permitting the amended consortium to remain in the tender process would be fair and equitable to all other Qualifying Bidders participating in the tender process for the relevant Qualifying Project, in accordance with the Tender Regulations. Where Ofgem permits the amended consortium to remain in the Tender Process, the Qualifying Bidder may be required to resubmit the relevant sections of the PQ and QTT Documents.

### Ofgem reserves the right to exclude a consortium from the Tender Process where it considers that the consortium can no longer fulfil the criteria which led to its inclusion on the shortlist at the conclusion of the QTT stage.

# Mark up of documents during the ITT Stage

## Submission of Required Mark Ups and Commentary

### Qualifying Bidders must propose any changes to the following documents for each Project by no later than 5pm on 21 January 2010:

#### **Draft Project SPA** **and Disclosure Letter** – by way of a drafting mark up of the Draft Project SPA and Disclosure Letter and a commentary table to a maximum of 10 pages;

#### **Draft Interface Agreement** – by way of commentary table only, to a maximum of two pages;

#### **Commercial Offers** **(Operations & Maintenance Agreement and Insurance Proposals where applicable)** – by way of comment and clarification to a maximum of 10 pages.

### In respect of Greater Gabbard only, Qualifying Bidders are also required to respond in respect of the Draft Interim Services Agreement and Draft Commissioning Services Agreement (which will be provided into the relevant Data Room in early January), by way of a drafting mark up and a commentary table to a maxiumum of 10 pages per Agreement.

### Following consideration by Ofgem, these mark ups and commentary tables will be provided to the relevant Developer on an anonymous basis. The Developer will consider the changes proposed to the Draft Project SPA and will prepare the Final Project SPA, which will be provided to Qualifying Bidders by 17 February 2010.

### In providing mark ups and commentary tables, Qualifying Bidders should be mindful of the assumptions set out in in section 6 of this ITT Document.

### Ofgem will not be evaluating these mark ups. However, Qualifying Bidders will be required to make their ITT Submissions based on, and assuming, that there will be no further changes to the Final Project SPA. Qualifying Bidders firm Tender Revenue Stream bids must be priced on the above basis. Qualifying Bidders will not be permitted to provide a mark up of the Final Project SPA with their ITT Submissions.

## Form of Mark Up

### Where a mark up of a document is required, Qualifying Bidders must provide the mark up as:

#### a clean document in MS Word format; and

#### a PDF of a comparison between the mark up and the original document provided by the Developer.

## Form of Commentary Table

### Where a commentary table is required, Qualifying Bidders must:

#### prepare the commentary table using the form provided in the Data Room; and

#### provide the commentary table in MS Word format.

### Qualifying Bidders are required to indicate in the commentary table whether the issues underlying their proposed changes to the relevant document are:

###### **High:** Significant commercial/legal impact which will materially affect the Tender Revenue Stream being bid;

###### **Medium:** Commercial/legal impact which will not materially affect the Tender Revenue Stream being bid; or

###### **Low:** Amendments which neither affects the Tender Revenue Stream bid nor have a significant commercial impact, but which would make the transaction more desirable from the Qualifying Bidder’s perspective.

### Where a Qualifying Bidder identifies issues of High or Medium significance, they are required to explain the nature of these and the impact that it has on the Tender Revenue Stream bid.

## Form of Documents Generally

### The marked up documents and commentary tables must be provided on an anonymised basis and not contain any information (including in footnotes) which could identify or allow ready identification of the Qualifying Bidder or any member of the consortium (if relevant).

### Any comments on the documents, whether by way of mark ups or commentary tables, should relate to the subject matter of the relevant document (for example, comments on the Draft Project SPA should relate soley to the Sale and Purchase Agreement as a mechanism to transfer the transmission assets). Any comments which are issues for Ofgem to address, including issues in relation to the Tender Process, Electricity Transmission Licence or regulatory regime, should be raised as clarifications in accordance with the procedure set out in paragraph 3.3.3 in section 3 of this ITT Document.

### Qualifying Bidders should be aware that failure to comply with instructions regarding the production of mark ups and commentary tables may result in their comments not being passed to the Developer.

# ITT Submissions

## Form of ITT Submission

### All ITT Submissions must be made via the Portal, using the templates provided, except where information is explicitly requested to be provided in specific formats, such as the Ofgem proforma input sheets.

### Where a Qualifying Bidder is on the shortlist for two or more Qualifying Projects, it is required to submit a separate ITT Submission for each Qualifying Project. Each ITT Submission must set out how the Qualifying Bidder would meet the requirements in respect of the particular Qualifying Project in question.

### The ITT Submission must be completed in English, including any supplementary supporting documentation.

## ITT Submission Deadline

### All Submissions must be submitted via the Portal no later than 12 noon on 4 March 2010. The Portal will be closed at this time and no late submissions will be accepted.

## Content of ITT Submission

### A complete ITT Submission must contain the following:

#### Responses to all requirements of this ITT Document, together with required supporting documentation and any optional supporting documentation;

#### For each Qualifying Project being bid, the Qualifying Bidder’s fully populated financial model provided in Microsoft Excel in either Microsoft Excel Version 2003 or Microsoft Excel Version 2007. The model should not incorporate any password protection or protected macros; and

#### Fully populated proforma input sheets for each Qualifying Project being bid, for Ofgem’s evaluation purposes, in accordance with the Tender Guidance Document for Ofgem Proforma Input Sheets.

### Where page limits are indicated in the requirements for response, these must be adhered to. Ofgem will ignore any additional information submitted in excess of these.

### Ofgem reserves the right to amend these requirements during the ITT Stage prior to the ITT Submission deadline.

## Variant ITT Submissions

### Ofgem will not accept any variant ITT Submissions.

# Assumptions for itt submissions

## Introduction

### This section sets out certain standard assumptions that Qualifying Bidders must use, where relevant, in compiling their ITT Submissions. This includes financing assumptions, economic assumptions, and certain assumptions specific to each Qualifying Project.

## Financing Assumptions

### Where a Qualifying Bidder’s funding structure is dependent on underlying market rates, it is required to adopt the following reference rate assumptions as appropriate:

* RPI Swap Rate is 3.67%
* Interest Rate Swap Rate is 4.08%
* Gilt Rate is 4.12%
* Index Linked Gilt Rate is 0.70%
* Barclays Base Rate is 0.5%

### The rates above are based on the following assumptions:

### Inflation will be hedged for the full duration of the Offshore Electricity Transmission Licence based on a flat 20 year swap profile; and

### Senior debt will hedged on the basis of an 18 to 19 year debt tenor, with an average loan life of 12 years.

### Qualifying Bidders should be aware that Ofgem reserves the right to update these reference rates during the ITT stage, as appropriate.

### Should a Qualifying Bidder consider that its ITT Submission contains substantially different assumptions to the reference rates quoted above, they are required to raise a clarification via the Portal in the first instance. Depending on the nature of the clarification, Ofgem may make this available to all other Qualifying Bidders in accordance with the clarification process described in section 3 above. Ofgem will communicate its decision on any such clarification through the Portal.

### Qualifying Bidders should note that all reference rates above are quoted before application of any applicable credit spreads. Qualifying Bidders are required to include any spreads and margins in their financial models.

## Economic Assumptions

### All Qualifying Bidders are required to adopt the following economic assumptions in compiling their ITT Submissions:

### Discount Rate is 3.5% Real

### Base date for indexation is the Estimated Transfer Date for the relevant Qualifying Project

### Indexation should be applied in accordance with the Offshore Electricity Transmission licence, i.e. annually each April

### The Tender Revenue Stream commencement date is the Estimated Transfer Date for the relevant Qualifying Project, with the exception of Greater Gabbard where a Pre-Transfer Tender Revenue Stream is required as set out in Appendix 2, Section 5 Part C

### The length of the Tender Revenue Stream is 20 years from the Estimated Transfer Date for the relevant Qualifying Project

### Support is required for 120% of the total funding requirement for all sources of finance for the Qualifying Project

### The financial year end is assumed to be March each year.

## Qualifying Project Assumptions

### The following table sets out a number of data that Qualifying Bidders must assume in compiling their ITT Submissions. This was the information published in the Information Memoranda published at the commencement of the QTT stage.

