

# **Annex 1: The Draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012**

## **DRAFT**

### **The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012**

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The Gas and Electricity Markets Authority(**a**), with the approval of the Secretary of State(**b**), makes the following Regulations in exercise of the powers conferred by sections 6C, 6D and 60 of the Electricity Act 1989(**c**).

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(**a**) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).  
(**b**) In accordance with section 6C(4) of the Electricity Act 1989 (c.29).  
(**c**) 1989 c.29: section 6C was inserted by section 92 of the Energy Act 2004 (c.20) and section 6D was inserted by section 44 of the Energy Act 2008 (c.32).

# PART 1

## INTRODUCTORY

### **Citation, commencement and revocation**

1. —(1) These Regulations may be cited as the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012 and shall come into force on XXX.

(2) Subject to regulation 2, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (“the 2010 Regulations”)(a) are revoked.

### **Transitional provisions**

2. —(1) Where the Authority has given notice in respect of the invitation to tender stage for a particular qualifying project in accordance with regulation 15(1) of the 2010 Regulations at the date upon which these Regulations come into force, the 2010 Regulations continue to apply in respect of the tender exercise for that particular qualifying project.

(2) Where the Authority has not given notice referred to in paragraph (1) for a particular qualifying project which is subject to the 2010 Regulations at the date upon which these Regulations come into force, the tender exercise for that particular qualifying project shall be treated thereafter as being and having been held under these Regulations.

(3) A tender exercise to which paragraph (2) applies which conforms to the requirements of the 2010 Regulations shall not be treated as defective by virtue only of failure to comply with the requirements of these Regulations in respect of any aspect of the tender exercise held prior to the date upon which these Regulations come into force.

### **Interpretation**

3.—(1) In these Regulations –

“the 1989 Act” means the Electricity Act 1989;

“the Authority” means the Gas and Electricity Markets Authority;

“best and final offer” means a submission by a qualifying bidder to the Authority in response to the best and final offer documentation issued in accordance with regulation 19(3);

“bid costs” means the costs incurred by a qualifying bidder in the preparation of a tender in respect of a qualifying project as determined in accordance with regulation 8(4)(b);

“bidder” means any person who submits a pre-qualification questionnaire to the Authority in accordance with these Regulations;

“bidder group” means two or more persons approved by the Authority acting together as bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder;

“confidentiality agreement” means the standard form agreement between a developer and a qualifying bidder in respect of confidential information disclosed in connection with a tender exercise;

“connection offer” means an offer by the holder of a co-ordination licence of a connection to or modification of a connection to the transmission system;

“cost recovery methodology” means the methodology for calculating and recovering the Authority’s tender costs in relation to a particular tender exercise published by the Authority in accordance with regulation 11(4);

“data room” means a secure store of information in respect of a qualifying project to be maintained by the Authority;

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(a) S.I. 2010/1903.

“developer” means any person within section 6D(2)(a) of the 1989 Act or within a developer group;

“developer group” means two or more persons acting together for the purposes of developing a qualifying project;

“entry conditions” means the conditions specified in paragraph 1 or 2 of Schedule 2;

“information memorandum” means a memorandum of that description issued by the Authority to a qualifying bidder containing in summary form information in respect of a qualifying project;

“preliminary works” means all necessary works undertaken or to be undertaken by a developer in relation to the development of the proposed transmission assets prior to the grant of an offshore transmission licence to a successful bidder in respect of a qualifying project as determined in accordance with regulation 8(4)(b);

“preliminary works transfer agreement” means the agreement to transfer any–

- (a) property interests, rights or liabilities in or relating to preliminary works;
- (b) shares or other interests in an undertaking, having the meaning given in section 1161 of the Companies Act 2006(a), in which any property interests, rights or liabilities within paragraph (a) are vested; or
- (c) beneficial interest in any property interests, rights or liabilities within paragraph (a) or shares or interests within paragraph (b),

from a developer to a successful bidder in respect of a qualifying project as determined in accordance with regulation 8(4)(b);

“preferred bidder” has the meaning given in paragraph 35(1) of Schedule 2A to the 1989 Act;

“pre-qualification questionnaire” means a questionnaire of that description published by the Authority in accordance with regulation 13(1) or regulation 13(2)(a);

“qualification to tender questionnaire” means a questionnaire of that description published by the Authority in accordance with regulation 15(3);

“qualifying bidder” means a bidder determined as a qualifying bidder in accordance with regulation 14(1);

“qualifying project” means a project as determined in accordance with regulation 8(3);

“relevant generating station” means a generating station that generates, or is to generate, electricity to be transmitted over the transmission assets;

“reserve bidder” means a qualifying bidder determined as a reserve bidder in accordance with regulation 19(5) in relation to the best and final offer stage or regulation 18(3) in any other case;

“security” includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit;

“system specification” means the requirements for the design and construction of the transmission assets in respect of a qualifying project as determined in accordance with regulation 8(4)(b), consistent with any such requirements agreed in the bilateral agreement entered into by the developer with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system;

“tender” means a submission by a qualifying bidder to the Authority in response to the invitation to tender documentation issued in accordance with regulation 17(3);

“tender rules” means the rules in relation to a particular tender exercise published by the Authority in accordance with regulation 11(4);

“transfer agreement” means the agreement to transfer any–

- (a) property interests, rights or liabilities in or relating to transmission assets;

- (b) shares or other interests in an undertaking, having the meaning given in section 1161 of the Companies Act 2006, in which any property interests, rights or liabilities within paragraph (a) are vested; or
- (c) beneficial interest in any property interests, rights or liabilities within paragraph (a) or shares or interests within paragraph (b),

from a developer to a successful bidder in respect of a qualifying project subject to a transitional tender exercise;

“transitional tender exercise” means a tender exercise in relation to which paragraph 1(1) of Schedule 2A to the 1989 Act applies;

“transmission assets” has the meaning given in paragraph 1(3)(a) of Schedule 2A to the 1989 Act; and

“transmission services” has the meaning given in the standard conditions of a transmission licence.

(2) Any notice required to be given by the Authority in accordance with these Regulations shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

## PART 2

### CALCULATION AND PAYMENT OF COSTS INCURRED IN CONNECTION WITH TRANSMISSION ASSETS FOR A TRANSITIONAL TENDER EXERCISE

#### **Calculation of costs incurred in connection with transmission assets**

4.—(1) In respect of a transitional tender exercise, the Authority shall calculate, based on all relevant information available to the Authority at that time, other than information that the Authority decides not to take into account in accordance with paragraph (7), the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the transmission assets in respect of a qualifying project in accordance with paragraph (2).

(2) The calculation of costs in paragraph (1) shall be—

- (a) where the construction of the transmission assets has not reached the stage when those transmission assets are available for use for the transmission of electricity, an estimate of the costs which ought to be incurred in connection with the development and construction of those transmission assets; or
- (b) where the construction of the transmission assets has reached the stage when those transmission assets are available for use for the transmission of electricity, an assessment of the costs which ought to have been incurred in connection with the development and construction of those transmission assets.

(3) In order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs which ought to be incurred in connection with developing and constructing the transmission assets in respect of a qualifying project, the Authority may require the developer to provide further information at a particular stage of a tender exercise for the purposes of enabling those bidders, qualifying bidders, or that preferred bidder, reserve bidder or successful bidder to take into account the most accurate estimate of the costs in order to meet any requirements of that particular stage.

(4) Where the Authority requires the developer to provide further information in accordance with paragraph (3), the Authority shall specify the date by which the developer shall provide that information.

(5) Where the Authority considers that the information provided by the developer in accordance with paragraph (3) is a material change from the information already available to the Authority, it

may, in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs, undertake one or more further estimates of the costs which ought to be incurred in connection with the development and construction of those transmission assets, as it considers necessary, until such time as those transmission assets are available for use for the transmission of electricity in respect of that qualifying project.

(6) Where the Authority—

- (a) has previously estimated the costs in accordance with paragraph (2)(a) or (5); and
- (b) is satisfied with the evidence provided by the developer that those transmission assets are available for use for the transmission of electricity,

the Authority shall, as soon as reasonably practicable, assess the economic and efficient costs which ought to have been incurred in connection with the development and construction of those transmission assets.

