

Annex 4: Summary of responses to questions in 'Offshore Electricity Transmission: Updated proposals for the enduring regime', May 2012 - Final policy positions as they affect the draft Regulations

- 1.1 In May 2012, we published 'Updated proposals for the enduring regime' which included questions on some aspects of the regime still under development. Some of these questions directly impact on the policy positions reflected in the draft Regulations. We have therefore provided a summary of the responses to those questions to inform stakeholders' understanding of the context for the changes proposed in these Regulations.
- 1.2 Please note, the May publication set out a number of minded to positions which had been consulted on in our 'Consultation on tender exercises under the enduring regime', December 2011. A summary of responses to that consultation was included in the May publication. We will provide a summary of responses to all the questions in the May publication later this year.

Recovery of costs incurred at ITT by bidders

- 1.3 We consulted on the anticipated costs an unsuccessful bidder may incur in developing an OFTO build bid at the ITT stage and how Ofgem might approach calculating an allowance for costs. We also consulted on the policy proposal in December 2011.
- 1.4 In general, bidders responding to the May publication were in favour of the proposal that Ofgem should reimburse a proportion of the fees incurred in developing ITT bids for OFTO build. They were in agreement that the bid costs incurred under OFTO build would be higher than under Generator build. Potential bidders offered different options as to how we might determine the amount reimbursed. These tended towards an approach in which Ofgem set a fixed allowance or amount for each unsuccessful bidder.
- 1.5 There was a mixed response from generators. Half of respondents stated that reimbursement for unsuccessful bid costs was not standard practice and were opposed to the proposal. However, the other half recognised there may be benefits to such a mechanism in some circumstances. They recommended there would need to be strict criteria in place to manage any reimbursement.
- 1.6 We consider that for certain OFTO build projects there would be advantage in reimbursing unsuccessful qualifying bidders a proportion of the costs they incur in developing an ITT tender. This would be to promote bidder interest and competition within the tender exercise, where the costs incurred might otherwise be prohibitive. We have incorporated arrangements to reflect this policy position in the Regulations. Any reimbursement would be in line with the cost recovery methodology which we would issue ahead of the tender exercise.

Qualifying project requirements and tender entry conditions

- 1.7 We outlined in the May publication that we believed there to be advantage in introducing additional qualifying project requirements under the OFTO build option. This would provide additional assurance that a project would be taken forward by a generator and therefore reduce the risk of a failed tender exercise and ensure we were able to attract fixed price bids.

- 1.8 While the majority of respondents were not persuaded that additional qualifying project requirements were necessary, some saw benefit in introducing new qualifying project requirements, particularly with regard to evidence that the generator will fund preliminary works (referred to in the May publication as pre-construction works).
- 1.9 We consider that there is a significant need to ensure that developers are committed to taking forward all the assets included in a qualifying project. We think that otherwise there is a risk of qualifying a project before a developer has fully committed to either the preliminary works or the generation assets to which the final transmission assets will connect. We have reviewed the existing arrangements for user commitment and do not feel that these sufficiently allay our concerns at this early stage of a project's development.
- 1.10 We have therefore decided to incorporate two new qualifying requirements for OFTO build into the draft Regulations at paragraph 1 of Schedule 1. These are that the developer has:
- *secured financing to obtain the preliminary works for the transmission assets and provided the Authority with evidence in writing of those preliminary works will be obtained; and*
 - *provided the Authority with evidence in writing of its commitment to secure financing to construct the relevant generating station.*
- 1.11 It should be noted that neither of these require additional financial commitment from the developer than that which they would normally expect to make as part of proceeding with a project.
- 1.12 We also consulted on proposed tender entry conditions for OFTO build. Most respondents were of the view that the proposed list was reasonable, though a couple of respondents sought further clarification on the final condition to 'comply with any other conditions necessary for that particular tender exercise'. It should be noted that this condition is consistent with the existing Regulations.
- 1.13 We stated in May that the final tender entry conditions would be consistent with the final policy positions reached through the May consultation. We have outlined below where the entry conditions incorporated into the Regulations are either additional to or vary significantly from those explicitly set out in the May publication. They are listed according to the order in which they appear in the draft Regulations.
- 1.14 The draft Regulations include an additional condition that the developer should *provide 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)*. This is to support the minded-to-position set out in May that we may involve the generator in the bid evaluation process relating to technical aspects of bids received at the ITT stage. We believe this should also be applicable to the BAFO stage as reflected in the entry condition. As confirmed in May, this provision does not grant the generator any delegated decision-making powers.
- 1.15 In May, we proposed that the generator should *complete a tender specification in accordance with the tender specification guidance provided by Ofgem*. The corresponding entry condition in the draft Regulations is that the developer has *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*.