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Developer(s)** | **Estimated Transfer Value** | **Estimated Transfer Date** |
| Barrow | DONG Energy, Centrica | £36.5m | June 2010 |
| Robin Rigg | E.On | £57.3m | June 2010 |
| Gunfleet Sands I & II | DONG Energy | £48.2m | June 2010 |
| Sheringham Shoal[[4]](#footnote-4) | StatoilHydro, Statkraft | £182.1m | April 2011 |
| Ormonde | Vattenfall | £101.1m | March 2011 |
| Greater Gabbard[[5]](#footnote-5) | SSE/Airtricity, RWE Innogy | £316.6m | Nov 2010 |
| Thanet | Vattenfall | £163.1m | June 2010 |
| Walney 1 | DONG Energy | £101.8m | Oct 2010 |
| Walney 2 | DONG Energy | £105.0m | Aug 2011 |
|  | **TOTAL** | **£1,111.7m** |  |

## Deferred Consideration, Security and Interest

### Qualifying Bidders should assume that, for Qualifying Projects which are commissioned after the “Go Live” date:

#### For the purpose of providing their Tender Revenue Stream bid, Deferred Consideration shall be equal to 25% of the Estimated Transfer Value. Qualifying Bidders should assume that financing is in place at the date that the transmission assets are transferred for 100% of the Estimated Transfer Value.

#### The provision for security for the “Deferred Consideration” (as defined in the relevant Draft Project SPA) in the form of a Parent Company Guarantee or Letter of Credit for a period of 6 months post transfer; and

#### The interest payable on the amount of Deferred Consideration at Barclays Base Rate which has been set out in the financial assumptions above.

## Value Added Taxation

### All Qualifying Bidders are required to assume that the transfer value is VAT free. Please see HMRC letter referred to at 3.2.4 and issued in the data room.

## Accounting and Taxation

### All accounting and tax assumptions made by Qualifying Bidders are at their own risk and each bidder must undertake not to pass on any costs of changing its accounting and / or tax assumptions within their financial models.

## EIB Funding

### The European Investment Bank has confirmed that it is willing to provide debt funding to the offshore transmission regime for six Qualifying Projects which are Greater Gabbard, Ormond, Sheringham Shoal, Thanet and Walney I and Walney II.  Qualifying Bidders are invited to include this source of debt funding in their financing proposal for these projects.  Where a Qualifying Bidder does so, it is required to indicate this in its ITT Submission and provide details supported by any outline terms issued to it by EIB in its base case financial model.

### Qualifying Bidders should engage directly with EIB during the ITT Stage and obtain outline terms from EIB on a case by case basis.  Qualifying Bidders should note that EIB will not provide credit approved terms until the appointment of Preferred Bidder has been announced.  However, Ofgem requires credit approval for all other sources of finance to be included in the proposed financing structure as set out in the Qualifying Bidder’s ITT Submission. Ofgem understand that the debt approvals will be subject to EIB involvement at the next stage.  Ofgem encourages Qualifying Bidders to consider EIB funding for those projects which have been identified as eligible where this will enable a lower tender revenue stream to be bid. The outline terms obtained from EIB should be adopted in their financial models together with the other sources of funding being utilised.

# Evaluation OF ITT SUBMISSIONs

## Introduction

### This section explains how Ofgem will evaluate the detailed ITT Submissions provided by Qualifying Bidders for each Qualifying Project for which they have bid. It also sets out those conditions precedent that Ofgem considers will be the only outstanding issues that the Preferred Bidders would need to satisfy prior to the grant of the Offshore Electricity Transmission Licence.

## Conditions Precedent

### Qualifying Bidders are required to provide a firm bid in their ITT Submissions that will be subject only to the following conditions precedent:

#### To execute the Sale and Purchase Agreement (and all ancillary agreements required as conditions or completion deliverables under the Sale and Purchase Agreement) within a specific timescale;

#### To agree, within a specific timescale, to the grant of the Offshore Electricity Transmission Licence from Ofgem;

#### To accede to relevant industry codes, and any necessary interface agreements, where applicable, within a specific timescale; and

#### To execute defined project contracts or other documentation within a specific timescale, including:

#### Completion of relevant financing documents and confirmatory due diligence,

#### Execution of an O&M agreement and/or relevant sub-contracts, and

#### Establishment of the SPV (where required).

For the avoidance of doubt the Conditions Precedent above must be completed to the timescales set out in the Guidance Note to Asset Transfer.

## Evaluation Process

### The purpose of the ITT Stage is to identify a Preferred Bidder for each Qualifying Project to whom Ofgem would be willing to grant a Offshore Electricity Transmission Licence.

### In order to do so, Ofgem will conduct a detailed evaluation process over four distinct sequential stages:

##### An assessment of compliance;

##### An assessment of the quality and deliverability of Qualifying Bidders’ non-financial submissions;

##### An assessment of the quality and deliverability of Qualifying Bidders’ financial submissions; and

##### An assessment of the Qualifying Bidders’ Tender Revenue Stream bids combined with an assessment of the quality of the underlying assumptions.

### This process is illustrated in the following diagram and described in further detail below. Appendix 2 contains the detailed requirements Qualifying Bidders need to satisfy in respect of each of these stages.

**Evaluated on Scored and Ranked Basis**

**Combined Score will Determine Preferred Bidder**

* **Non-Financial Deliverability**
* **Evaluated on a Scored Basis**
* **Minimum Threshold Applied**
* **Compliance Check**
* **Pass/Fail Test**
* **Financial Deliverability**
* **Evaluated on Scored Basis**
* **Minimum Threshold Applied**
* **Tender Revenue Stream**
* **60% Weighting**
* **Quality of Underlying Assumption**
* **Threshold Requirement**
* **40% Weighting**

### Ofgem will conduct its evaluation in order to best achieve its stated policy objectives for the offshore transmission regime, being:

#### The delivery of fit for purpose transmission infrastructure to connect offshore generation;

#### Provision of certainty and best value to consumers through the competitive process; and

#### Attracting new entrants to the sector.

## Completeness Check

### Prior to the formal evaluation process and following receipt of the ITT Submissions, Ofgem will undertake a completeness check of the information received. If this check identifies any omissions in the information requested, the Qualifying Bidder will be notified and given 48 hours to rectify the omission.

### In this event, evaluation of the Submission will only commence following receipt of the requested omitted information.

### Ofgem reserves the right to disqualify a Qualifying Bidder’s Submission if any omitted information requested is not provided within the required time.

## Compliance Check

### Following this initial completeness check, Ofgem will assess whether ITT Submissions received are compliant. In order to demonstrate compliance, Qualifying Bidders will be required to return a signed copy of the Compliance Declaration provided in Appendix 2.

### In addition to this Compliance Declaration, a compliant ITT Submission must also include the return of a signed copy of the Qualifying Bidder ITT Certificate provided in Appendix 3.

### This is a Pass/Fail requirement. Submissions will not be considered further if compliance has not been demonstrated to Ofgem’s satisfaction.

## Non-Financial Deliverability

### ITT Submissions assessed as being complaint will then be evaluated in terms of the deliverability of a number of non-financial issues. This evaluation will demonstrate to Ofgem the robustness of the Qualifying Bidder’s ability to deliver on its operational and management obligations as a OFTO licensee over the duration of the licence period.