(7) The Authority may decide not to take into account any information that is provided after the date specified by the Authority in accordance with paragraph (4) in undertaking any estimates in accordance with paragraph (5) or assessment in accordance with paragraph (6).

(8) Where the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 27(2), the assessment undertaken in accordance with paragraph (2)(b) or (6) shall be used by the Authority to determine the value of the transmission assets to be transferred to the successful bidder.

#### **Payment of costs incurred by the Authority in connection with transmission assets calculation of costs**

5.—(1) Where the Authority has estimated the costs in accordance with regulation 4(2)(a) or 4(5) in relation to a particular qualifying project, it shall, prior to the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to the developer to make a payment to the Authority of a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in estimating the economic and efficient costs which ought to be incurred in connection with developing and constructing the transmission assets in respect of that qualifying project.

(2) Where the Authority has assessed the costs in accordance with regulation 4(2)(b) or 4(6) in relation to a particular qualifying project, it shall—

- (a) prior to the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project; or
- (b) as soon as reasonably practicable after the transitional tender exercise in relation to that qualifying project has been held in accordance with these Regulations,

give notice to the successful bidder to make a payment to the Authority of a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in assessing the economic and efficient costs which ought to have been incurred in connection with developing and constructing the transmission assets in respect of that qualifying project.

### **PART 3**

#### **CALCULATION AND PAYMENT OF COSTS INCURRED IN CONNECTION WITH PRELIMINARY WORKS**

##### **Calculation of costs incurred in connection with preliminary works**

6.—(1) In respect of preliminary works for a qualifying project as determined in accordance with regulation 8(4)(b), the Authority shall calculate, based on all relevant information available to the Authority at that time, other than information that the Authority decides not to take into account in accordance with paragraph (7), the economic and efficient costs which ought to be, or

ought to have been, incurred in connection with obtaining those works in respect of a qualifying project in accordance with paragraph (2).

(2) The calculation of costs in paragraph (1) shall be—

- (a) where the preliminary works have not reached the stage at which all those preliminary works have been obtained by the developer in respect of a particular qualifying project, an estimate of the costs which ought to be incurred in connection with obtaining those preliminary works; or
- (b) where the preliminary works have reached the stage at which all those preliminary works have been obtained by the developer in respect of a particular qualifying project, an assessment of the costs which ought to have been incurred in connection with obtaining those preliminary works.

(3) In order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs which ought to be incurred in connection with obtaining the preliminary works in respect of a qualifying project, the Authority may require the developer to provide further information at a particular stage of a tender exercise for the purposes of enabling those bidders, qualifying bidders, or that preferred bidder, reserve bidder or successful bidder to take into account the most accurate estimate of the costs in order to meet any requirements of that particular stage.

(4) Where the Authority requires the developer to provide further information in accordance with paragraph (3), the Authority shall specify the date by which the developer shall provide that information.

(5) Where the Authority considers that the information provided by the developer in accordance with paragraph (3) is a material change from the information already available to the Authority, it may, in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs, undertake one or more further estimates of the costs which ought to be incurred in connection with obtaining the preliminary works, as it considers necessary, until such time as all those preliminary works have been obtained by the developer in respect of that qualifying project.

(6) Where the Authority—

- (a) has previously estimated the costs in accordance with paragraph (2)(a) or (5); and
- (b) is satisfied with the evidence provided by the developer that all those preliminary works have been obtained by the developer ,

the Authority shall, as soon as reasonably practicable, assess the economic and efficient costs which ought to have been incurred in connection with obtaining those works.

(7) The Authority may decide not to take into account any information that is provided after the date specified by the Authority in accordance with paragraph (4) in obtaining any estimates in accordance with paragraph (5) or assessment in accordance with paragraph (6).

(8) Where the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 27(2), the assessment undertaken in accordance with paragraph (2)(b) or (6) shall be used by the Authority to determine the value of the preliminary works to be transferred to the successful bidder.

#### **Payment of costs incurred by the Authority in connection with preliminary works calculation of costs**

7.—(1) Where the Authority has estimated the costs in accordance with regulation 6(2)(a) or 6(5) in relation to a particular qualifying project, it shall, prior to the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to the developer to make a payment to the Authority of a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in estimating the economic and efficient costs which ought to be incurred in connection with obtaining the preliminary works in respect of that qualifying project.



(2) Where the Authority has assessed the costs in accordance with regulation 6(2)(b) or 6(6) in relation to a particular qualifying project, it shall, prior to the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to that successful bidder to make a payment to the Authority of a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in assessing the economic and efficient costs which ought to have been incurred in connection with obtaining the preliminary works in respect of that qualifying project.

## PART 4

### QUALIFYING PROJECTS AND DEVELOPER'S PAYMENT AND SECURITY

#### Qualifying projects

**8.**—(1) A developer who wishes the Authority to publish a notice in accordance with regulation 11 in order to commence a tender exercise, shall make a request to that effect in writing to the Authority.

(2) A request made in accordance with paragraph (1) must specify whether the project is intended to meet the requirements of paragraph (4)(a) or (b).

(3) Where the Authority has received one or more requests in accordance with paragraph (1), the Authority shall, as soon as reasonably practicable thereafter, determine whether each of those requests relates to a qualifying project in accordance with paragraph (4).

(4) A qualifying project is a project in respect of which the Authority is satisfied—

(a) in the case of a transitional tender exercise, it is one where either—

(a) the requirements specified in paragraph 2 of Schedule 1 have been met; or

(b) the provision specified in paragraph 3 of Schedule 1 applies; or

(b) in any other case, it is one where the requirements specified in paragraph 1 of Schedule 1 have been met.

(5) For the purposes specified in paragraph (4)(b), the Authority may determine that the requirement in paragraph 1(a) of Schedule 1 is met where—

(a) the connection offer has been referred to the Authority for determination in accordance with the provisions of a transmission licence; and

(b) the matter that has been referred to the Authority would not, in the opinion of the Authority, have a material impact on the design of the changes required to be made to the transmission system as specified in that connection offer.

(6) The Authority may require the developer to provide any other information it considers necessary in order to carry out its assessment in relation to paragraphs 1, 2 or 3 of Schedule 1.

(7) Where the Authority determines that a request relates to a qualifying project in accordance with paragraph (3), it shall give notice to that effect to the developer who made the request.

(8) Where the Authority determines that a request does not relate to a qualifying project in accordance with paragraph (3), it shall give notice to that effect to the developer who made the request and give reasons for its determination.

(9) Where the developer disagrees with the Authority's determination as notified to the developer in accordance with paragraph (8), the developer may make representations in writing to the Authority within seven days from receipt of the notice.

(10) The Authority shall consider any representations received from a developer in accordance with paragraph (9) and decide whether to amend its determination made in accordance with paragraph (3).

(11) The Authority shall give notice to the developer of the decision made in accordance with paragraph (10) and give reasons for its decision.

### **Developer's payment and security**

**9.**—(1) Prior to publishing a notice in accordance with regulation 11, the Authority shall give notice to the developer of—

- (a) the amount of payment that the Authority requires to be paid by the developer in relation to the Authority's tender costs as calculated in accordance with the Authority's cost recovery methodology for that tender exercise; and
- (b) the security that the Authority requires to be provided by the developer or such other person with whom the developer has made arrangements and has been approved by the Authority, in relation to the Authority's tender costs as calculated in accordance with the Authority's cost recovery methodology for that tender exercise.

## **PART 5**

### **ENTRY CONDITIONS**

#### **Entry conditions in respect of qualifying projects**

**10.**—(1) In respect of a qualifying project, the Authority shall notify the developer of—

- (a) the information that the Authority will require in order to be satisfied—
  - (i) in the case of a transitional tender exercise, that the entry conditions specified in paragraph 2 of Schedule 2 have been met in respect of that particular qualifying project; or
  - (ii) in any other case, that the entry conditions specified in paragraph 1 of Schedule 2 have been met in respect of that particular qualifying project; and
- (b) the date by which each of the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, must be met by the developer in respect of that qualifying project.

(2) The Authority shall give notice to the developer in accordance with paragraph (1) at a time determined by the Authority.

(3) The Authority may require the developer to provide any other information it considers necessary in order to satisfy itself that the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met.

(4) Where the Authority is satisfied that the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met in accordance with paragraph (1), it shall give notice to that effect to the developer.

