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**SENT BY E-MAIL**

5 November 2012

Dear Emily,

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

Please find our response to Ofgem's consultation on regulations for competitive tenders for offshore electricity transmission licences. Generally we are supportive of the proposed tender regulations and provide some comments for your consideration in the attached table.

National Grid Offshore Limited (NGOL) is a qualified bidder in the transitional regime for offshore electricity transmission and a long-time advocate of OFTO build in the enduring regime. In our response to consultation 72/12 in July we noted a slowing down of OFTO investment opportunity, reflecting the status of offshore wind projects. We believe that actively assisting a transition to the OFTO build form of tender in the enduring regime, with earlier certainty of transmission investment and ownership, will provide a better platform to support the development of the offshore wind industry. We encourage an approach to offshore transmission regulation that works towards this.

Yours sincerely,

**Morris Bray**

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

**Consultation Response**

<b>Regulation</b>	<b>Comment</b>
2 (1)	Please clarify that Gwynt y Mor the only project that the 2010 Regulations and this transitional provision could apply to.
2 (2)	Please clarify that, for projects in Transitional tranche 2B, West of Duddon Sands is the only project that this transitional provision could apply to.
3 (1) “bidder”, “bidder group”, “developer”, “developer group”	In relation to Schedule 2, 1.(k), these definitions should ideally be more precise with respect to business information separation provisions.  Additionally, the Tender Regulations do not appear to anticipate requirements for separation of interests with generation or supply of electricity from that are necessary for application for certification under Section 10B of the Electricity Act 1989 (as amended).
6 (-)	In the event that transferring preliminary works do not subsequently meet quality expectations, unforeseen or unexpected by Ofgem in the initial assessment of costs, the successful bidder would need the ability of recourse to Ofgem and the developer in order to re-assess the value of transferring works. Regulation 6 should allow scope for this.
8 (4), (b)	The definition of “preliminary works” for OFTO build relies on paragraph 1 of Schedule 1. There may be ambiguity over what the preliminary works are. In our response to consultation 72/12 we considered that the BCA, a planning consent application and any pre-construction works carried out by the generator in accordance with the TOCA would provide an appropriate level of specification of preliminary works for any project. Paragraph 1 of Schedule 1 could therefore additionally include; (i) evidence of a level of information capable of achieving planning permission and (ii) where any works have commenced, that these works are demonstrably in accordance with the TOCA.
12 (2)	It could be efficient to hold a single pre-qualification tender stage for OFTO build, so the wording in regulation 12 (2) could also apply to OFTO build as well as to a transitional tender.
13 - 19	Ofgem was minded to have flexibility to include the developer in the PQ/ QTT/ITT evaluation processes in some respect. It may be appropriate to ensure that these regulations do provide for the Authority requiring the developer to support Ofgem in evaluation of the PQ / QTT / ITT stage in accordance with the relevant Tender Rules.
20 (4) (a), (b)	There is no explicit reference here for the preferred bidder to assure that arrangements for funding are in place. Firmness of funding will be increasingly important for larger projects and should be a matter referred to in the notice in regulation 20.
23 (6)	Outside of the Tender Regulations, what are the Authority’s alternatives in the event of a tender exercise failing?
32 (5)	As regulation 20 does not explicitly mention funding, how does this regulation deal with changes to bidder group funding and any consequential impact on tender revenue stream subsequent to determination of a preferred bidder?
Schedule 1	Paragraph 1. (for Ofoto build) should contain a requirement for evidence of readiness to submit applications for all necessary planning consents from all relevant consenting bodies. Failing this, the evidence of how the preliminary works will be obtained in 1.(c) should be consistent with being able to submit applications for all necessary planning consents.

Regulation	Comment
Schedule 2 1. (k)	<p>The manifestation of “appropriate internal information barriers to the satisfaction of the Authority” must be transparent, clear and consistent for both bidders and developers in the event that a participant in a developer group forms part of a bidder group or vice versa. It would, therefore, be helpful if Ofgem could provide guidance on what will be to the satisfaction of the Authority.</p> <p>In the event of such an undertaking in writing by a developer, it would not be appropriate for Ofgem to involve the developer or developer group in any way in the evaluation of PQ, QTT or ITT.</p>
Schedule 3	In relation to Regulation 13, Schedule 3 should include provision of information regarding the identity and role of any other 3 <sup>rd</sup> party expected to be involved in the PQ evaluation process.
Schedule 4	In relation to Regulation 15, Schedule 4 should include provision of information regarding the identity and role of any other 3 <sup>rd</sup> party expected to be involved in the QTT evaluation process.
Schedule 5	In relation to Regulation 17, Schedule 5 should include provision of information regarding the identity and role of any other 3 <sup>rd</sup> party expected to be involved in the ITT evaluation process.
Schedule 6	In relation to Regulation 19, Schedule 6 should include provision of information regarding the identity and role of any other 3 <sup>rd</sup> party expected to be involved in the BAFO evaluation process.
Schedule 7 (i), (j), (k)	In the event that a successful bidder fails in accordance with (i), (j) or (k), prior to a decision to re-run the tender process there should be sufficient flexibility in the regulations to allow Ofgem to re-engage with the reserve bidder to continue the existing process.
Schedule 8 (e)	Similarly to our comment regarding Schedule 2, 1. (k); given that the failure to put in place “appropriate internal information barriers to the satisfaction of the Authority” would lead to an event of cancellation, Ofgem’s requirements in this regard must be transparent, clear and consistent.
Schedule 9 1. & 3.	An event of disqualification for a bidder or bidder group should include a failure to comply with business separation requirements for the bidder of the nature referred to in Schedule 2, 1. (k).