

## **Annex 3: The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012 – Key Features of the Draft Regulations**

This annex provides an overview of each regulation.

### **Citation, commencement and revocation (regulation 1)**

Regulation 1 names the regulations, being the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012 (“the Regulations”) and sets out the date on which they will come into force. It also states that, subject to the provisions of regulation 2, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (“the 2010 regulations”) are revoked.

### **Transitional provisions (regulation 2)**

Regulation 2 sets out the circumstances in which the 2010 Regulations, otherwise revoked by Regulation 1, will continue to apply.

On the date the Regulations come into force:

- Where the Authority has notified qualifying bidders of the payment they need to make to the Authority in relation to the invitation to tender (“ITT”) stage of a tender exercise in respect of a particular qualifying project in accordance with regulation 15(1) of the 2010 regulations, the tender exercise for that qualifying project will continue to be run under the 2010 regulations;
- Where a tender exercise for a qualifying project has been commenced under the 2010 regulations but the Authority has not notified qualifying bidders of the payment they need to make to the Authority in relation to the ITT stage in accordance with regulation 15(1) of the 2010 regulations, the outstanding stages of that tender exercise for that qualifying project will be run under the Regulations. However, such a qualifying project will not be expected to have met the requirements of the Regulations in relation to tender stages which have already passed.

### **Interpretation (regulation 3)**

Regulation 3 sets out the meaning of terms used in the Regulations.

Notices required to be given in accordance with these Regulations should be given in the manner in which the Authority sees fit in order to bring the notices to the attention of those likely to be affected.

### **Calculation of costs incurred in connection with transmission assets (regulation 4)**

Regulation 4 sets out how the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the transmission assets will be calculated in respect of a transitional tender exercise (being a tender exercise in relation to an offshore transmission licence where any transmission assets have been transferred to the successful bidder or, for operational purposes, it is necessary for any transmission assets to be so transferred, and those assets were not constructed or installed by the successful bidder).

The Authority will calculate the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the transmission assets based on all relevant information available to it at the time, except the information the Authority has decided not to take into account, as set out below.

Where the construction of the transmission assets has not reached the stage where those transmission assets are available for transmission of electricity, the calculation will amount to an estimate of costs which ought to be incurred. Where the construction of the transmission assets has reached the stage where those transmission assets are available for transmission of electricity, the calculation will amount to an assessment of costs which ought to have been incurred.

The Authority may require the developer to provide further information at different stages of the tender exercise in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of relevant project costs. Where the Authority requires the developer to provide such information, the Authority will specify the date by which this requirement needs to be met.

Where the developer has provided the information requested, and the Authority considers that it is a material change from the information already available to the Authority, the Authority may, in order to provide such bidders with the most accurate estimate of relevant project costs, carry out one or more further estimates of costs which ought to be incurred. The Authority may continue doing so until the construction of the transmission assets reaches the stage where those assets are available for transmission of electricity.

Where the developer has failed to provide the information by the required date, the Authority may decide not to take into account the information provided after that date when undertaking any estimates or the assessment.

Where the Authority has previously carried out estimates of the costs and is satisfied that the transmission assets are available for transmission of electricity it will, as soon as reasonably practicable, assess the costs which ought to have been incurred in connection with those assets. Once the Authority determines to grant a licence to the successful bidder, this assessment will be used by the Authority to determine the value of the transmission assets to be transferred to the successful bidder.

### **Payment of costs incurred in connection with transmission assets calculation of costs (regulation 5)**

Where the Authority has estimated the economic and efficient costs in relation to a particular qualifying project in accordance with regulation 4, it will give notice to the developer to make a payment of a sum determined in accordance with the Authority's cost recovery methodology prior to the grant of a licence to the successful bidder in relation to the Authority's costs in estimating those costs.

Where the Authority has assessed the economic and efficient costs in relation to a particular qualifying project in accordance with regulation 4, it will give such a notice to the successful bidder as soon as reasonably practicable prior to the grant of a licence to the successful bidder, or after the completion of the tender exercise in relation to that qualifying project in relation to the Authority's costs in assessing those costs.

## **Calculation of costs incurred in connection with preliminary works (regulation 6)**

Regulation 6 sets out how costs incurred in connection with preliminary works carried out in respect of a qualifying project subject to a tender exercise other than a transitional tender exercise will be calculated.