## **PART 6**

### **COMMENCEMENT OF A TENDER EXERCISE**

#### **Commencement of a tender exercise**

**11.**—(1) As soon as reasonably practicable after the Authority—

- (a) has determined that one or more requests relate to a qualifying project in accordance with regulation 8;
- (b) has received payment and security from the developer in accordance with regulation 9; and
- (c) is satisfied that any entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, which must be met by the developer prior to the publication of a notice under this Regulation, have been met pursuant to regulation 10(1)(b),

the Authority shall publish a notice of its intention to commence a tender exercise in respect of those determined qualifying projects specifying the date on which the tender exercise shall be commenced in a given calendar year.

(2) The Authority may, after consulting a developer in respect of a particular qualifying project, publish a notice specifying the date on which that particular tender exercise in respect of that particular qualifying project shall be commenced (which may be earlier or later than the date specified in accordance with paragraph (1)).

(3) Where the Authority has published a notice in accordance with paragraph (1) or (2) and the Authority subsequently determines that it is impracticable to commence a tender exercise on the date specified in that notice, the Authority shall publish a notice specifying a revised date on which that tender exercise shall be commenced.

(4) The Authority shall publish the tender rules and the cost recovery methodology no later than the date on which the tender exercise is to be commenced as specified in a notice published in accordance with paragraph (1), (2) or (3).

## **PART 7**

### **STAGES OF A TENDER EXERCISE**

#### **Stages of a tender exercise**

**12.**—(1) A tender exercise to be held in accordance with these Regulations shall comprise the following stages—

- (a) a pre-qualification stage in order to determine which bidders shall become qualifying bidders in respect of each qualifying project within that tender exercise;
- (b) subject to paragraph (2), a qualification to tender stage in order to determine which qualifying bidders shall be invited to participate in an invitation to tender stage in respect of each qualifying project within that tender exercise;
- (c) an invitation to tender stage in order to determine which qualifying bidders shall be selected to become preferred bidders or reserve bidders in respect of each qualifying project within that tender exercise;
- (d) where the Authority determines in accordance with the criteria set out in the invitation to tender documentation in respect of a particular qualifying project, a best and final offer stage in respect of that particular qualifying project within that tender exercise; and
- (e) a preferred bidder stage in order to determine the successful bidder to whom an offshore transmission licence is to be granted in respect of a particular qualifying project within that tender exercise.

(2) In respect of a transitional tender exercise, the Authority may determine not to hold a qualification to tender stage where the Authority considers it is not necessary in relation to that particular tender exercise.

## **PART 8**

### **PRE-QUALIFICATION STAGE**

#### **Pre-qualification**

**13.**—(1) Subject to paragraph (2), on the date specified in the notice published in accordance with regulation 11(1), (2) or (3), the Authority shall commence the pre-qualification stage by publishing the pre-qualification documentation, which shall include the information specified in Schedule 3.

(2) Where the Authority determines not to hold a qualification to tender stage in accordance with regulation 12(2), on the date specified in the notice published in accordance with regulation 11(1), (2) or (3), the Authority shall commence the pre-qualification stage by publishing—

- (a) the pre-qualification documentation, which shall include the information specified in Schedule 3;
- (b) the confidentiality agreement in respect of each qualifying project within that tender exercise to be signed and submitted to the Authority by bidders; and
- (c) any instructions that apply to the confidentiality agreement including the date, time and manner in which that confidentiality agreement is to be submitted to the Authority.

(3) Where paragraph (2) applies, as soon as reasonably practicable after a bidder has submitted one or more signed confidentiality agreements in respect of particular qualifying projects to the Authority in accordance with paragraph (2)(c) and made the payment in accordance with paragraph (e)(ii) of Schedule 3, the Authority shall issue to that bidder any confidential information in respect of those particular qualifying projects.

### **Determination of qualifying bidders at the pre-qualification stage**

**14.—**(1) The Authority shall evaluate each completed pre-qualification questionnaire submitted to it by a bidder in accordance with the evaluation criteria set out in the pre-qualification documentation, in order to determine in respect of each qualifying project within that tender exercise—

- (a) where a qualification to tender stage is to be held, which bidders shall become qualifying bidders and be invited to participate in the qualification to tender stage in accordance with regulation 15; or
- (b) where a qualification to tender stage is not to be held, which bidders shall become qualifying bidders and be invited to participate in the invitation to tender stage in accordance with regulation 17.

(2) The Authority may decline to consider a pre-qualification questionnaire submitted to it by a bidder where the Authority determines that the submitted pre-qualification questionnaire does not comply in any material respect with the requirements specified in the pre-qualification documentation issued in accordance with regulation 13(1) or regulation 13(2)(a).

(3) The Authority shall give notice to each bidder of its determination in accordance with paragraph (1) or (2) and give reasons for its determination.

## **PART 9**

### **QUALIFICATION TO TENDER STAGE**

#### **Qualification to tender**

**15.—**(1) In respect of the qualification to tender stage the Authority shall publish—

- (a) the confidentiality agreement in respect of each qualifying project to be signed and submitted to the Authority by qualifying bidders; and
- (b) any instructions that apply to the confidentiality agreement including the date, time and manner in which that confidentiality agreement is to be submitted to the Authority.

(2) The Authority shall give notice to all qualifying bidders of the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the qualification to tender stage of that tender exercise.

(3) As soon as reasonably practicable after a qualifying bidder has submitted one or more signed confidentiality agreements in respect of particular qualifying projects to the Authority in accordance with paragraph (1) and has made the payment referred to in paragraph (2), the

Authority shall issue to that qualifying bidder the qualification to tender documentation, which shall include the information specified in Schedule 4.

(4) The Authority shall invite all qualifying bidders who have been issued the qualification to tender documentation in accordance with paragraph (3) to submit a completed qualification to tender questionnaire in respect of one or more qualifying projects in accordance with the requirements set out in the qualification to tender documentation.

#### **Determination of qualifying bidders to be invited to participate in the invitation to tender stage**

**16.**—(1) The Authority shall evaluate each completed qualification to tender questionnaire submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the qualification to tender documentation, in order to determine which qualifying bidders shall be invited to participate in the invitation to tender stage in respect of each qualifying project.

(2) The Authority may decline to consider a qualification to tender questionnaire submitted to it by a qualifying bidder where the Authority determines that the submitted qualification to tender questionnaire does not comply in any material respect with the requirements specified in the qualification to tender documentation issued in accordance with regulation 15(3).

(3) The Authority shall give notice to each qualifying bidder of its determination in accordance with paragraph (1) or (2) and give reasons for its determination.

## **PART 10**

### **INVITATION TO TENDER STAGE**

#### **Invitation to tender**

**17.**—(1) In respect of the invitation to tender stage, the Authority shall give notice to all qualifying bidders of the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the invitation to tender stage of that tender exercise.

(2) The Authority may give notice to the developer of a particular qualifying project of the amount of payment payable by the developer to the Authority, if any, as calculated in accordance with its cost recovery methodology in relation to reimbursing a qualifying bidder, preferred bidder or successful bidder's bid costs or a proportion of those costs if any of the events in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) of Schedule 8 should occur in respect of that qualifying project in accordance with regulation 25(4).

(3) As soon as reasonably practicable after a qualifying bidder has made the payment referred to in paragraph (1), the Authority shall issue to that qualifying bidder the invitation to tender documentation, which shall include the information specified in Schedule 5.

(4) The Authority shall invite all qualifying bidders who have been issued the invitation to tender documentation in accordance with paragraph (3) to submit a tender in respect of one or more qualifying projects in accordance with the requirements set out in the invitation to tender documentation.

(5) The submission of a tender by a qualifying bidder is an application for the grant of an offshore transmission licence to that qualifying bidder where that qualifying bidder becomes the successful bidder in accordance with these Regulations.

#### **Determination of preferred bidders at the invitation to tender stage**

**18.**—(1) The Authority shall evaluate each tender in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the invitation to tender documentation, in order to determine—

- (a) which qualifying bidder shall become the preferred bidder in respect of that qualifying project; or
- (b) whether to hold a best and final offer stage in accordance with the criteria set out in the invitation to tender documentation in respect of that particular qualifying project .

(2) The Authority may decline to consider a tender submitted to it by a qualifying bidder where the Authority determines that the submitted tender does not comply in any material respect with the requirements specified in the invitation to tender documentation issued in accordance with regulation 17(3).