### Evaluation of non-financial deliverability will assess proposals submitted by the Qualifying Bidder against the following minimum thresholds:

#### Section 1: Shareholding/consortium structure

Qualifying Bidders must demonstrate to Ofgem’s satisfaction that they have in place, or will have in place by the time of the expected transfer date for the relevant Qualifying Project (as provided in the Qualifying Project Assumptions), a robust and coherent structure for the entity that would be granted the Offshore Electricity Transmission Licence.

#### Section 2: Takeover plan

Qualifying Bidders must demonstrate to Ofgem’s satisfaction that they have in place robust and coherent proposals for the takeover of the transmission assets from the relevant Developer by the expected transfer date for the relevant Qualifying Project.

#### Section 3: Ongoing operation

Qualifying Bidders must demonstrate to Ofgem’s satisfaction that they have in place robust and coherent operational plans for the relevant Qualifying Project.

#### Section 4: Decommissioning plan

Qualifying Bidders must demonstrate to Ofgem’s satisfaction that they have a thorough understanding of the decommissioning requirements for the relevant Qualifying Project, and that these are reflected in a pragmatic and deliverable decommissioning programme. As appropriate, this must take into account any decommissioning plans already identified by the relevant Developer. This programme must be consistent with the financing assumptions identified for decommissioning by the Qualifying Bidder.

### In responding to the requirements set out in Appendix 2, Qualifying Bidders should take into consideration any proposals made by the relevant Developer in the Final Project SPA or other documents placed in the data room (such as proposed transition arrangements) which may have an impact on their proposed takeover and operational plan.

### Evaluation of non-financial issues will be assessed on a scored basis, with Qualifying Bidders required to meet each of the minimum thresholds identified above. Scores will be allocated on the overall robustness and coherence of the Qualifying Bidder’s detailed arrangements.

### Appendix 2 sets out the information Qualifying Bidders are required in respect of each of these sections within the overall non-financial deliverability.

### Qualifying Bidders that do not demonstrate to Ofgem’s satisfaction that they meet each of these minimum thresholds will not be considered further.

## Financial Deliverability

### Submissions that meet the threshold requirements in terms of non-financial deliverability will then be evaluated in terms of the deliverability of their financial proposals.

### Evaluation of financial deliverability (Appendix 2, Section 5) will assess proposals submitted by the Qualifying Bidder against the following minimum thresholds:

#### Extent to which financing is committed

Qualifying Bidders must provide all the information requested in the relevant parts of Appendix 2, and are required to demonstrate to Ofgem that these financing proposals are deliverable in the timeframe by the expected transfer date for the relevant Qualifying Project.

#### Approach to Due Diligence

### Qualifying Bidders must demonstrate to Ofgem’s satisfaction that they have a fully developed due diligence plan in place for the relevant Qualifying Project, which also sets out any remaining confirmatory due diligence required on appointment of Preferred Bidder.

#### Approach to comply with standard licence conditions E10 & E11

Qualifying Bidders must demonstrate that they have robust and coherent arrangements in place to address licence condition E11 on credit rating and the associated ring fencing provisions in E10.

#### Approach to financing standard licence condition E17

Qualifying Bidders must demonstrate that they have robust and coherent arrangements in place to cater for any amendments which may arise as a result of Standard Licence Condition E17 of the Offshore Electricity Transmission Licence, demonstrating how they intend to fund any incremental capital expenditure and ensure best value of any financing and investment proposals.

#### Ability to comply with standard licence condition E7

#### Qualifying Bidders must demonstrate that they have put in place the necessary arrangements to ensure compliance with Standard Licence Condition E7 financial ring-fencing, of the Offshore Electricity Transmission Licence, and how it will comply.

### Evaluation of financial deliverability will be assessed on a scored basis, with Qualifying Bidders required to meet each minimum threshold identified above.

### Appendix 2 sets out the detailed requirements that each Qualifying Bidder needs to provide.

### Qualifying Bidders that do not demonstrate to Ofgem’s satisfaction that they meet these minimum thresholds will not be considered further.

## The Tender Revenue Stream and the Quality of the Underlying Assumptions

### Each Qualifying Bidder that meets the threshold requirements in respect of non-financial and financial deliverability will be evaluated on the basis of their firm Tender Revenue Stream bid and the robustness of the underlying assumptions of this bid. The scores for these sections will be combined on a 60/40 weighted basis to determine an overall best value bid for the relevant Qualifying Project.

### Section 6: Tender Revenue Stream

### Qualifying Bidders must submit their Tender Revenue Stream bid for each Qualifying Project in accordance with the requirements set out in Appendix 2. This must be submitted with both the Qualifying Bidders’ own financial model and completed proforma input sheets for Ofgem’s evaluation purposes. These will not be evaluated, but used to inform consideration of the assumptions underlying the Tender Revenue Stream bid.

### Ofgem will evaluate the Tender Revenue Stream bid of each Qualifying Bidder on a ranked and scored basis. Scores will be allocated across Qualifying Bidders for each Qualifying Project on the basis of the Tender Revenue Stream bids, with the lowest Tender Revenue Stream being awarded the highest available score.

### Section 6 will be assigned a **60%** weighting for the overall score for this stage of the evaluation.

### Section 7: Quality of Underlying Assumptions

### Qualifying Bidders must submit their assumptions underlying their Tender Revenue Stream bid.

### Ofgem will evaluate the quality of the underlying assumptions of the Tender Revenue Stream on a scored basis. Scores will be allocated on the basis of the robustness of the underlying assumptions for each cost component, along with an assessment of the level of certainty provided by Qualifying Bidders in deriving the Tender Revenue Stream.

This Section 7 is also a threshold requirement. Where Ofgem considers that there are significant outstanding issues that undermine the Tender Revenue Stream bid, then it reserves the right to not consider the Qualifying Bidders’ ITT Submission further.

Qualifying Bidders are reminded that Ofgem set out in the QTT Document that it was minded to treat the Project IRR proposed by Qualifying Applicants in their QTT Submissions as a cap. On the basis of this, Ofgem does not expect that Project IRRs submitted as part of Qualifying Bidders’ ITT Submissions will be higher than that provided in their QTT Submissions. In instances where Project IRRs are higher than those provided in the QTT Submissions, Ofgem reserves the right to exclude the Qualifying Bidder, as set out in the QTT Document.

### Section 7 will be assigned a **40%** weighting for the overall score for this stage of the evaluation.

### **Combining Tender Revenue Stream and Underlying Assumptions**

### The outcomes of the evaluation of the Tender Revenue Stream and the quality of the underlying assumptions will be combined to determine an overall weighted score for the best value Tender Revenue Stream bid. The Qualifying Bidder with the highest overall score will be selected as the Preferred Bidder for the relevant Qualifying Project.

### 

### **Re-consideration of Earlier Scores**

In instances where Ofgem’s evaluation of the Tender Revenue Stream and the underlying assumptions reveals two or more Qualifying Bidders with similar scores within a small percentage of each other, it reserves the right to re-consider earlier scores attained on non-financial and financial deliverability as a means of determining a Preferred Bidder.

### **Best and Final Offer (BAFO) Stage**

### Alternatively and/or additionally, Ofgem may determine that the most appropriate route is to pursue a BAFO stage. In these instances, this will represent an opportunity for the requested Qualifying Bidders to submit a BAFO Submission in accordance with the instructions issued by Ofgem at the time.

# Selection of Preferred Bidder and Next Steps

## Introduction

### This section provides an overview of the steps following the identification of a Preferred Bidder for each Qualifying Project. Ofgem will provide further information in this respect in due course.