In relation to such works, the Authority will calculate the economic and efficient costs which ought to be, or ought to have been, incurred, based on all relevant information available to it at the time, except the information the Authority has decided not to take into account, as set out below.

Where the preliminary works have not reached the stage at which they have all been obtained, the calculation will amount to an estimate of the costs that ought to be incurred in relation to obtaining those preliminary works. Where the preliminary works have all been obtained, the calculation will amount to an assessment of the costs which ought to have been incurred in connection with obtaining those preliminary works.

The Authority may require the developer to provide further information in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs that ought to be incurred in connection with obtaining the preliminary works. Where the Authority requires the developer to provide such information, the Authority will specify the date by which this requirement needs to be met.

Where the developer has provided the information requested, and the Authority considers that it is a material change from the information already available to the Authority, the Authority may, in order to provide such bidders with the most accurate estimate of the costs that ought to be incurred in connection with obtaining the preliminary works, carry out one or more further estimates of costs which ought to be incurred. It may continue doing so until the preliminary works can be transferred to the successful bidder.

Where the developer has failed to provide information by the required date, the Authority may decide not to take into account any information that is provided after that date when undertaking any estimates or the assessment.

Where the Authority has previously carried out estimates of the costs and is satisfied that all the preliminary works have been obtained by the developer, it will, as soon as reasonably practicable, assess the costs which ought to have been incurred in connection with obtaining those works. Once the Authority determines to grant a licence to the successful bidder, this assessment will be used by the Authority to determine the value of the preliminary works to be transferred to the successful bidder.

## **Payment of costs incurred in connection with preliminary works (regulation 7)**

Where the Authority has estimated or assessed the costs that ought to be, or ought to have been, incurred in connection with obtaining preliminary works, it will give notice to the developer to make a payment of a sum determined in accordance with the Authority's cost recovery methodology prior to the grant of a licence to the successful bidder in relation to the Authority's costs in estimating or assessing those costs.

### **Qualifying projects (regulation 8)**

Regulation 8 sets out how a project qualifies for the purposes of commencing a tender exercise under the Regulations.

A developer who wishes the Authority to publish a notice commencing a tender exercise under the Regulations must make a request to that effect in writing specifying whether the project is intended to meet the qualifying requirements of a transitional tender exercise set out in paragraph 2 of Schedule 1 to the Regulations or any other tender exercise set out in paragraph 1 of Schedule 1 to the Regulations.

The Authority may require the developer to provide any other information to help it assess whether or not the developer's request relates to a qualifying project. Once the Authority has made its determination, it is required to give notice to that effect to the developer. Where the Authority determines that the developer's request does not relate to a qualifying project, it must notify the developer and provide reasons for its determination. The developer can object in writing to the Authority within 7 days of receiving the notice. The Authority will consider any such representations and decide whether or not to amend its determination. It will notify the developer of its decision and reasons for that decision.

### **Developer's payment and security (regulation 9)**

Regulation 9 provides that prior to publishing a notice of when the tender exercise will commence, the Authority will notify the developer of the amount of payment the developer must pay and of the security the developer, or another party nominated by the developer and approved by the Authority, must provide in relation to the Authority's tender costs as calculated in accordance with the Authority's cost recovery methodology.

### **Entry conditions (regulation 10)**

Regulation 10 provides that the Authority will notify the developer of the information it will require in order to be satisfied that the relevant entry conditions have been met and the date by which they must be met. In relation to a transitional tender exercise, those entry conditions are set out in paragraph 2 of Schedule 2 to the Regulations. In relation to any other exercise, the entry conditions are set out in paragraph 1 of Schedule 2 to the Regulations. The Authority may ask the developer for any other information it considers necessary in order to be satisfied that the entry conditions have been met. Once the Authority is satisfied that they have been met, it will notify the developer.

### **Commencement of a tender exercise (regulation 11)**

Regulation 11 sets out the process for commencing a tender exercise.

Once the Authority is satisfied that the steps contained in regulations 8, 9 and 10 have been met, it will publish a notice of its intention to commence a tender exercise for those determined qualifying projects, specifying the date on which the tender exercise will commence. It may, after consulting a particular developer, decide that a tender exercise for a particular qualifying project may commence at a different date. In that case the Authority will publish a notice to that effect. If the Authority changes the commencement date for the tender exercise or for a tender exercise in respect of a particular qualifying project, it will publish a notice specifying the new date. The Authority will publish the

tender rules and the cost recovery methodology no later than the date on which the tender exercise (or the tender exercise for a particular qualifying project, if different) commences.