(3) Where the Authority does not hold a best and final offer stage in accordance with paragraph (1)(b), the Authority may evaluate each tender in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the invitation to tender documentation, in order to determine which qualifying bidder shall become the reserve bidder in respect of that qualifying project.

## PART 11

### BEST AND FINAL OFFER STAGE

#### **Best and final offer**

**19.**—(1) Where the Authority determines to hold a best and final offer stage in accordance with regulation 18(1)(b), the Authority shall determine in accordance with the evaluation criteria set out in the invitation to tender documentation which qualifying bidders shall be invited to participate in a best and final offer stage in respect of that particular qualifying project .

(2) The Authority shall give notice to each qualifying bidder as to whether they have or have not been invited to participate in a best and final offer stage.

(3) The Authority shall issue to the selected qualifying bidders the best and final offer documentation, which shall include the information specified in Schedule 6.

(4) The Authority shall evaluate each best and final offer in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which qualifying bidder shall become the preferred bidder in respect of that qualifying project.

(5) The Authority may evaluate each best and final offer in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which qualifying bidder shall become the reserve bidder in respect of that qualifying project.

(6) The Authority may decline to consider a best and final offer submitted to it by a qualifying bidder where the Authority determines that the submitted best and final offer does not comply in any material respect with the requirements specified in the best and final offer documentation issued in accordance with paragraph (3).

## PART 12

### PREFERRED BIDDER STAGE

#### **Notification of preferred bidder and reserve bidder**

**20.**—(1) As soon as reasonably practicable after the Authority has determined the preferred bidder in respect of a particular qualifying project in accordance with regulation 18(1)(a) or 19(4), it shall publish a notice to that effect.

(2) As soon as reasonably practicable after the Authority has determined the reserve bidder in respect of a particular qualifying project in accordance with regulation 18(3) or 19(5), it shall give notice to that effect to that reserve bidder.

(3) The notice referred to in paragraph (1) must—

- (a) specify the name and address of the preferred bidder; and
- (b) describe, in general terms, the matters to be resolved by the preferred bidder to the Authority's satisfaction as specified in paragraph (4)(a) or (b), as the case may be, before that preferred bidder becomes the successful bidder in accordance with regulation 27(1).

(4) The matters referred to in paragraph (3)(b) shall include—

(a) in the case of a transitional tender exercise—

- (i) that the preferred bidder has established necessary arrangements to provide transmission services for that particular qualifying project;
- (ii) that the preferred bidder has in place a bilateral agreement with the holder of a co-ordination licence to provide transmission services for that particular qualifying project;
- (iii) that the preferred bidder has acceded to the contractual framework which defines the relationship between the holder of a co-ordination licence and any provider of transmission services that the co-ordination licence requires the holder of a co-ordination licence to have in force; and
- (iv) any other matters which the Authority may determine are necessary in relation to that particular qualifying project; or

(b) in any other case—

- (i) that the preferred bidder has established necessary arrangements to construct the transmission assets and to provide transmission services for that particular qualifying project;
- (ii) that the preferred bidder has in place a bilateral agreement with the holder of a co-ordination licence to provide transmission services for that particular qualifying project;
- (iii) that the preferred bidder has acceded to the contractual framework which defines the relationship between the holder of a co-ordination licence and any provider of transmission services that the co-ordination licence requires the holder of a co-ordination licence to have in force; and
- (iv) any other matters which the Authority may determine are necessary in relation to that particular qualifying project.

(5) As soon as reasonably practicable after the Authority has published a notice in accordance with paragraph (1), it shall give notice to the preferred bidder as to—

- (a) how the matters referred to in paragraph (4)(a) or (b), as the case may be, shall be resolved and by what date; and
- (b) the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the preferred bidder stage of that tender exercise.

(6) Where—

- (a) the matters referred to in paragraph (4)(a) or (b), as the case may be, are not resolved by the preferred bidder to the Authority's satisfaction in accordance with the notice issued by virtue of paragraph (5)(a);
- (b) the preferred bidder fails to make the payment referred to in paragraph (5)(b);
- (c) the preferred bidder withdraws from the tender exercise in respect of that qualifying project in accordance with regulation 22(1); or
- (d) the preferred bidder is disqualified from the tender exercise in accordance with regulation 26(1),

the Authority may withdraw the notice published in accordance with paragraph (1) by publishing a further notice to that effect.

(7) Where the Authority has published a further notice in accordance with paragraph (6), it shall discontinue the tender exercise with the preferred bidder and may determine to treat the reserve bidder (where such reserve bidder has been determined in accordance with regulation 18(3) or 19(5)), as if that reserve bidder were the preferred bidder in respect of a particular qualifying project.

(8) Paragraphs (1) and (3), (4), (5) and (6) shall apply in circumstances where the Authority determines to treat the reserve bidder as if it were the preferred bidder.

(9) The Authority shall give notice to any qualifying bidder of the fact that it is not a preferred bidder or a reserve bidder.

### **Particular obligations of the developer from preferred bidder stage**

**21.—**(1) In order to facilitate the making of the Authority's determination to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 27(2), the developer shall from the date of the notice given in accordance with regulation 20(5) use its reasonable endeavours to—

- (a) enable the preferred bidder to resolve the matters specified in the notice given in accordance with regulation 20(5) to the extent that the resolution of those matters depends on the actions of the developer; and
- (b) enable the preliminary works or the transmission assets, as the case may be, in respect of that qualifying project to be transferred to the successful bidder.

## **PART 13**

### **WITHDRAWAL**

### **Withdrawal**

**22.—**(1) A bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder may withdraw from the tender exercise in respect of a particular qualifying project by giving notice in writing to that effect to the Authority.

(2) A bidder or qualifying bidder who has not withdrawn pursuant to paragraph (1) but who fails to submit a qualification to tender questionnaire, a tender or a best and final offer within the date and time specified by the Authority shall be deemed to have withdrawn from the tender exercise in respect of that qualifying project.

(3) Where a bidder or qualifying bidder withdraws from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1) or is deemed to have withdrawn in accordance with paragraph (2), that bidder or qualifying bidder may only be re-admitted to the tender exercise in respect of that qualifying project, where there has been a permitted change to the membership of a bidder group incorporating that bidder or qualifying bidder in accordance with regulation 32.

(4) Where a preferred bidder, reserve bidder or successful bidder withdraws from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1), that preferred bidder, reserve bidder or successful bidder shall not be re-admitted to that tender exercise in respect of that qualifying project.

(5) Where a bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder has withdrawn from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1) or a bidder or qualifying bidder is deemed to have withdrawn in accordance with paragraph (2), any payment provided to the Authority by that bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder in accordance with these Regulations, including any



interest which may have accrued on that payment, will only be repaid by the Authority in accordance with the Authority's cost recovery methodology in relation to that tender exercise.

## **PART 14**

### **RE-RUN, CANCELLATION AND TREATMENT OF PAYMENTS AND SECURITY ON CANCELLATION**

#### **Re-run**

**23.—**(1) Where the Authority is satisfied that any of the events in Schedule 7 are occurring or have occurred in respect of a qualifying project, it may re-run that tender exercise in respect of that qualifying project, from the beginning or a particular stage of that tender exercise in accordance with these Regulations.

(2) In the event that no preferred bidder, reserve bidder or successful bidder is or can be determined pursuant to a tender exercise run as a consequence of a decision taken in accordance with paragraph (1), the Authority may—

- (a) further re-run that tender exercise in respect of that qualifying project, from the beginning or a particular stage of that tender exercise in accordance with these Regulations; or
- (b) determine that the tender exercise in respect of that qualifying project is to be cancelled.

(3) Where the Authority determines that the tender exercise in respect of that qualifying project is to be cancelled in accordance with paragraph (2)(b), it may, in the circumstances specified in paragraph (4), publish a notice cancelling that qualifying project from the tender exercise.

(4) The circumstances in which the Authority may publish a notice in accordance with paragraph (3) are that the Authority has—

- (a) given seven days notice of its intention to cancel the qualifying project from the tender exercise; and
- (b) considered any representations which have been duly made in relation to the notice published in accordance with sub-paragraph (a).