- 1.16 This reflects the change in terminology from tender specification to system specification since May and our decision to publish guidance on the system specification outside of the Regulations (see 'Tender specification' below). Our policy intent, as stated in May, is that the developer should be responsible for ensuring they produce a system specification which meets the requirements of their project.
- 1.17 We stated in May that we were considering introducing greater obligations on generators to ensure they facilitate the timely conclusion of a tender exercise. We consider that in order to ensure the efficient running of a tender exercise and therefore its timely conclusion, we need additional undertakings from the generator as part of their entry conditions, and specific obligations relating to the period from the appointment of the preferred bidder (PB).
- 1.18 Informed by our experience from the transitional regime, we have therefore included two further additional entry conditions relating to the developer undertaking to provide us with updated information on the qualifying project's development and a commitment from them that they will carry out their activities in respect of the qualifying project in an efficient manner. These apply to both Generator and OFTO build tender exercises:
- [the developer has] *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; and*
 - *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.*
- 1.19 As we state in the open letter, we have also incorporated two obligations specific to the period from the appointment of the PB. These relate to a) the developer enabling the PB to meet their matters where these are dependent on the actions of the developer and b) enabling the transfer of the assets or preliminary works, as the case may be. Again, we consider these to be necessary to meet our aim of ensuring a timely conclusion of the tender exercise and are applicable to both Generator build and OFTO build tender exercises:
- *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*
 - *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.*

Tender specification

- 1.20 We consulted in May on our proposed approach to the tender specification. Please note this is referred to a 'system specification' in the Regulations as we consider this to more accurately reflect the purpose of the specification.
- 1.21 We have decided that a developer will be required to provide a system specification for an OFTO build tender exercise consistent with the position set out in the May publication. However, the Regulations do not specify the contents of the specification on which we consulted in May. We anticipate publishing guidance on the system specification outside of the Regulations to inform the tender process. We have included a summary below of responses received in May.

- 1.22 OFTOs generally were in agreement that the proposed approach provided the necessary information for a system specification. Suggested amendments included that the specification should include any considerations such as land permissions; a high level annotated graphical representation of the constraints placed on the OFTO assets; requested life span as a range; cable separation/segregation requirements; separation distances between the OFTO's and the windfarm's activities and expected use of the OFTO assets by the generator.
- 1.23 Developers were broadly in agreement with the proposed approach but they emphasised that the design process is iterative and that the specification should therefore retain some flexibility. Several referred to the Rochdale Envelope in this context. Two generators raised that if bidders' designs did not meet the requirements of the specification, they should be expected to explain why. Three developers argued that if bidders are involved in the design process, extra time will be needed to build in any necessary changes arising from consents.
- 1.24 Other responses highlighted that the Connection Infrastructure Options Note will be useful to bidders in detailing the preferred offshore design and should be available in the data room and that information relating to turbine specification should be included.

Staged Projects

- 1.25 We consulted in May on proposed principles for treating staged projects under the enduring regime.
- 1.26 In general, the responses to the May consultation were in agreement with the proposed approach of including all stages of a project within a single tender exercise. A minority of respondents suggested that the usual position may warrant variation in certain project specific circumstances, particularly where several years might pass between commissioning of the first stage and the transfer of assets to OFTOs.
- 1.27 Our view remains that we would include all stages of a qualifying project within a single tender exercise and that no changes are necessary to the 2010 Regulations at this point; the draft Regulations have been prepared on this basis.

Phased Projects

- 1.28 We consulted on the proposed approach for treating phased projects under the enduring regime, including with regard to the circumstances in which Ofgem may consider changes to the baseline position of linking the scope of a tender exercise to a committed project phase.
- 1.29 Respondents to the May consultation were predominantly of the view that Ofgem's proposed approach was sensible and pragmatic. Examples of occasions on which Ofgem might wish to consider amendments to this approach were identified by some respondents, as where anticipatory investment may be required as a part of the development of a coordinated offshore network, or where there are inter-phase transmission linkages.
- 1.30 We remain committed to linking the scope of a tender exercise to a committed project phase. The draft Regulations have been drafted to reflect this position. We expect to work with generators to consider variations in a limited number of project-specific circumstances within the scope of the requirements set out in the draft Regulations.