### **Stages of a tender exercise (regulation 12)**

Regulation 12 sets out the stages of a tender exercise.

A tender exercise will comprise the following stages:

- a pre-qualification ("PQ") stage to determine the bidders that will become qualifying bidders for a qualifying project within a tender exercise;
- a qualification to tender ("QTT") stage to determine the bidders that will be invited to participate in the ITT stage for a qualifying project within a tender exercise (except that for a transitional tender exercise the Authority may decide not to hold a QTT stage, in which case it would give reasons for this at the PQ stage);
- an ITT stage to determine which qualifying bidders will become the preferred bidder or reserve bidder for each qualifying project within a tender exercise;
- a best and final offer ("BAFO") stage for a qualifying project within a tender exercise where the Authority decides this stage is required in accordance with the criteria to be applied by the Authority in determining whether to hold a BAFO stage set out in the ITT documentation; and
- a preferred bidder stage in order to determine the successful bidder to whom the transmission licence is to be granted for a qualifying project.

### **Pre-qualification stage (regulation 13)**

The Authority will commence this stage by publishing PQ documentation including that information specified in Schedule 3 to the Regulations.

Where the Authority has decided not to hold the QTT stage, it will take additional steps at the PQ stage. In addition to the PQ documentation, the Authority will publish the confidentiality agreement in respect of each qualifying project within that tender exercise, which bidders will need to sign and submit. It will also publish any instructions that apply to the confidentiality agreement including the date by which the confidentiality agreement should be submitted to the Authority.

The Authority will notify all bidders of the payment they need to make to the Authority in relation to the PQ stage, calculated on the basis of the Authority's cost recovery methodology.

Where no QTT stage is being held and after the bidders have submitted the relevant confidentiality agreement(s) and have provided the payment, the Authority will issue to the bidders confidential information in respect of the particular qualifying project(s).

### **Determination of qualifying bidders at the pre-qualification stage (regulation 14)**

In accordance with the evaluation criteria set out in the PQ documentation, the Authority will evaluate the completed PQ questionnaires in order to determine for each qualifying project the qualifying bidders for the purposes of the QTT stage or, where that stage is not to be held, the qualifying bidders who will be invited to participate in the ITT stage for each qualifying project. Where a PQ questionnaire submitted to the Authority does

not comply in any material respect with the requirements specified in the pre-qualification documentation, the Authority may decline to consider it. The Authority will notify each bidder of its determination of who will be invited to participate in the next tender stage and reasons for that determination.

### **Qualification to tender stage (regulation 15)**

The Authority will publish the confidentiality agreement in respect of each qualifying project within the tender exercise, which bidders will need to sign and submit. It will also publish any instructions that apply to the confidentiality agreement including the date by which the completed confidentiality agreement should be submitted to the Authority.

The Authority will notify all qualifying bidders of the payment they need to make to the Authority in relation to the QTT stage, calculated on the basis of the cost recovery methodology.

After the qualifying bidders have submitted the relevant confidentiality agreements and have provided the payment, the Authority will issue to those qualifying bidders the QTT documentation including information specified in Schedule 4 to the Regulations. The qualifying bidders may then submit a completed QTT questionnaire in respect of one or more qualifying projects in accordance with the requirements specified in the QTT documentation.

### **Determination of qualifying bidders to be invited to participate in the invitation to tender stage (regulation 16)**

The Authority will evaluate each QTT questionnaire in accordance with the evaluation criteria in order to determine which qualifying bidders will be invited to participate in the ITT stage in respect of each qualifying project. Where a QTT questionnaire submitted to the Authority does not comply in any material respect with the requirements specified in the QTT documentation, the Authority may decline to consider it. The Authority will notify each bidder of its determination of who will be invited to participate in the next tender stage and reasons for that determination.

### **Invitation to tender (regulation 17)**

The Authority will notify all qualifying bidders of the payment they need to make to the Authority in relation to the ITT stage, calculated in accordance with the cost recovery methodology. The Authority will issue the ITT documentation to those qualifying bidders who make the payment, which will include information specified in Schedule 5 to the Regulations and will invite them to submit a tender for one or more qualifying projects. The submission of a tender by a qualifying bidder is its application for the grant of an offshore transmission licence where that qualifying bidder becomes the successful bidder.