(5) Where the Authority has published a notice in accordance with paragraph (3), the Authority may determine that the tender exercise in respect of that qualifying project has failed.

(6) Where the Authority determines that the tender exercise has failed in accordance with paragraph (5), that tender exercise is finished in respect of that qualifying project.

#### **Cancellation**

**24.—**(1) Where the Authority is satisfied that any of the events in Schedule 8 are occurring or have occurred in respect of a qualifying project, it may, in the circumstances specified in paragraph (2), publish a notice cancelling that qualifying project from the tender exercise.

(2) The circumstances in which the Authority may publish a notice in accordance with paragraph (1) are that the Authority has—

- (a) given seven days notice of its intention to cancel the qualifying project from the tender exercise; and
- (b) considered any representations which have been duly made in relation to the notice published in accordance with sub-paragraph (a).

(3) Where the Authority has published a notice in accordance with paragraph (1), the Authority may determine that the tender exercise in respect of that qualifying project has failed.

(4) Where the Authority determines that the tender exercise has failed in accordance with paragraph (3), that tender exercise is finished in respect of that qualifying project.

## **Treatment of payments and security on cancellation**

**25.**—(1) This regulation applies where the Authority cancels a qualifying project from a tender exercise in accordance with regulation 23(3) or 24(1).

(2) Where any of the events in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) of Schedule 7 or paragraph (a) of Schedule 8 are occurring or have occurred in respect of a qualifying project, the Authority shall, in accordance with its cost recovery methodology—

- (a) not repay wholly or in part any payment that has been made by a bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment;
- (b) repay to the developer wholly or in part the payment that has been made in accordance with regulation 9(1)(a), including any interest which may have been accrued on the whole or part of that payment; and
- (c) release to the developer or person approved by the Authority with whom the developer has made arrangements, wholly or in part the security that has been provided in accordance with regulation 9(1)(b), including any interest which may have been accrued where that security provided is a monetary deposit.

(3) Where any of the events in paragraph (a) of Schedule 7 or paragraphs (b), (c), (d) (e), (f), (g), (h) or (i) of Schedule 8 are occurring or have occurred in respect of a qualifying project, the Authority shall, in accordance with its cost recovery methodology—

- (a) repay to a bidder, qualifying bidder, preferred bidder or successful bidder wholly or in part any payment that has been made by that bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment;
- (b) not repay wholly or in part the payment that has been made in accordance with regulation 9(1)(a), including any interest which may have been accrued on the whole or part of that payment; and
- (c) determine that the security provided in accordance with regulation 9(1)(b) shall be forfeited wholly or in part, including any interest which may have been accrued where that security provided is a monetary deposit.

(4) Where any of the events in paragraphs (b), (c), (d) (e), (f), (g), (h) or (i) of Schedule 8 are occurring or have occurred in respect of a qualifying project, the Authority may, in accordance with its cost recovery methodology reimburse a qualifying bidder, preferred bidder or successful bidder its bid costs or a proportion of those costs.

## **PART 15**

### **DISQUALIFICATION FROM A TENDER EXERCISE**

#### **Disqualification**

**26.**—(1) Where the Authority is satisfied that any of the events in Schedule 9 are occurring or have occurred and that the occurrence would materially affect the outcome of the tender exercise, it shall disqualify that developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, from the tender exercise in respect of that and any other qualifying project by giving notice to that effect to that developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be.

(2) Where the developer has been disqualified in accordance with paragraph (1), the Authority shall in accordance with its cost recovery methodology—

- (a) not repay wholly or in part the payment that has been made in accordance with regulation 9(1)(a), including any interest which may have been accrued on the whole or part of that payment; and

- (b) determine that the security provided in accordance with regulation 9(1)(b) shall be forfeited wholly or in part, including any interest which may have been accrued where that security provided is a monetary deposit.

(3) Where a bidder, qualifying bidder, preferred bidder or successful bidder has been disqualified in accordance with paragraph (1), the Authority shall in accordance with its cost recovery methodology not repay wholly or in part any payment that has been made by that bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment.

(4) Where a bidder, qualifying bidder, preferred bidder or reserve bidder, as the case may be, is disqualified from the tender exercise in accordance with paragraph (1), no document, tender or any information submitted by that bidder, qualifying bidder, preferred bidder or reserve bidder to the Authority shall be taken into consideration for the purpose of determining the successful bidder in respect of each qualifying project.

## PART 16

### NOTIFICATION OF SUCCESSFUL BIDDER

#### **Notification of successful bidder**

**27.**—(1) Where the Authority is satisfied that the preferred bidder has resolved the matters described in the notice published in accordance with regulation 20(5), that preferred bidder shall become the successful bidder.

(2) As soon as reasonably practicable after the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project it shall publish a notice to that effect.

(3) The notice shall specify the name and address of the successful bidder.

(4) The Authority shall give notice to the successful bidder of the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to—

- (a) the offshore transmission licence grant stage of that tender exercise; and
- (b) enabling the Authority to reimburse a qualifying bidder's bid costs or a proportion of those costs in accordance with regulation 28(7).

#### **Information in respect of successful bidder**

**28.**—(1) Subject to paragraph (3), the Authority shall as soon as practicable after a determination has been made in accordance with regulation 27(2), give notice to each qualifying bidder of its determination in relation to the successful bidder in respect of that qualifying project.

(2) The notice referred to in paragraph (1) shall include—

- (a) the evaluation criteria applied by the Authority in evaluating tenders;
- (b) the reasons for the determination, including the characteristics and relative advantages of the successful tender;
- (c) the result obtained by—
  - (i) the qualifying bidder which is to receive the notice; and
  - (ii) the successful bidder;
- (d) the name of the successful bidder; and
- (e) a statement of when the period specified in paragraph (5) is expected to end.

(3) The Authority may withhold any information to be provided in accordance with paragraph (1) where the disclosure of such information—

- (a) would impede law enforcement;

- (b) would otherwise be contrary to law;
- (c) would otherwise be contrary to the public interest;
- (d) would prejudice the legitimate commercial interests of any qualifying bidder; or
- (e) may prejudice fair competition between qualifying bidders.

(4) Where paragraph (1) applies, the Authority shall not grant an offshore transmission licence to the successful bidder before the end of the period specified in paragraph (5).

(5) Where the Authority gives notice to each qualifying bidder in accordance with paragraph (1), it shall allow a period to elapse ending not before midnight at the end of the tenth working day after the date on which the notices referred to in paragraph (1) are given.

(6) As soon as reasonably practicable after the end of the period specified in paragraph (5), the Authority shall confirm its determination made pursuant to regulation 27(2), to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project and shall-

- (a) publish a notice to that effect; and
- (b) give notice to the reserve bidder (where such reserve bidder has been determined in accordance with regulation 18(3) or 19(5)) of the fact that it is being stood down.

(7) As soon as reasonably practicable after the Authority has published a notice in accordance with paragraph (6)(a), it may reimburse a qualifying bidder who has received a notice in accordance with paragraph (1) its bid costs or a proportion of those costs in accordance with the Authority's cost recovery methodology.

(8) Where the Authority publishes a notice in accordance with paragraph (6)(a), that tender exercise is finished in respect of that qualifying project.

## PART 17

### COST RECOVERY

#### **Recovery of tender costs**

**29.—**(1) The Authority shall recover its tender costs in relation to a tender exercise in accordance with the Authority's cost recovery methodology published pursuant to regulation 11(4).

(2) The Authority shall give notice to the developer in respect of any payment or security required in accordance with these Regulations of—

- (a) the amount of the payment or the nature of the security;
- (b) the date and time by which it is to be made or provided; and
- (c) the manner in which it is to be made or provided,

as calculated in accordance with the Authority's cost recovery methodology.

(3) The Authority shall give notice to a bidder, qualifying bidder, preferred bidder or successful bidder in respect of any payment required in accordance with these Regulations of—

- (a) the amount of the payment;
- (b) the date and time by which it is to be made; and
- (c) the manner in which it is to be made,

as calculated in accordance with the Authority's cost recovery methodology.