## Conditions Precedent

### Once a Preferred Bidder has been identified for the relevant Qualifying Project, it will be notified by Ofgem. Following this notification, the Preferred Bidder will have to satisfy the outstanding matters in accordance with the timescales set out in the Guidance Note to Asset Transfer and as notified by Ofgem, namely:

#### To execute the Sale and Purchase Agreement (and all ancillary agreements required as conditions or completion deliverables under the Sale and Purchase Agreement) within a specific timescale;

#### To agree, within a specific timescale, to the grant of the Offshore Electricity Transmission Licence from Ofgem;

#### To accede to relevant industry codes, and any necessary interface agreements, where applicable, within a specific timescale; and

#### To execute defined project contracts or other documentation within a specific timescale, including:

#### Completion of relevant financing documents and confirmatory due diligence,

#### Execution of an O&M agreement and/or relevant sub-contracts, and

#### Establishment of the SPV (where required)

### Ofgem reserves the right to determine other matters which a Preferred Bidder may be required to satisfy on a per Qualifying Project basis, in accordance with the Tender Regulations.

### In addition to the above, the Preferred Bidder will be required to make a further Payment to Ofgem in accordance with its published Cost Recovery Methodology.

### Qualifying Bidders are advised that the selection of a Preferred Bidder does not in any way oblige Ofgem to grant an Offshore Electricity Transmission licence to that party.

### Further information on the Preferred Bidder process will be made available in due course.

## Reserve Bidder

### Ofgem may, at its discretion, identify a Reserve Bidder that it may determine is to replace the Preferred Bidder if the Preferred Bidder fails to meet the requirements specified by Ofgem or withdraws from the Tender Process.

### If Ofgem so determines that the Reserve Bidder is to replace the Preferred Bidder, the Reserve Bidder shall be deemed to be the Preferred Bidder for the purposes of this ITT Document and the ITT Stage. Ofgem may engage or re-engage the Reserve Bidder at any time prior to Licence Grant.

## Successful Bidder

### Once the Preferred Bidder has demonstrated it has met the requirements as specified by Ofgem and made the required Payment, Ofgem will confirm it as the Successful Bidder for the relevant Qualifying Project.

### Following the confirmation of the Successful Bidder, Ofgem will observe a 10-day standstill period in accordance with the requirements of Regulation 22 of the Tender Regulations.

### Further information on the Successful Bidder process will be made available in due course.

# Miscellaneous

## Withdrawal, Cancellation and Disqualification

### Parts 10, 11 and 12 of the Tender Regulations and chapters 12, 13 and 14 of the Tender Rules set out circumstances in which Qualifying Bidders may withdraw from a Tender Process, any particular Tender Process may be cancelled and the circumstances under which a Qualifying Bidder may be disqualified from the Tender Round, and the consequences of such withdrawal, cancellation or disqualification.

### Ofgem reserves the right to:

#### reject any Submission that, in Ofgem's opinion, fails to comply with the requirements for ITT Submissions set out in the ITT Document; and/or

#### exclude any Qualifying Bidder that fails to comply with the Tender Regulations or the Tender Rules,

#### although, subject to the Tender Regulations, Ofgem shall not be obliged to reject any such ITT Submissions or exclude any such Qualifying Bidders in such circumstances.

## Unsuccessful Qualifying Bidder Feedback

### In the event that an ITT Submission is unsuccessful, the relevant Qualifying Bidder will be notified accordingly. Qualifying Bidders may request feedback from Ofgem following such a notice. Any request for feedback must be made within one month of a Qualifying Bidder receiving notification that it has been unsuccessful. Ofgem will provide feedback within a reasonable timeframe to any unsuccessful Qualifying Bidder who requests it.

**APPENDIX 1: QUALIFYING BIDDER MEETING SCHEDULE AS AT 21 DECEMBER 2010**

The following table sets out those meetings that Qualifying Bidders are required to attend during the ITT stage. Ofgem will invite Qualifying Bidders to these meetings under separate cover.

|  |  |
| --- | --- |
| **Date** | **Meeting** |
| 07/01/2010 | Qualifying Bidder feedback on QTT Submission, incorporating general overview of ITT requirements and Special Licence Conditions |
| 08/01/2010 | Qualifying Bidder feedback on QTT Submission, incorporating general overview of ITT requirements and Special Licence Conditions |
| 13/01/2010 | Project Briefing Day – Barrow, Gunfleet Sands and Walney I & II |
| 15/01/2010 | Project Briefing Day – Qualifying Projects developed by Vattenfall, SCIRA, Eon, SSE |

**APPENDIX 2: QUALIFYING BIDDER REQUIREMENTS**

**Introduction**

This Appendix sets out the information Qualifying Bidders are required to return for each Qualifying Project for which it provides an ITT Submission. The ITT requirements are separated into the following sections:

1. Shareholding/consortium structure
2. Takeover Plan
3. Ongoing Operations
4. Decommissioning
5. Financial Deliverability
6. Tender Revenue Stream
7. Underlying Assumptions for Tender Revenue Stream

Ofgem will evaluate responses to this Appendix in accordance with the evaluation approach set out in Section 7 of this ITT Document, as illustrated in the following diagram:

**Evaluated on Scored and Ranked Basis**

**Combined Score will Determine Preferred Bidder**

* **Non-Financial Deliverability**
* **Evaluated on a Scored Basis**
* **Minimum Threshold Applied**
* **Compliance Check**
* **Pass/Fail Test**
* **Financial Deliverability**
* **Evaluated on Scored Basis**
* **Minimum Threshold Applied**
* **Tender Revenue Stream**
* **60% Weighting**
* **Quality of Underlying Assumption**
* **Threshold Requirement**
* **40% Weighting**

**QUALIFYING BIDDER COMPLIANCE CERTIFICATE**

Each Qualifying Bidder must have a duly authorised officer of the Qualifying Bidder or consortium Qualifying Bidder indicate his or her confirmation of all of the statements (A) to (C) below by signing where indicated. A signed copy of the declaration must then be uploaded on to the Portal as part of the ITT Submission.

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

1. the Qualifying Bidder and each of the other consortium members (if applicable) hereby accept the standard conditions of the Electricity Transmission Licence;
2. the Tender Revenue Stream identified in the ITT Submission fully reflects:
   1. the draft special conditions of the Offshore Electricity Transmission Licence; and
   2. the terms of the Final Project SPA; and
3. the Qualifying Bidder and each of the other consortium members (if applicable) hereby accept that the ITT Submission is firm and the Qualifying Bidder is able to meet the timescales set out in the Guidance Note to Asset Transfer, subject only to the conditions precedent identified in 7.2.1 of the ITT Document.

Signed:

Name:

Position:

Dated:

**NON\_FINANCIAL DELIVERABILITY**

### **Section 1: Shareholding/Consortium Structure**

*The response to this section should be provided in no more than 5 pages. Supporting information may be provided in separate appendices.*

Qualifying Bidders are required to provide the following in relation to the shareholding/consortium structure for the entity that would be granted the Offshore Electricity Transmission Licence:

#### Details of the proposed shareholding/consortium organisational structure, making clear the identity of the entity that will hold the Offshore Electricity Transmission Licence for the relevant Qualifying Project and the roles, decision-making responsibilities and relationship which each consortium member will have within and/or with the OFTO; and

#### In the case of a consortium, the proposed ownership arrangements, the proposed ownership proportions and how you propose to share liability between consortium members.

2. In responding to this section, a Qualifying Bidder must:

#### Explain and provide evidence where available of the arrangements to ensure that the entity will be registered for Value Added Taxation purposes, in accordance with the Sale and Purchase Agreement requirements; and

#### Provide, in relation to the Qualifying Bidders’ structure, Shareholding Agreements, Articles of Association, Loan Note Agreements, Management Services Agreements and other relevant consortium documentation identifying any conditionality and outstanding items which are still to be agreed or subject to confirmatory due diligence.