For a qualifying project subject to a tender exercise other than a transitional tender exercise, the Authority may also notify the developer that they are required to make a payment to cover the reimbursement of certain bidders' bid costs, being those costs incurred by a qualifying bidder in the preparation of a tender in respect of such qualifying project, or a proportion of those costs if any of the cancellation events set out in paragraphs (b) to (i) in Schedule 8 to the Regulations should occur. The amount of the payment will be determined in accordance with the cost recovery methodology.

### **Determination of preferred bidders at the invitation to tender stage (regulation 18)**

The Authority will evaluate each tender submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the ITT documentation in order to determine the preferred bidder for a particular qualifying project or whether to hold a BAFO stage in accordance with the criteria to be applied by the Authority in determining whether to hold a BAFO stage as set out in the ITT documentation.

Where a tender submitted to the Authority does not comply in any material respect with the requirements specified in the ITT documentation, the Authority may decline to consider it.

Where the Authority decides not to hold a BAFO, the Authority may evaluate each tender in respect of a particular qualifying project in order to determine the reserve bidder for that qualifying project.

### **Best and final offer stage (regulation 19)**

Where the Authority decides to hold a BAFO stage in accordance with the criteria to be applied by the Authority in determining whether to hold a best and final offer stage as set out in the ITT documentation, it will determine in accordance with the evaluation criteria set out in the ITT documentation which bidders will be invited to participate in that stage in respect of a particular qualifying project.

The Authority will notify each qualifying bidder as to whether or not they will participate in the BAFO stage and will provide them with the BAFO documentation which will include the information specified in Schedule 6 to the Regulations. It will then evaluate each best and final offer in accordance with the evaluation criteria set out in the BAFO documentation in order to determine which qualifying bidder will become the preferred bidder in respect of the relevant qualifying project. The Authority may also determine the reserve bidder as part of the evaluation process.

Where it determines that a best and final offer submitted to the Authority does not comply in any material respect with the requirements specified in the BAFO documentation, the Authority may decline to consider it.

### **Notification of preferred bidder and reserve bidder (regulation 20)**

As soon as reasonably practicable after the Authority has determined the preferred bidder, the Authority will publish a notice stating who that is and describe in general terms the matters they must resolve before becoming the successful bidder. The matters for a transitional tender exercise are listed in regulation 20(4)(a). The matters for a tender exercise other than a transitional tender exercise are listed in regulation 20(4)(b).

As soon as reasonably practicable after it has determined the reserve bidder, the Authority shall notify that reserve bidder. It will also notify all other qualifying bidders that they are neither a preferred bidder nor a reserve bidder.

As soon as reasonably practicable after it has published the notice identifying the preferred bidder and describing in general terms the matters they must resolve before becoming the successful bidder, the Authority will give notice to that preferred bidder as

to how and by when those matters should be resolved, as well as the amount of payment the preferred bidder must pay to the Authority in relation to the preferred bidder stage as calculated in accordance with its cost recovery methodology.

The Authority may publish a notice withdrawing its determination of the preferred bidder where:

- the matters the preferred bidder must resolve before becoming the successful bidder have not been resolved to the Authority's satisfaction;
- the preferred bidder has failed to make the payment relating to the preferred bidder stage of the tender;
- the preferred bidder has withdrawn from the tender exercise; or
- the preferred bidder has been disqualified from the tender exercise.

In such circumstances the Authority will discontinue the tender exercise with the preferred bidder and may, where the Authority has appointed a reserve bidder, treat the reserve bidder as a replacement preferred bidder in relation to the particular qualifying project. If so, it will as soon as reasonably practicable publish a notice stating who that is and describe in general terms the matters they must resolve before becoming the successful bidder.

### **Particular obligations of the developer from preferred bidder stage (regulation 21)**

Regulation 21 sets out the obligations set on the developer in order to facilitate the Authority's determination to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project. From the date the Authority publishes a notice stating who the preferred bidder is, the developer is required to use its reasonable endeavours to enable the preferred bidder to meet the matters they must resolve before becoming the successful bidder to the extent that the resolution of those matters depends on the actions of the developer and to 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.

Failure to comply with any of these obligations may result in the developer being disqualified from the tender exercise under regulation 26.

### **Withdrawal (regulation 22)**

Regulation 22 governs bidder withdrawal from a tender exercise.

A bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder may withdraw from a tender exercise in respect of a particular qualifying project by notifying the Authority in writing.

If a bidder or qualifying bidder fails to give notice in writing but does not submit a QTT questionnaire, a tender or a best and final offer within the time and date specified, they will be deemed to have withdrawn from the tender exercise in respect of the relevant qualifying project.

Where a bidder or qualifying bidder withdraws or is deemed to have withdrawn from a tender exercise, they 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 the



bidder group incorporating that bidder or qualifying bidder in accordance with regulation 32. A preferred bidder, reserve bidder or successful bidder cannot be re-admitted to the tender exercise in respect of a qualifying project from which it has withdrawn.

In these circumstances, any payment provided to the Authority in accordance with the Regulations by the relevant bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, including any interest accrued on that payment, will only be repaid by the Authority in accordance with its cost recovery methodology in relation to that tender exercise.

### **Re-run (regulation 23)**

Regulation 23 sets out the circumstances in which the Authority may re-run a tender exercise in respect of a qualifying project.

Schedule 7 to the Regulations lists the events that may trigger a re-run of a tender exercise. Where any of these events have occurred or are occurring, the Authority may choose to re-run a tender exercise in respect of a qualifying project, either from the beginning, or from a particular stage of that exercise.

If a tender exercise or stage of a tender exercise has been re-run and no preferred bidder, reserve bidder or successful bidder is or can be determined, the Authority may further re-run that tender exercise or a stage of that tender exercise or it may determine that the tender exercise for that project is to be cancelled. Where the exercise is to be cancelled, the Authority may publish a notice cancelling that qualifying project from the tender exercise, provided the Authority has given seven days notice of its intention to cancel and has considered any representations it has received. If so, this will result in the tender exercise being finished in respect of that project.

### **Cancellation (regulation 24)**

Regulation 24 sets out the circumstances in which the Authority may cancel a qualifying project from a tender exercise.

Schedule 8 to the Regulations lists events that could result in cancellation. Where any of these events have occurred or are occurring, the Authority may publish a notice cancelling the project from the tender exercise, provided the Authority has given seven days' notice of its intention to cancel and has considered any representations it has received. Where a cancellation notice has been published, the Authority may determine that the tender exercise in respect of a qualifying project has failed. If so, this will result in the tender exercise being finished in respect of that project.

### **Treatment of payments and security on cancellation (regulation 25)**

Regulation 25 governs the treatment of payments and security where a project has been cancelled from a tender exercise.

Where any of the events (which are bidder related events) listed in Schedule 7 (except the event in paragraph (a) of Schedule 7) or in Schedule 8(a) to the Regulations occur or have occurred, in accordance with its cost recovery methodology the Authority:

- will not repay, wholly or partly, any payments made by bidders, qualifying bidders, the preferred bidder or successful bidder under the Regulations including any interest accrued on the whole or part of that payment;
- will repay the developer wholly or in part the payment made by the developer, including any interest accrued on the whole or part of that payment; and
- will release to the developer or to another relevant party for the developer, any security that has been provided, including any interest accrued on that security where it is a monetary deposit.

Where any of the events (which are developer related events) listed in Schedule 8, except the event in paragraph (a) of Schedule 8, or Schedule 7(a) occur or have occurred, in accordance with its cost recovery methodology the Authority:

- will repay, wholly or in part, any payments made by the bidders, qualifying bidders, the preferred bidder or successful bidder under the Regulations, including any interest accrued on the whole or part of that payment;
- will not repay the developer wholly or in part the payment made by the developer, including any interest accrued on the whole or part of that payment; and
- determine that the developer will forfeit the whole or part of the security provided by the developer or another relevant party for the developer, including any interest accrued on that security where it is a monetary deposit.

Where any of the events listed in Schedule 8, except the event in paragraph (a) of Schedule 8, are occurring or have occurred causing a qualifying project to be cancelled from the tender exercise, 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.

### **Disqualification (regulation 26)**

Regulation 26 governs disqualification of parties from a tender exercise.

Where the Authority is satisfied that any of the events set out in Schedule 9 to the Regulations are occurring or have occurred, and that the occurrence would materially affect the outcome of the tender exercise, it will disqualify the relevant developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder from the tender exercise in respect of that project and any other qualifying project in which it is participating by giving notice to the relevant party.