(4) As soon as reasonably practicable after a tender exercise is finished, the Authority shall—

- (a) calculate its total tender costs in relation to that tender exercise; and
- (b) undertake an aggregation of—
  - (i) the payments made in accordance with these Regulations by a developer, bidder, qualifying bidder, preferred bidder or successful bidder and not repaid; and

- (ii) the value of any security forfeited in accordance with these Regulations by the developer or person approved by the Authority with whom the developer has made arrangements in accordance with regulation 9(1)(b),

in order to identify whether the total of the payments made and the security forfeited exceeds the Authority's total tender costs in respect of that tender exercise.

(5) Where the total amount identified as a result of the aggregation undertaken in accordance with paragraph (4)(b) exceeds the total tender costs incurred by the Authority in respect of that tender exercise, the Authority shall as soon as reasonably practicable after that tender exercise is finished-

- (a) repay wholly or in part any payment that has been made which exceeds the tender costs to any person in paragraph (4)(b)(i) who made the payment, including any interest which may have been accrued on the whole or part of that payment; and
- (b) repay wholly or in part the security that has been forfeited which exceeds the tender costs to any person in paragraph (4)(b)(ii) who provided that security, including any interest which may have been accrued where that security provided is a monetary deposit,

in accordance with the Authority's cost recovery methodology in relation to that tender exercise, so as to ensure that the Authority's total tender costs have not been exceeded.

(6) As soon as reasonably practicable after an offshore transmission licence has been granted to the successful bidder in respect of a particular qualifying project, the Authority shall-

- (a) release wholly or in part any security that has not been forfeited to any person in regulation 9(1)(b) who provided that security, including any interest which may have been accrued where that security provided is a monetary deposit; and
- (b) repay wholly or in part any payment that has been made which has not been used in accordance with regulation 17(2) to the developer, including any interest which may have been accrued on the whole or part of that payment.

## PART 18

### MISCELLANEOUS

#### **Failure to make payments or provide security**

**30.**—(1) Where the developer fails to make the payment or provide the security in accordance with regulation 9, the Authority may permit that payment or security to be made or provided within a further period specified by the Authority by notice to the developer, such period to be no later than the date on which a notice is published in accordance with regulation 11(1), (2) or (3).

(2) Where the developer fails to make the payment in accordance with regulation 17(2), the Authority may permit that payment to be made within a further period specified by the Authority by notice to the developer.

(3) Where the developer fails to make the payment or provide the security in accordance with regulation 9 or within any further period specified in accordance with paragraph (1) or fails to make the payment in accordance with regulation 17(2) or within any further period specified in accordance with paragraph (2), the Authority may cancel that qualifying project from that tender exercise in accordance with regulation 24.

(4) Where either a bidder or a qualifying bidder fails to make any payment in accordance with these Regulations, the Authority may disqualify that bidder or qualifying bidder from that tender exercise in accordance with regulation 26 if that failure is not remedied within a period not exceeding ten days specified by the Authority by notice to that bidder or qualifying bidder.

### **Application for a decision by the Authority**

**31.**—(1) A bidder or qualifying bidder may apply to the Authority for a decision as to the effect of any—

- (a) restriction applied as a result of these Regulations on the making of an application for the grant of an offshore transmission licence; or
- (b) requirement applied by virtue of these Regulations that operates so as to prevent an application for the grant of an offshore transmission licence from being considered or further considered.

(2) Where a bidder or qualifying bidder makes an application in accordance with paragraph (1), the Authority may charge that bidder or qualifying bidder a fee in accordance with the Authority's cost recovery methodology for any decision given in response to it.

### **Changes to bidder groups**

**32.**—(1) No change may be made to the membership of a bidder group unless the Authority has permitted the change in accordance with paragraphs (3), (4), or (5).

(2) Where a bidder group seeks to change its membership it must notify the Authority in writing of the proposed change as soon as reasonably practicable.

(3) Where a bidder group seeks to change its membership between the pre-qualification and qualification to tender stages of a tender exercise, the Authority shall permit that change provided that the new membership of that bidder group meets the pre-qualification evaluation criteria set out in the pre-qualification documentation issued in accordance with regulation 13(1).

(4) Any proposed change to the membership of a bidder group notified to the Authority after a qualification to tender questionnaire has been submitted to the Authority or, where the Authority determines not to hold a qualification to tender stage in accordance with regulation 12(2), after a pre-qualification questionnaire has been submitted to the Authority may be permitted by the Authority provided that—

- (a) the Authority determines that change would be fair and equitable to all other bidders or qualifying bidders participating in the tender exercise in respect of that particular qualifying project; and
- (b) the new membership of that bidder group meets the evaluation criteria set out in the later of—
  - (i) the qualification to tender documentation issued in accordance with regulation 15(3) or, where the Authority determines not to hold a qualification to tender stage in accordance with regulation 12(2), the pre-qualification documentation issued in accordance with regulation 13(2)(a);
  - (ii) the invitation to tender documentation issued in accordance with regulation 17(3), or
  - (iii) the best and final offer documentation issued in accordance with regulation 19(3).

(5) Any proposed change to the membership of a bidder group notified to the Authority after the Authority has published a notice in accordance with regulation 20(1) which confirms the determination of a preferred bidder may be permitted by the Authority provided that—

- (a) the Authority determines that change would be fair and equitable to all other qualifying bidders who were invited to participate in the latest stage of the tender exercise, being either the invitation to tender stage or the best and final offer stage; and
- (b) the new membership of that bidder group—
  - (i) meets the evaluation criteria set out in the later of the invitation to tender documentation issued in accordance with regulation 17(3) or the best and final offer documentation issued in accordance with regulation 19(3); and
  - (ii) confirms in writing to the Authority that where the matters specified in the notice given in accordance with regulation 20(5) have previously been resolved by the

preferred bidder to the Authority's satisfaction, such matters remain resolved by the new membership of that bidder group.

(6) Where the Authority has permitted any proposed change to the membership of a bidder group in accordance with paragraphs (3), (4) or (5), it may give notice to that bidder group or qualifying bidder, as the case may be, of the amount of any payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to permitting the change to the membership of that bidder group.

#### **Changes to delivery of documents or actions**

**33.**—(1) Where the Authority determines that it is impracticable—

- (a) for any document or notice which is to be delivered to or published by the Authority in accordance with these Regulations to be delivered or published by the time, date or in the manner specified in accordance with these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations, to be completed by the time, date or in the manner specified,

then paragraph (2) applies.

(2) Where this paragraph applies, the Authority shall take reasonable steps to give notice to a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, that—

- (a) delivery or publication shall be made by a different time or date or in a different manner;  
or
- (b) the action shall be completed by a different time or date or in a different manner.

#### **Disapplication of certain provisions**

**34.**—(1) No application for an offshore transmission licence shall be considered or granted by the Authority other than in accordance with these Regulations.

(2) Sections 6A and 6B of the 1989 Act and any regulations made under them shall be dispensed with insofar as they relate to an application for an offshore transmission licence.

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

XXX

XXX  
A member of the Gas and Electricity Markets Authority

I approve

XXX

XXX  
Minister of State  
Department for Energy and Climate Change



## SCHEDULE 1

Regulation 8

### QUALIFYING PROJECTS

1. The requirements in this paragraph are that the developer has—
  - (a) entered into a bilateral agreement with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system;
  - (b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners<sup>(a)</sup>;
  - (c) secured financing to obtain the preliminary works for the transmission assets and provided the Authority with evidence in writing of how those preliminary works will be obtained; and
  - (d) provided the Authority with evidence in writing of its commitment to secure financing to construct the relevant generating station.
2. The requirements in this paragraph are that the developer has—
  - (a) entered into a bilateral agreement with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system, or entered into an agreement or accepted an offer of an agreement, with the electricity distributor responsible for the distribution system to which the transmission assets are or are intended to be connected;
  - (b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners;
  - (c) obtained all necessary consents and property rights for the transmission assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the successful bidder are so assignable;
  - (d) completed construction of, or entered into all necessary contracts for the construction of the transmission assets and ensured that any such contracts are assignable to the successful bidder; and
  - (e) secured financing to construct the transmission assets.

3. Where the Authority considers that the developer has not met the requirements in paragraph 2(c) or (d), it may deem a project to be a qualifying project for those purposes, where the Authority is satisfied that the developer will use its reasonable endeavours to meet those requirements within a reasonable time period, such period to be notified by the Authority to the developer.