**Section 2: Takeover Plan**

*The response to this section should be provided in no more than 10 pages. Supporting information may be provided in separate appendices.*

Qualifying Bidders are required to provide the following in relation to the initial takeover of the transmission assets from the relevant Developer.

1. Qualifying Bidders are required to provide a fully detailed takeover plan identifying the key activities necessary to ensure effective acquisition of the transmission assets for the relevant Qualifying Project covering the period from the notification of Preferred Bidder through to three months following completion of asset transfer.

The takeover plan should clearly cover the relevant legal, regulatory, commercial, financial, technical and communication activities including key deliverables. This should be accompanied by a Gantt chart showing the tasks, timings, key milestones, linkages and dependencies across each of the main work areas.

1. Qualifying Bidders are required to set out implementation of the takeover plan including organisational and management team structure, resources (technical/operational, administrative, finance and accounting etc), procurement strategy, quality and risk management, health, safety and environmental management and stakeholder engagement.
2. Qualifying Bidders are required provide:

#### A takeover risk management register, identifying key business and operational risks and detailing the proposed mitigation approach;

#### A description of obligations and dependencies on the Developer, NETSO, Ofgem, the Crown Estate and other relevant stakeholders clearly defining the requirement and likely delivery date; and

#### An organisation diagram for the team responsible for delivering the takeover plan in this period to include a role description and responsibilities of each team member. Summary role descriptions and CVs for key post-holders already/provisionally appointed or a plan of the process for their appointment should be provided separately in an appendix.

**Section 3: Ongoing Operations**

*The response to this section should be provided in no more than 14 pages. Supporting information may be provided in separate appendices.*

Qualifying Bidders are required to provide the following in relation to the ongoing operations of the OFTO**:**

1. Asset management policy and framework

Qualifying Bidders are required to provide details of the asset management policy that they intend to apply as an OFTO to cover areas associated with asset condition monitoring, required planned and unplanned maintenance regime development, asset replacement planning, spares holdings and management and transport logistics.

The Qualifying Bidder is required to outline what it sees as the advantages of this particular approach and how it would be implemented using the transferred assets and records data. Details should also be provided in relation to novel and/or innovative solutions that may be applied within the OFTO environment for the particular project.

In addition, Qualifying Bidders are required to provide an overview of the key deliverables of the asset management policy selected (e.g. inspection plans, routine maintenance schedules, repair plans, contingency plans for major failures, outage planning, security plans, data management, main stakeholder communications) along with indicative resourcing needs and, where applicable, response time requirements should be described. For each activity and / or deliverable, the key stakeholder interfaces, frequency and level of coordination required should also be clearly identified.

1. Detailed O&M arrangements and costs

Qualifying Bidders are required to provide the operations and maintenance (O&M) working arrangements they intend to apply including the procurement approach, management arrangements, core skills, expected use of operational partners and/or subcontractors, risk management approach and insurance arrangements. In doing so, Qualifying Bidders are required to describe the relationship to the associated O&M assumptions and cost provisions provided in response to Section 10.

In addition, Qualifying Bidders are required to provide:

1. Site security requirements including statutory framework, liaison with enforcement agencies and other stakeholders; and
2. The emergency cover requirements distinguishing between normal day to day operation and major failure events.
3. Statutory arrangements and reporting

Qualifying Bidders are required to provide a plan of how it would on a project specific basis manage, monitor and review:

1. Compliance with all applicable health, safety and environmental legislation. Details must be provided in relation to the key regulatory and enforcement bodies involved with safety, health and environmental (SHE) issues and the organisational and management structure (including functional teams such as a compliance team, audit team) that will be put in place to oversee, manage, communicate and review the SHE compliance related matters of all parties involved (i.e. employees, subcontractors and members of public); and
2. Regulatory compliance (e.g. with the OFTO licence and relevant industry codes) and reporting. Details must be provided in relation to the organisational and management structures for the project and procedures that will be put in place to oversee, manage, communicate and review the regulatory compliance and reporting related matters both internally and externally. As part of the response to this, Qualifying Bidders must explain how the O&M provisons will relate to the performance incentive under the OFTO licence.

**Section 4: Decommissioning**

*The response to this section should be provided in no more than 6 pages. Supporting information may be provided in separate appendices.*

Qualifying Bidders are required to provide the following in relation to the decommissioning of the OFTO assets**:**

1. Qualifying Bidders are required to provide a plan setting out the approach to decommissioning for the relevant Qualifying Project. Details must be provided in relation to:
2. the process and stakeholder engagement that the Qualifying Bidder would adopt in its approach to development of a decommissioning plan and its implementation; and
3. the existing or proposed (as applicable) technical and environmental approach to decommissioning of the transmission assets (both onshore and offshore).
4. Qualifying Bidders are required, where relevant, to provide an outline of how and when it would plan and manage any decommissioning liabilities at the end of the 20 year revenue period. Details should be provided in relation to the Qualifying Bidder’s proposals for any unlicensed entity required for delivery of decommissioning work at the end of this period.

**FINANCIAL DELIVERABILITY**

#### **Section 5: Financial Deliverability**

#### All Qualifying Bidders are required to provide responses to the following General Finance section:

#### General Finance Requirements

1. Qualifying Bidders must provide a statement that the Tender Revenue Stream is in accordance with the Qualifying Bidders’ own financial model and that it reflect the terms of funders. Any errors on such matters are entirely for the Qualifying Bidders’ own liability.
2. Qualifying Bidders must identify the lead bank on any proposed swaps.
3. Qualifying Bidders are required to provide a detailed plan for how they will achieve final credit approvals and/or board approvals within the six to eight week period for all sources of finance (as set out in the Asset Transfer Guidance Note).
4. Qualifying Bidders are required to identify the due diligence undertaken. Ofgem expects that this will include technical, legal and financial due diligence. Qualifying Bidders must also provide their confirmatory due diligence plan, indicating activities required to be undertaken with appropriate timescales.
5. Qualifying Bidders are required to provide their approach to funding contingency related events, such as potential delays to the Estimated Transfer Date and potential liquidity constraints. Where applicable Qualifying Bidders should include reference to Letters of Support which may apply in the response to this question.
6. Qualifying Bidders are required to provide a description of how they would manage any additional call for debt and or equity based on Ofgem's determination of the Final Transfer Value post asset transfer.
7. Qualifying Bidders are required to set out their approach to addressing licence condition E11 on credit rating and the associated indebtedness conditions in E10. In particular the need to enable special administration arrangements by the Secretary of State to be applicable to the proposed licensee company (e.g. by the SPV being a UK registered company).
8. Qualifying Bidders are required to set out their approach to satisfying Standard Licence Condition E17 of the Offshore Electricity Transmission Licence, that an OFTO fund incremental investments at any point over the period of the licence, at a value of up to 20% of the Final Transfer Value of the Qualifying Project.
9. Qualifying Bidders are required to set out their approach to complying with Standard Licence Condition E7 financial ring-fencing, of the Offshore Electricity Transmission Licence.
10. Qualifying Bidders are required to provide a statement outlining the approach and principles adopted regarding Accounting treatment and Taxation.
11. All accounting and tax assumptions made by bidders are at their own risk and each bidder must undertake not to pass on any costs of changing its accounting and / or tax assumptions within its Financial Model.

In addition to the above, Qualifying Bidders are also required to respond to the relevant sub-sections below:

Qualifying Project Specific Requirements

### Qualifying Bidders should respond **only** to Part A for the Qualifying Projects listed below, which are those Qualifying Projects which are or are expected to be commissioned and fully operational at the Go Live date for the offshore transmission regime:

* Barrow
* Gunfleet Sands
* Robin Rigg
* Thanet

Qualifying Bidders should respond **only** toPart B for the Qualifying Projects listed below, which are those projects which are expected to be commissioned after the Go Live date:

* Ormonde
* Sheringham Shoal
* Walney I
* Walney II

Qualifying Bidders should **only** respond to Part C in respect of Greater Gabbard.