Where the developer is disqualified, the Authority, in accordance with its cost recovery methodology, will not repay wholly or in part, the payment made by the developer including any interest accrued on the whole or part of that payment. The developer will also forfeit the whole or part of the security, including any interest accrued on that security where it is a monetary deposit.

Where a bidder, qualifying bidder, preferred bidder or successful bidder is disqualified the Authority, in accordance with its cost recovery methodology, will not repay the whole or part of any payment made by that party, including any interest accrued on the whole or part of that payment.

Where the bidder, qualifying bidder, preferred bidder or reserve bidder is disqualified, no document, tender or information submitted by that party will be taken into consideration for the purpose of determining a successful bidder in respect of each qualifying project.

### **Notification of successful bidder (regulation 27)**

Where the Authority is satisfied that the matters the preferred bidder must resolve before becoming the successful bidder have been met, that preferred bidder will become the successful bidder. As soon as reasonably practicable after the Authority has decided to grant an offshore transmission licence to the successful bidder, it will publish a notice stating this and specifying the name and address of the successful bidder. The Authority will also notify the successful bidder the amount of payment payable in relation to the offshore transmission licence grant stage of the tender exercise and of the amount needed to reimburse qualifying bidders their bid costs or a proportion of their bid costs, calculated in accordance with its cost recovery methodology for qualifying projects subject to a tender exercise other than a transitional tender exercise.

### **Information in respect of successful bidder (regulation 28)**

Regulation 28 governs the provision of information in respect of the successful bidder.

As soon as reasonably practicable after the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a qualifying project, the Authority will notify all qualifying bidders of this and set out the evaluation criteria applied in evaluating the tenders, the reasons for the determination, the result obtained by the relevant qualifying bidder receiving the notice and the successful bidder, and the name of the successful bidder in that notice. The Authority will then allow for a "standstill" period, specifying in the notice when such period will end. After ten working days from the date of the notice, the Authority shall confirm its determination to grant an offshore transmission licence to the successful bidder.

There are circumstances in which the Authority may withhold information from being included in the notice. These are where disclosure of such information would otherwise either impede law enforcement, be contrary to law, contrary to the public interest, would prejudice the legitimate commercial interests of any qualifying bidder or where it may prejudice fair competition between qualifying bidders.

The Authority shall publish a notice confirming its determination to grant an offshore transmission licence to the successful bidder in respect of a qualifying project and thereby that the tender exercise is finished in respect of that qualifying project. The Authority will also give a notice to the reserve bidder, where there is one, of the fact that it is being stood down. As soon as reasonably practicable, the Authority may then reimburse any qualifying bidders, who received the notice from the Authority that it has determined to grant an offshore transmission licence to the successful bidder in respect of the qualifying project, their bid costs or a proportion of their bid costs.

### **Recovery of tender costs (regulation 29)**

The Authority will recover its costs for running a tender exercise in accordance with the Authority's cost recovery methodology.

Where the Authority requires a developer to make a payment or to provide security, or requires a bidder, qualifying bidder, preferred bidder or successful bidder to make a payment, the Authority will specify the amount of payment or nature of security, the date and time by which it needs to be provided and the manner in which it needs to be provided.

As soon as reasonably practicable after the relevant tender exercise for all qualifying projects is finished, the Authority will calculate its total tender costs in relation to that tender exercise and will aggregate payments made by a developer, bidder, qualifying bidder, preferred bidder or successful bidder and not repaid under these Regulations, as well as the value of any security forfeited by a developer, in order to identify whether the total of those payments and security forfeited exceeds the Authority's total tender costs in respect of that tender exercise.

Where the total of those payments and security forfeited exceeds the total tender costs incurred by the Authority for that tender exercise, it will, as soon as is reasonably practicable after the tender exercise is finished, repay wholly or in part any payment that has been made that exceeds the Authority's tender costs to the person who made the payment and repay any security that has been forfeited that exceeds the Authority's tender costs to the developer in whole or in part, including any interest accrued on the whole or part of that payment or security (where the security is a monetary deposit).

As soon as reasonably practicable after the Authority has granted a licence to the successful bidder for a particular qualifying project, the Authority will release wholly or in part to the developer any security that has not been forfeited, including any interest accrued on the security where it is a monetary deposit, under these regulations for the qualifying project.

The Authority will also repay to the developer wholly or in part any payment made by the developer which has not been used to cover the reimbursement of certain bidders' bid costs, or a proportion of those costs, including interest accrued on the whole or part of that payment.