## SCHEDULE 2

Regulation 10

### ENTRY CONDITIONS

1. The conditions in this paragraph are that the developer has—
  - (a) provided information to the Authority's satisfaction to enable the Authority to both issue an information memorandum and establish a data room;
  - (b) provided an undertaking in writing to the Authority that where the information provided in sub-paragraph (a) has changed, or where new relevant information becomes available, the developer shall provide that information to the Authority;

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(a) The Crown Estate Commissioners are a body corporate under section 1(1) of the Crown Estate Act 1961 (c.55).

- (c) provided a written warranty to the Authority, in a form reasonably acceptable to the Authority, that any information provided pursuant to sub-paragraph (a) or (b) is to the best of the knowledge and belief of the developer, having made reasonable enquiries, true, accurate and complete and is not misleading in all material respects;
- (d) signed the confidentiality agreement;
- (e) provided an undertaking in writing to the Authority to obtain the preliminary works and ensure that any preliminary works which are capable of being assignable to the successful bidder are so assignable;
- (f) provided to the Authority the preliminary works transfer agreement completed, as far as possible, with all relevant information available to the developer and provided an undertaking in writing to the Authority to continue to complete the preliminary works transfer agreement with all relevant information;
- (g) provided an undertaking in writing to the Authority to assist the Authority during any evaluation pursuant to regulation 18(1), 18(3), 19(4) and 19(5);
- (h) provided an undertaking in writing to the Authority to respond to all queries from the Authority within a reasonable period, whether arising from the Authority or forwarded by the Authority on behalf of a third party;
- (i) provided to the Authority a system specification in respect of the transmission assets completed, as far as possible, with all relevant information available to the developer and provided an undertaking in writing to the Authority to continue to complete the system specification with all relevant information;
- (j) provided the Authority with evidence in writing of its planned submission dates to the relevant consenting authorities in respect of the necessary consents to construct and maintain the transmission assets;
- (k) provided an undertaking in writing to the Authority that in the event that the developer decides to participate in any stage of a tender exercise as a bidder or qualifying bidder in respect of a qualifying project for which it is the developer, it will put in place and maintain appropriate internal information barriers to the satisfaction of the Authority, in order to prevent information passing between the developer and the bidder or qualifying bidder as the case may be;
- (l) provided an undertaking in writing to the Authority to provide reports as required to the Authority in connection with the development of the qualifying project;
- (m) provided an undertaking in writing to the Authority to carry out its activities in respect of the qualifying project in an efficient manner including making available all necessary management, technical, commercial and legal resources; and
- (n) complied with such other conditions as the Authority may determine are necessary in relation to that particular qualifying project.

**2. The conditions in this paragraph are that the developer has–**

- (a) provided information to the Authority's satisfaction to enable the Authority to both issue an information memorandum and establish a data room;
- (b) provided an undertaking in writing to the Authority that where the information provided in sub-paragraph (a) has changed, or where new relevant information becomes available, the developer shall provide that information to the Authority;
- (c) provided a written warranty to the Authority, in a form reasonably acceptable to the Authority, that any information provided pursuant to sub-paragraph (a) or (b) is to the best of the knowledge and belief of the developer, having made reasonable enquiries, true, accurate and complete and is not misleading in all material respects;
- (d) signed the confidentiality agreement;
- (e) provided to the Authority the transfer agreement completed, as far as possible, with all relevant information available to the developer, and provided an undertaking in writing to

the Authority to continue to complete the transfer agreement with all relevant information;

- (f) provided an undertaking in writing to the Authority that in the event that the developer decides to participate in any stage of a tender exercise as a bidder or qualifying bidder in respect of a qualifying project for which it is the developer, it will put in place and maintain appropriate internal information barriers to the satisfaction of the Authority, in order to prevent information passing between the developer and the bidder or qualifying bidder as the case may be;
- (g) provided an undertaking in writing to the Authority to respond to all queries from the Authority within a reasonable period, whether arising from the Authority or forwarded by the Authority on behalf of a third party;
- (h) provided an undertaking in writing to the Authority to provide reports as required to the Authority in connection with the development of the qualifying project;
- (i) provided an undertaking in writing to the Authority to carry out its activities in respect of the qualifying project in an efficient manner including making available all necessary management, technical, commercial and legal resources; and
- (j) complied with such other conditions as the Authority may determine are necessary in relation to that particular qualifying project.

### SCHEDULE 3

Regulation 13

#### PRE-QUALIFICATION

The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the stages of the tender exercise and where the Authority determines not to hold a qualification to tender stage in accordance with regulation 12(2), the reasons for its determination;
- (b) the rules particular to the pre-qualification stage of the tender exercise;
- (c) the pre-qualification questionnaire;
- (d) the instructions that apply to the pre-qualification questionnaire;
- (e) the date, time and manner in which the following are to be submitted to the Authority—
  - (i) a completed pre-qualification questionnaire; and
  - (ii) the amount of payment as calculated in accordance with the Authority's cost recovery methodology in relation to the pre-qualification stage of that tender exercise;
- (f) the evaluation criteria to be applied by the Authority in evaluating a completed pre-qualification questionnaire submitted to the Authority; and
- (g) any other such information in relation to the pre-qualification stage of the particular tender exercise as the Authority may determine is necessary.

### SCHEDULE 4

Regulation 15

#### QUALIFICATION TO TENDER

The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the rules particular to the qualification to tender stage of the tender exercise;
- (b) the qualification to tender questionnaire;
- (c) the instructions that apply to the qualification to tender questionnaire;

- (d) the date, time and manner in which a completed qualification to tender questionnaire is to be submitted to the Authority;
- (e) the evaluation criteria to be applied by the Authority in evaluating a completed qualification to tender questionnaire submitted to the Authority; and
- (f) any other such information in relation to the qualification to tender stage of the particular tender exercise as the Authority may determine is necessary.

## SCHEDULE 5

Regulation 17

### INVITATION TO TENDER

The information specified in this Schedule in relation to a particular tender exercise is as follows–

- (a) the rules particular to the invitation to tender stage of the tender exercise;
- (b) a description of the information required by the Authority for the submission of a tender;
- (c) the date, time and manner in which a tender is to be submitted to the Authority;
- (d) the evaluation criteria to be applied by the Authority in evaluating tenders;
- (e) the criteria to be applied by the Authority in determining whether to hold a best and final offer stage; and
- (f) any other such information in relation to the invitation to tender stage of the particular tender exercise as the Authority may determine is necessary.

## SCHEDULE 6

Regulation 19

### BEST AND FINAL OFFER

The information specified in this Schedule in relation to a particular tender exercise is as follows–

- (a) the rules particular to the best and final offer stage of the tender exercise;
- (b) a description of the information required by the Authority for the submission of a best and final offer;
- (c) the date, time and manner in which a best and final offer is to be submitted to the Authority;
- (d) the evaluation criteria to be applied by the Authority in evaluating best and final offers; and
- (e) any other such information in relation to the best and final offer stage of the particular tender exercise as the Authority may determine is necessary.

## SCHEDULE 7

Regulation 23

### EVENTS OF RE-RUN

The events in this Schedule are–

- (a) the Authority does not receive any completed and compliant pre-qualification questionnaires in accordance with regulation 14;
- (b) the Authority does not receive any completed and compliant qualification to tender questionnaires in accordance with regulation 16;
- (c) the Authority does not receive any compliant tenders in accordance with regulation 18;

- (d) the Authority does not receive any compliant best and final offers in accordance with regulation 19;
- (e) a preferred bidder withdraws from a tender exercise in respect of a particular qualifying project or is disqualified from a tender exercise and the Authority has not determined a reserve bidder in respect of that qualifying project;
- (f) the matters referred to in the notice published in accordance with regulation 20(5) are not resolved by a preferred bidder and the Authority has not determined a reserve bidder;
- (g) a reserve bidder withdraws from a tender exercise in respect of a particular qualifying project or is disqualified from a tender exercise after a preferred bidder has withdrawn from that tender exercise in respect of that qualifying project or has been disqualified from a tender exercise, or after a preferred bidder has failed to resolve the matters referred to in the notice published in accordance with regulation 20(5);
- (h) the matters referred to in the notice published in accordance with regulation 20(5) are not resolved by a reserve bidder and the preferred bidder has withdrawn from that tender exercise in respect of that qualifying project or has been disqualified from a tender exercise, or the preferred bidder has failed to resolve those matters;
- (i) a successful bidder withdraws from a tender exercise in respect of a particular qualifying project;
- (j) a successful bidder has been disqualified from a tender exercise;
- (k) a successful bidder fails to make a payment in accordance with regulation 27(4);
- (l) the Authority determines that it would not be appropriate to grant an offshore transmission licence to any qualifying bidder.