**Part A**

### Qualifying Bidders are required, as a minimum to provide commitment for 6 months from the date of the ITT Submission based on 120% of the total funding requirement in the Base case financial model of the relevant Qualifying Project. This should be reflected in the following:

#### For Equity and Corporate Finance

1. Letters of support evidencing full board approval of the Equity and/or Corporate Finance in support of the amounts required as set out in the Qualifying Bidders Financial Model multiplied by 120%. These letters must identify any constraints imposed by the lender in respect of the regime generally, as well as the particular Qualifying Bidder.
2. Full and complete terms attached to any Equity and/or Corporate Finance including any conditionality placed on the offering of such financing.
3. Copies of Loan Note Documentation and any other Equity and/or Corporate Finance agreements which are proposed by the Qualifying Bidder in agreed form.

#### For Debt Finance

1. Letter in support of credit approved term sheets stating the amounts committed as set out in the Qualifying Bidders Financial Model multiplied by 120% including any conditionality of such credit approved terms. These letters must identify any constraints imposed by the lender in respect of the regime generally, as well as the particular Qualifying Bidder.
2. A credit approved term sheet, which in the case of proposed club funding solutions will be a conformed Term Sheet, conditional only upon:
   1. Underlying interest and RPI swap rate movements’
   2. Agreed finance documentation,
   3. Confirmatory Due Diligence, and
   4. EIB funding, where applicable

These term sheets should include as a minimum:

1. Margins on Senior Debt, with any applicable phasing,
2. Interest Rate Swap Credit Spread,
3. RPI Rate Swap Credit Spread,
4. Agency Fees,
5. Cover Ratio Requirements including LLCR, DCSR, ADSCR and respective calculations,
6. Gearing constraints,
7. Facility maximum amount,
8. Loan Tenor,
9. Debt Tail,
10. Availability and Grace Period,
11. Commitment fees for all sources of finance,
12. Arrangement Fees for all sources of finance,
13. Cancellation and prepayment fees where applicable,
14. % proposed for any proposed RPI Swap instrument, and
15. Other relevant information as would normally be provided for transactions of this nature

**Part B**

### Qualifying Bidders are required, as a minimum to provide commitment based on 120% of the total funding requirement in the base case financial model of the relevant Qualifying Project. This should be reflected in the following:

#### For Equity and Corporate Finance

1. Letters of support evidencing level of board approval obtained for the Equity and/or Corporate Finance in support of the amounts required as set out in the Qualifying Bidders Financial Model multiplied by 120%.
2. Any terms attached to any Equity and/or Corporate Finance including any conditionality placed on the offering of such financing.
3. Copies of Loan Note Documentation and any other Equity and/or Corporate Finance agreements which are proposed by the Qualifying Bidder in agreed form.
4. Where a fund is proposing to raise additional equity for the relevant Qualifying Project, Qualifying Bidders are required to provide the level of commitment and how this prospective funding would be appropriately ring-fenced.

#### For Debt Finance

1. Letter in support of outline term sheet stating the facility size as set out in the Qualifying Bidders Financial Model multiplied by 120% including any conditionality of such outline terms. These letters must identify any constraints imposed by the lender in respect of the regime generally, as well as the particular Qualifying Bidder.
2. A credit approved term sheet, which in the case of proposed club funding solutions will be a conformed term sheet, conditional only upon:
   1. Underlying interest and RPI swap rate movements,
   2. Indicative margins with capped market flex,
   3. Material adverse change to the transferring assets,
   4. Agreed finance documentation,
   5. Confirmatory Due Diligence, and
   6. EIB funding, where applicable

**Part C**

Qualifying Bidders are required, as a minimum, to provide the information requested under Part A. In providing their response, Qualifying Bidders must assume the following:

The transfer of assets is expected to occur in November 2010 (the Estimated Transfer Date). Licence Grant is expected to occur at or before Go Live (June 2010) with a Pre Transfer Revenue Stream in place until the assets transfer and is replaced by the full Tender Revenue Stream.

* + - 1. Pre Asset Transfer Revenue Stream

From the period of June 2010 (Go Live) until November 2010 (the Estimated Transfer Date for Greater Gabbard), Qualifying Bidders will be required to model a Pre-Transfer Tender Revenue Stream which should include for any costs which the OFTO will incur between Licence Grant and asset transfer.

For the avoidance of doubt, commitment for 100% of the Estimated Transfer Value should be in place on Licence Grant and the assumptions regarding cost categories to be included in the Pre Transfer Revenue Stream are set out in Appendix 2, Section 6.

* + - 1. Full Tender Revenue Stream

From November 2010, Qualifying Bidders will be required to assume that 75% of the Estimated Transfer Value is payable to the Developer of Greater Gabbard, with the amount for Deferred Consideration being 25% of the Estimated Transfer Value, payable 6 months post asset transfer.

**TENDER REVENUE STREAM AND QUALITY OF UNDERLYING ASSUMPTIONS**

**Section 6: Tender Revenue Stream**

### Qualifying Bidders are required to provide a Tender Revenue Stream bid (the base case) for the relevant Qualifying Project. This must assume a constant revenue stream in real terms as at the Estimated Transfer Date for the relevant Qualifying Project and must be based on the draft Project Availability Standard. It must be based on a 20-year term from asset transfer.

### Qualifying Bidders are required to provide a revised Tender Revenue Stream, on the assumption that the Final Transfer Value is up to 120% of the Estimated Transfer Value. Please provide a detailed breakdown of any changes in assumptions which result in an amendment to the base case Tender Revenue Stream coupled with a detailed approach of how any Final Transfer Value variation will be managed.

### Qualified Bidders are required to provide a revised Tender Revenue Stream, on the assumption that the Final Transfer Value is down to 90% of the Estimated Transfer Value. Please provide a detailed breakdown of any changes in assumptions which result in an amendment to the base case Tender Revenue Stream.

**Greater Gabbard**

1. In addition to providing the above requirements, Qualifying Bidders must also provide a Pre-Transfer Tender Revenue Stream for Greater Gabbard. This will represent the period between “Go Live”/Licence Grant and the point at which the assets transfer (the Estimated Transfer Date). Items should include for any costs which the OFTO will incur from Licence Grant to asset transfer but not necessarily be limited to the following:
2. Cost of securing financing with a delayed drawdown (Arrangement Fees, Equity Bridge Facilities, Commitment Fees on undrawn amounts, Bank Agency Fees);
3. Any applicable Insurances to cover the period to Asset Transfer;
4. SPV Management costs; and
5. Any other relevant costs

For the avoidance of doubt, the transmission assets should only be depreciated from the point that the assets are transferred to the OFTO.

**Financial Model Requirements**

1. Qualifying Bidders are required to submit their financial model to support their Tender Revenue Stream bid in accordance with the Tender Guidance Document for Qualifying Bidder Financial Model. The following information sets out the specific requirements Ofgem requires for the model:
2. Financial Statements

Ofgem requires Qualifying Bidders to provide the following accounting and financial statements:

1. Profit and Loss Statement or Income Statement;
2. Cash Flow Statement;
3. Balance Sheet;
4. Key financial Ratios (e.g. ADSCR, LLCR, IRR, NPV, WACC);
5. All working schedules used in the calculation of 1 to 4 above; and
6. A worksheet detailing the components of their Tender Revenue Stream
7. Discounted Cash Flow Analysis

Qualifying Bidders are required to have a section in their model providing a full 20-year Discounted Cash Flow Analysis. This section should be clearly identified within the contents page to the model.