### **Failure to make payments or provide security (regulation 30)**

Where the developer fails to make a payment or provide security as required under regulation 9, the Authority may permit that developer to make the payment or provide the security within a further period of time specified by the Authority up to the date the Authority publishes a notice as to when the tender exercise in respect of the particular qualifying project will commence.

Where the developer fails to make the payment to cover the reimbursement of certain bidders' bid costs, or a proportion of those costs, if any of the cancellation events set out in paragraphs (b) to (i) in Schedule 8 to the Regulations should occur in accordance with regulation 17(2), the Authority may permit that payment to be made within a further period specified in a notice to the developer.

Where either the original or, where applicable, the extension date is not met for either of the payments or the security, the Authority may cancel that qualifying project from the tender exercise.

Where either a bidder or a qualifying bidder fails to make any payment in accordance with the Regulations, the Authority may disqualify that bidder or qualifying bidder from that tender exercise unless the failure is remedied within a period of up to ten days specified by the Authority in a notice to the that bidder or qualifying bidder.

### **Application for a decision by the Authority (regulation 31)**

A bidder or a qualifying bidder may apply to the Authority for a decision as to the effect of any restriction in the Regulations on the making of an application for the grant of an offshore transmission licence or the effect of any requirement that may prevent an application for the grant of an offshore transmission licence from being considered or further considered as required by the Regulations. The Authority may charge a fee, in accordance with its cost recovery methodology, for any decision it provides in response.

### **Changes to bidder groups (regulation 32)**

No change may be made to the membership of a bidder group unless the Authority has permitted that change. Where a bidder group seeks to change its membership, it must notify the Authority in writing as soon as is reasonably practicable.

Where the membership change is sought between the PQ and QTT stages, the Authority will permit that change provided the new membership meets the PQ evaluation criteria.

Where the membership change is sought after a QTT questionnaire has been submitted or, where the QTT is not held, after the PQ questionnaire has been submitted, the Authority may permit that change, provided that:

- the Authority has determined the change would be fair and equitable to all other bidders/qualifying bidders participating in the tender exercise in respect of that particular qualifying project; and
- the new membership meets the evaluation criteria set out in the QTT documentation or, where the QTT stage is not held, the PQ documentation, the ITT or the BAFO documentation, whichever is the later.

Where the membership change is sought after the Authority has confirmed its determination of the preferred bidder, the Authority may permit it, provided that:

- the Authority has determined the change would be fair and equitable to the qualifying bidders who participated in the previous stage (being either the ITT or the BAFO stage) of the tender exercise in respect of that particular qualifying project;
- the new membership meets the evaluation criteria set out in the ITT or the BAFO documentation, whichever is the later; and
- confirms in writing to the Authority that where the matters to be resolved by the preferred bidder before becoming the successful bidder were previously resolved by the preferred bidder, these matters remain resolved.

Where the Authority has permitted any bidder group membership change, it may give notice to that bidder group or qualifying bidder, as the case may be, of any payment payable to the Authority in accordance with its cost recovery methodology, in relation to permitting that change.

### **Changes to delivery of documents or action (regulation 33)**

The Authority may change the time, date or manner by which any document or notice must be delivered to or published by the Authority in accordance with the Regulations where the Authority determines it is impracticable for that document or notice to be delivered or published by the time, date or in the manner specified in accordance with the Regulations. The same applies in relation to any action required to be undertaken in accordance with the Regulations.

In such cases, the Authority will take reasonable steps to give notice to parties affected by the relevant requirement of the fact that the delivery, publication or action will be made or completed at a different time or date or in a different manner.

### **Disapplication of certain provisions (regulation 34)**

Regulation 34 provides that applications for offshore transmission licences can only be considered or granted in accordance with the Regulations.

## **SCHEDULES**

**Schedule 1** sets out the qualifying projects requirements.

**Schedule 2** sets out the tender entry conditions.

**Schedule 3** sets out the pre-qualification information.

**Schedule 4** sets out the qualification to tender information.

**Schedule 5** sets out the invitation to tender information.

**Schedule 6** sets out the best and final offer information.

**Schedule 7** specifies the events of re-run.

**Schedule 8** specifies the events of cancellation.

**Schedule 9** specifies the events of disqualification.

## **EXPLANATORY NOTE**

The explanatory note does not form part of the Regulations. It outlines the provisions of each regulation.