## SCHEDULE 8

Regulation 24

### EVENTS OF CANCELLATION

The events in this Schedule are—

- (a) the Authority determines that there are no bidders or qualifying bidders in respect of a qualifying project;
- (b) a developer has been disqualified from a tender exercise in accordance with regulation 26(1);
- (c) a developer fails to make a payment or provide security in accordance with regulation 30(3);
- (d) a developer fails to meet the requirements specified in paragraph 2(c) or (d) of Schedule 1 pursuant to the provisions specified in paragraph 3 of Schedule 1;
- (e) a developer fails to meet the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, in accordance with regulation 10;
- (f) a developer does not agree the variation to the bilateral agreement with the holder of a co-ordination licence in order that the preferred bidder has in place a valid bilateral agreement;
- (g) a developer terminates its bilateral agreement with the holder of a co-ordination licence;
- (h) a developer withdraws its qualifying project from a tender exercise for any reason;
- (i) a developer wishes to change its request made to the Authority in accordance with regulation 8(2).

## EVENTS OF DISQUALIFICATION

**1.** The events in this Schedule in relation to a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, are—

- (a) causing or inducing any person to enter into an agreement to collude or to inform a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder of the amount of any rival tender;
- (b) a material breach of the tender rules, any rules particular to the pre-qualification, qualification to tender, invitation to tender and best and final offer stages of a tender exercise or any requirements specified in these Regulations;
- (c) submitting any information to the Authority which is false or misleading unless the provision of further information is acceptable to the Authority;
- (d) engaging in, attempting to engage in, allowing or encouraging any anti-competitive behaviour by or between any developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder;
- (e) doing anything which would constitute the commission of an offence under section 1, 2 or 6 of the Bribery Act 2010<sup>(a)</sup>.

**2.** The events in this Schedule in relation to a developer are—

- (a) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of the Authority, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder who is involved in a tender exercise (or any related party of these) in relation to any actions or omissions;
- (b) contacting a bidder or qualifying bidder who is subject to a tender exercise (or any related party of these) outside the tender rules or any requirements specified in these Regulations. This includes, but is not limited to, contact for the purposes of discussing the possible transfer of an employee of a bidder or qualifying bidder to the employment of the developer for the purpose of a tender exercise in respect of a particular qualifying project;
- (c) a breach of any warranty or undertaking provided to the Authority in accordance with these Regulations, unless the Authority permits that breach to be remedied within a period specified by the Authority by notice to the developer;
- (d) failure to provide information to the Authority in accordance with regulation 4(3) or 6(3);
- (e) failure to comply with the obligations specified in regulation 21.

**3.** The events in this Schedule in relation to a bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder are—

- (a) failure to make any payment as required in accordance with these Regulations, unless that failure has been remedied within a period not exceeding ten days in accordance with regulation 30(4);
- (b) fixing or adjusting the amount of its tender by or in accordance with any agreement or arrangement with any other bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder or by improperly using insider information;
- (c) entering into any agreement or arrangement with any other bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder that it shall refrain from submitting a tender or as to the amount of the tender submitted;

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(a) 2010 c.23.

- (d) communicating to any person other than the Authority the details of its proposed tender in respect of a qualifying project, except where this disclosure is made in confidence in order to obtain quotations necessary for the preparation of that tender;
- (e) where the bidding entity is a bidder group, any change to the membership of that bidder group other than a change which has been permitted by the Authority or any breach of the tender rules in respect of bidder groups;
- (f) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of the Authority, the holder of a co-ordination licence or a developer, who is subject to a tender exercise in relation to any actions or omissions;
- (g) contacting any officer of the Authority or the holder of a co-ordination licence, or in relation to a bidder or qualifying bidder only, contacting any officer of a developer, who is subject to a tender exercise outside the tender rules, any rules particular to the pre-qualification, qualification to tender, invitation to tender and best and final offer stages of a tender exercise or any requirements specified in these Regulations. This includes, but is not limited to, contact for the purposes of discussing the possible transfer of such officer to the employment of the bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder for the purpose of a tender exercise in respect of a particular qualifying project.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the process for competitive tenders that will apply to the grant of offshore transmission licences.

Regulation 2 provides transitional arrangements for a tender exercise in respect of a particular qualifying project where the invitation to tender stage has commenced under the 2010 Regulations but the tender exercise has not finished at the date upon which these Regulations come into force.

Regulations 4 and 5 provide for the Authority to undertake an estimate or assessment of the total costs required to develop and construct the transmission assets and for the Authority to recover its costs in doing so.

Regulations 6 and 7 provide for the Authority to undertake an estimate or assessment of the total costs required to undertake preliminary works and for the Authority to recover its costs in doing so.

Regulation 8 sets out how projects qualify for a tender exercise. Schedule 1 contains the details of how a qualifying project will be determined.

Regulation 9 requires a developer to make a payment and provide security to the Authority in respect of the Authority's tender costs.

Regulation 10 sets out the conditions which must be satisfied by a developer in order for a tender exercise to be held in respect of a qualifying project. Schedule 2 contains the details of those conditions.

Regulation 11 requires the Authority to publish a notice specifying the date on which a tender exercise will begin for one or more qualifying projects and to publish the tender rules and the cost recovery methodology.

Regulation 12 sets out the stages of a tender exercise.

Regulations 13 and 14 describe the pre-qualification stage of a tender exercise and how qualifying bidders will be determined. Schedule 3 sets out the information in the pre-qualification documentation.

Regulations 15 and 16 describe the qualification to tender stage of a tender exercise and how qualifying bidders will be determined to participate in an invitation to tender stage. Schedule 4 sets out the information in the qualification to tender documentation.

Regulation 17 describes the invitation to tender stage of a tender exercise. Schedule 5 sets out the information in the invitation to tender documentation.

Regulation 18 describes how the Authority will determine a preferred bidder. The Authority may also identify a reserve bidder. The Authority may hold a best and final offer stage under regulation 19. The Authority may also identify a reserve bidder at the best and final offer stage. Schedule 6 sets out the information in the best and final offer documentation.

Regulation 20 requires the preferred bidder to resolve certain matters before it becomes the successful bidder. The reserve bidder may be treated as the preferred bidder if the original preferred bidder fails to resolve the matters, fails to make a payment, withdraws or is disqualified from a tender exercise.

Regulation 21 requires the developer to meet particular obligations from the preferred bidder stage.

Regulation 22 provides for participants to withdraw from a tender exercise or be deemed to have withdrawn and allows the Authority to retain any payments made to the Authority in the event of a withdrawal.



Regulation 23 provides for the Authority to re-run a tender exercise from a particular stage until a preferred bidder or reserve bidder is identified or determine that a tender exercise has failed. Schedule 7 sets out events of re-run.

Regulation 24 provides for the Authority to cancel a tender exercise under the circumstances described in Schedule 8. Regulation 25 describes how payments and security will be forfeited, repaid or released in the event of cancellation of a tender exercise.

Regulation 26 allows the Authority to disqualify a participant from a tender exercise under the circumstances described in Schedule 9 and forfeit any payments or security provided.

Regulation 27 requires the Authority to publish details of the successful bidder. Regulation 28 requires the Authority to give details of the successful bidder to unsuccessful bidders and allows at least ten working days to elapse before an offshore transmission licence is granted to the successful bidder. The Authority shall publish a notice to confirm its determination to grant an offshore transmission licence to the successful bidder.

Regulation 29 allows the Authority to recover its costs in running a tender exercise and return any overpayment and security where tender costs have been exceeded.

Regulation 30 relates to failure to make payments or provide security. Regulation 31 allows an application to the Authority for a decision as to the effect of any restriction or requirement applied under these Regulations.

Regulation 32 describes the rules for changes to bidder groups. The Authority shall notify a participant of any changes to the delivery of documents or actions required under regulation 33.

Regulation 34 dispenses with sections 6A and 6B of the Electricity Act 1989 for an application in respect of an offshore transmission licence.