1. Risk of Error

Any errors (including incorrect assumptions) or omissions discovered in the financial model that result in increased costs will be at the risk of Qualifying Bidders. The Tender Revenue Stream will not be increased to accommodate any errors or omissions post bid submission.  Qualifying Bidders accept that no adverse changes to the Tender Revenue Stream will be accepted arising from any amendments to the model with the exception of those specifically agreed with Ofgem post bid submission.

1. Model Integrity

The logical integrity (including, without limitation, all inputs, calculations and outputs) and assumptions used within the Financial Model remain the responsibility of Qualifying Bidders.

1. Qualifying Bidders are required to provide a detailed manual and supporting data book explaining the operations of the model and the assumptions adopted in the model, to include those items set out below:
2. Overview of model and model structure;
3. Procedure to load the model, including any unusual routines necessary to enable the model to work correctly and optimised appropriately (including stating any 'add-ins' and options that must be activated prior to use of the model);
4. Explanation of key assumptions in model;
5. Details of Macros and Visual Basic Code (subject to comments below); and
6. Procedure to optimise the model

**Section 7: Underlying Assumptions**

Qualifying Bidders are required to provide their assumptions in arriving at the Tender Revenue Stream provided in response to section 6, along with a detailed explanation supporting these assumptions. These should include but not be limited to:

1. Operating and maintenance costs
2. Insurance
3. Decommissioning costs
4. Operational performance security package for the last five years of the project (in accordance with Part 2, Special Licence Condition C4)
5. Corporation tax assumptions
6. SPV and/or management costs
7. Bid cost recoveries and/or development fees
8. Other income items, including any potential unregulated revenue and terminal values (to be expressed as a “negative cost”);
9. Cost of Equity Finance, Corporate Finance and Debt Finance service costs including all interest payments and fees (to reflect the Financing Strategy set out in your response to Section 4); and
10. Any other relevant foreseen costs.

Qualifying Bidders are required populate Ofgem Proforma Input Sheets 1 to 10 in accordance with the Tender Guidance Note for Ofgem Proforma Input Sheets.

In responding to Section 7 part 1, detailed statements in respect of the following cost components should cover :

#### Operating and maintenance costs

Qualifying Bidders are required to provide a cost appraisal of the proposed operation and maintenance arrangements both in real terms and as a percentage of estimated transfer value. In doing so, Qualifying Bidders are required to state the assumptions used in deriving the costs and outline the basis of those assumptions, and explain how elements of O&M costs per annum (including any costed heads of terms) relate to 20-year revenue stream in financial model. In particular, Qualifying Bidders must distinguish between standard ongoing costs and any amount included to cover events such as major equipment failure.

Qualifying Bidders are also required to state what part of the revenue assumptions are to apply to the last five years of the project and what (if any) implications a change in assumptions may have for the total Tender Revenue Stream (to allow it to comply with Part 2, Special Licence Condition J4).

#### Insurance

Qualifying Bidders are required to detail the proposed insurance arrangements (i.e. type and level of cover) for managing main failures and relationship to OFTO performance incentives together with revenue streams required for the insurance cover. In particular, distinguishing between external commercial cover (and its form) and any internal cover (e.g. via self insurance and/or spares clubs between OFTOs). If spare equipment is purchased over and above what is included in the sale transfer value, please include the total costs in this section and the consequential Tender Revenue Stream (£/annum) in the self insurance section in the data input sheet to the financial model.

#### Decommissioning costs

For the technical and environmental approach to decommissioning detailed in Section 4 above, the Qualifying Bidder must provide:

1. For a Qualifying Project with decommissioning plans already in place, an estimate of associated decommissioning costs as a proportion of the estimated transfer value should be provided. In doing so, the Qualifying Bidder is asked to state assumptions used in deriving the costs and outline the basis of those assumptions, and explain how decommissioning costs relate to costs included in the Tender Revenue Stream. Qualifying Bidders should make it clear what decommissioning assumptions are used to underpin their Tender Revenue Stream bids; and

1. For a Qualifying Project with decommissioning plans and requirements not yet agreed with DECC, an estimate of decommissioning costs based on a 20 year project life with decommissioning after 20 years should be proposed as a base case. Additionally, any alternative project specific options under Qualifying Bidder’s consideration (i.e. generator replanting at end of twenty years and consequent extension of the transmission asset life beyond the Licence period) based on a provisional decommissioning plans can be supplied along with any consequential changes in the annual equivalent cost for Tender Revenue Stream from the base decommissioning case. Qualifying Bidders should make clear what decommissioning assumptions are used to underpin their Tender Revenue Stream bids.

#### Other income items

Qualifying Bidders are required to provide the assumptions and any supporting documentation in arriving at any other income items (including terminal values) in their Tender Revenue Stream bids. Qualifying Bidders are required to explain what arrangements are in place should other income assumed in their base case financial model not materialise, including the impact on financial ratios.

1. Where a Qualifying Bidder’s real Project IRR differs from that provided in their response to the Qualification to Tender, they are required to provide a full explanation of any movement. Qualifying Bidders are reminded that Ofgem set out in the QTT Document that it was minded to treat the Project IRR proposed by Qualifying Applicants in their QTT Submissions as a cap. On the basis of this, Ofgem does not expect that Project IRRs submitted as part of Qualifying Bidders’ ITT Submissions will be higher than that provided in their QTT Submissions. In instances where Project IRRs are higher than those provided in the QTT Submissions, Ofgem reserves the right to exclude the Qualifying Bidder, as set out in the QTT Document.

### Qualifying Bidders are required to provide a copy of the sensitivities which they have performed in support of the proposed finance solution and evidence the due diligence activity carried out by themselves or for their funders. Ofgem requires Qualifying Bidders to provide these scenarios to understand the effects on the robustness of the Qualifying Bidders’ Submission. Qualifying Bidders are required to provide a table identifying the sensitivities which have been performed on the Base case financial model and include the key ratios and constraints as set out by the providers of any such finance.

**APPENDIX 3: QUALIFYING BIDDER ITT CERTIFICATE**

Each Qualifying Bidder must have a duly authorised officer of the Qualifying Bidder or consortium Qualifying Bidder indicate his or her confirmation of all of the statements (A) to (I) below by signing where indicated. A signed copy of the certificate must then be uploaded on to the Portal as part of your ITT Submission. In relation to statement (A) only, if the duly authorised officer is not able to confirm this statement then he or she need to indicate this in a mark up to this statement, and provide a written description of the reasons why the duly authorised officer cannot give such confirmation.

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

A) the information provided in the PQ and QTT Submissions remains materially true, accurate and complete;

B) the information provided in this ITT Submission is true, accurate and complete;

C) neither the Qualifying Applicant, [*insert the names of each of the other consortium members if applicable*] nor any of its / their (delete as appropriate) Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Financial Services and Markets Act 2000, the Tender Regulations, the Tender Rules, or the ITT Document in preparing or making this ITT Submission;

D) we are not aware of any application to place the Qualifying Bidder, any other consortium member or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced;

E) the Qualifying Bidder is acting as a principal in the Tender Process and not as an agent for any undisclosed person and the Qualifying Bidder and each of the other consortium members (if applicable) have expressly authorised me to act on their behalf in making this ITT Submission;

F) the Qualifying Bidder and each of the other consortium members (if applicable) hereby consent to the disclosure by Ofgem to Ofgem's Related Parties for the purposes of the Tender Rounds of any information given to Ofgem either before or during the Tender Process(es) by such Qualifying Bidder or consortium member;

G) In compiling this ITT Submission, neither I personally nor the Qualifying Bidder or Qualifying Bidder consortium has obtained an unfair commercial advantage including, in particular such advantage from a preferential or discriminatory arrangement with associated parent companies or affiliates, any user of the national electricity transmission system or transmission licensees;

H) the Qualifying Bidder and each of the other consortium members (if applicable) hereby confirm that they have considered the implications of the Third Package and understands that, if appointed as Preferred Bidder or Reserve Bidder and if the unbundling provisions of the Third Package, or where appropriate, the relevant provisions of the relevant implementing legislation, apply to [***insert name of project***], they will be required to comply with the provisions of the Third Package, or where appropriate, the relevant provisions of the relevant implementing legislation, by the time set out in relevant Articles of the Electricity Directive so far as they relate to full ownership unbundling set out in Article 9.1 of the Electricity Directive or one of the alternative models provided for in Article 13, Chapter V or Article 9.9 of the Electricity Directive; and

I) In providing this statement I have made all due enquiries on behalf of the Qualifying Bidder or Qualifying Bidder consortium."

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

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

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

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

**APPENDIX 4: CONFIDENTIALITY**

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

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

**APPENDIX 5: GLOSSARY**

**"Applicant"** means an entity that makes a Prequalification Submission and/or a Qualification to Tender Submission;

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

**"BAFO"** means the best and final offer that may be requested by Ofgem from some or all of the Qualifying Bidders pursuant to paragraph [4.3.5] of the ITT Documentation;

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

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

**"The Crown Estate"** means property owned by the Sovereign of the United Kingdom;

**"Data Room"** means, in respect of a Qualifying Project, an electronic data room populated by Ofgem with information provided by the relevant Developer and other third parties which is made available to each Qualifying Bidder through the Portal.

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

**“Deferred Consideration”** means the second payment for up to 25% of the Estimated Transfer Value in respect of the Qualifying Project, which will be payable on completion of the Ex Post valuation;

**"Developer"** means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act who has developed or is developing an offshore generating station which has triggered the commencement of this Tender Process;

**“Developer”** means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act which has developed or is developing an offshore generation station which has requested that Ofgem commences a Tender Process in respect of a Qualifying Project;

**“Draft Project SPA”** means the draft of the project specific Sale and Purchase Agreement prepared by the Developer and provided in the Data Room at the commencement of the ITT Stage;

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

**“Electricity Directive”** means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009.

**“Equity Finance”** means any direct equity and mezzanine finance;

**“Estimated Transfer Value”** means Ofgem’s estimate 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;

**“Final Project SPA”** means the revised draft of the project specific Sale and Purchase Agreement prepared by the Developer and provided in the Data Room during the ITT Stage;

**“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;

**“Interface Agreement”** means the interface agreement to be entered into between the Developer and OFTO under the requirements of the Connection and Use of System Code

**"ITT Document"** means this document, including all appendices, annexures, schedules and other documents related hereto.

**"ITT Stage"** means the stage at which the ITT Document is distributed to Qualifying Bidders by Ofgem, and ITT Submissions are prepared, submitted and evaluated;

**“ITT Submission”** means the response submitted by a Qualifying Bidder in response to this ITT Document;

**"Licence Grant"** means the grant of the Offshore Transmission Licence by Ofgem to the Successful Bidder, pursuant to section 6C of the Electricity Act.

**“Model SPA”** means the model Sale and Purchase Agreement published by Ofgem on 22 July 2009.

**"National Electricity Transmission System"** means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by Transmission Licensees and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any inter-connector and includes any electrical plant or meters owned or operated by any Transmission Licensee in connection with the transmission of electricity;

**"National Electricity Transmission System Operator"** or **"NETSO"** means National Grid Electricity Transmission plc (or NGET), acting in its capacity as the system operator for the National Electricity Transmission System pursuant to the terms of its Transmission Licence.

**"NGET"** means National Grid Electricity Transmission plc (registered number 2366977) whose registered office is situated at 1-3 Strand, London, WC2 5EH;

**"Offshore Electricity Transmission Licence"** means a licence grantedpursuant to section 6(1)(b) of the Electricity Act in relation to the transmission of electricity offshore, where offshore means:

1. waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;
2. waters within an area designated under section 1(7) of the Continental Shelf Act 1964 and/or section 84(4) of the Energy Act 2004; and
3. waters within an area designated under section 84(4) of the Energy Act 2004

and includes the Renewable Energy Zone.

"**Offshore Electricity Transmission Licensee**" means the holder of an Offshore Transmission Licence.

**"Ofgem"** means the Office of Gas and Electricity Markets.

**"OFTO"** means the holder of an Offshore Electricity Transmission Licence.

**“Portal”** means the Offshore Transmission Electronic Tendering Portal described in section 4 of the Tender Rules.

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

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

**"Pre-Qualification Stage"** means the period of a Tender Process starting from the publication of the Prequalification Document, including the preparation, submission and evaluation of Prequalification Submissions and ending once Ofgem has published the long list of Applicants who have prequalified for the Qualification to Tender Stage.

**"Pre-Qualification Submission(s)"** means an Applicant’s response to the Pre-Qualification Document.

**“Project Availability Standard”** means the Availability Standard as set out in the Project Specific Special Licence Conditions

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

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

**"Qualification to Tender Submission"** means a Qualifying Applicant’s response to the Qualification to Tender Document.

**“Qualifying Bidder”** means an entity invited to submit an ITT Submission to Ofgem in response to this ITT Document.

**“Qualifying Project”** means any offshore generation project in respect of which Ofgem determines that the Developer has satisfied the pre-conditions described in Schedules 1 and 2 to the Tender Regulations.

**"Related Party"** or **"Related Parties"** means employees, officers, directors, stakeholders and suppliers of the associated Party.

**"Renewable Energy Zone"** means the area designated as such pursuant to section 84(4) of the Energy Act 2004.

**"Reserve Bidder"** meansthe Qualifying Bidder determined byOfgem, in its sole discretion and following its evaluation of the ITT Submissions received (including any BAFO submissions requested), as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Electricity Transmission Licence should Ofgem ultimately decide not to grant the Offshore Electricity Transmission Licence to the Preferred Bidder.

**“Sale and Purchase Agreement”** **or “SPA”** means in relation to each Qualifying Project, means the transfer agreement to be entered into between the Preferred Bidder and the relevant Developer in accordance with the Tender Regulations.

**“Successful Bidder”** means a Preferred Bidder to which Ofgem has determined to grant the Offshore Electricity Transmission Licence.

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

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

**“Tender Revenue Stream”** means a constant revenue stream in real terms submitted by the Qualifying Bidder for the relevant Qualifying Project;

**“Tender Round”** means a competitive process run by Ofgem in order to identify Successful Bidders to be granted Offshore Electricity Transmission Licences in relation to Qualifying Projects.

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

**“Third Package”** means a package of European legislation on the liberalisation of EU gas and electricity markets which entered into force on 3 September 2009.

1. Appendix 1 contains the meeting schedule for Qualifying Bidders during the ITT stage. This will be updated on a weekly basis. [↑](#footnote-ref-1)
2. Formerly the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Trade and Industry (DTI) [↑](#footnote-ref-2)
3. Qualifying Bidders should be aware that Ofgem is consulting on the detailed legal drafting of the Special Licence Conditions during the ITT stage of the tender process. Qualifying Bidders will be contacted separately in this regard. [↑](#footnote-ref-3)
4. Qualifying Bidders shortlisted for Sheringham Shoal should be aware of ongoing discussions with respect to the transfer arrangements. Further information is set out in the SPA Commentary that is available in the Data Room for this Qualifying Project. [↑](#footnote-ref-4)
5. Qualifying Bidders shortlisted for Greater Gabbard should be aware of the specific arrangements for the transfer of the transmission assets. Further information is set out in Appendix 2 and in the SPA Commentary that is available in the Data Room for this Qualifying Project. [↑](#footnote-ref-5)