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Invitation to Tender Document for the Second Transitional Tender Round – London Array (Phase 1) Project

Tender Document

Publication date: 30 November 2011**Contact:** Mary Smith, Senior Manager, Tenders & Transactions**Team:** Offshore Tenders & Transactions**Tel:** 020 7901 1837**Email:** tendercoordinator@ofgem.gov.uk

Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant Offshore Transmission Licences on the basis of a competitive Tender Exercise. Ofgem E-Serve (responsible for Ofgem's support and delivery functions) is responsible for managing this process.

A Tender Exercise is run over a number of stages, the third of which is the ITT Stage, where Qualifying Bidders are invited to set out their final OFTO proposals, including a Tender Revenue Stream, their financial strategy, risk management approach and their technical expertise in taking over and operating the Transmission Assets. These proposals are evaluated by Ofgem against a number of criteria. This ITT Document sets out the requirements Qualifying Bidders need to demonstrate in this regard. The outcome of Ofgem's evaluation is the identification of a Preferred Bidder, and possibly a Reserve Bidder, for the Qualifying Project to be invited to participate at the Preferred Bidder stage. This ITT document relates to the London Array Project only. A separate ITT Document was released for the Lincs project in July 2011 and the ITT Document for the Gwynt-y- Môr project will be released in 2012.

Context

Electricity generated from offshore renewable sources is expected to make an important contribution towards the United Kingdom achieving its renewable energy targets by 2020. Fit for purpose offshore electricity transmission infrastructure is required to transfer the electricity generated offshore to the onshore network and ultimately to consumers. It is important that this infrastructure is developed in a timely, secure and cost-effective manner. It should also provide best value to present and future electricity consumers, while reflecting the requirements of generators and ensuring that, as far as possible, offshore infrastructure develops in a co-ordinated manner.

DECC¹ and Ofgem² have developed a regulatory regime for offshore electricity transmission. It was consulted on extensively and refined over four years, culminating in a final statement published in June 2009³.

A key part of the regime is that Offshore Transmission Licences can be granted following a competitive Tender Exercise run by Ofgem, with the Successful Bidder becoming the OFTO. The result will be that the generating assets (offshore wind farms) will be owned and operated by the generator, whilst the Offshore Transmission System, which connects the offshore wind farms to the onshore transmission system, will be owned and managed by the OFTO. The Offshore Transmission Licences will place certain rights and responsibilities on OFTOs, including the right to a regulated revenue stream for a period of 20 years in return for the provision of Transmission Services.

Tenders in the second transitional Tender Round are being conducted across two tranches of Tender Exercises. The first tranche (Tranche A) of Tender Exercises commenced on 17 November 2010, and a shortlist of Qualifying Bidders was announced on 28 April 2011 following completion of the QTT Stage. The second tranche (Tranche B) of Tender Exercises is expected to commence in 2012.

The Tranche A Tender Exercises are being run over a number of stages, the third of which is the ITT Stage. The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) in respect of each set of offshore Transmission Assets (referred to as Qualifying Projects). The ITT Stage is designed to enable shortlisted Qualifying Bidders to submit details of their proposed approach for the named Qualifying Project, for evaluation by Ofgem against a number of criteria. The

¹ And its predecessors, the Department for Trade and Industry and the Department of Business, Enterprise and Regulatory Reform

² See Appendix 3 for more information on Ofgem. The Gas and Electricity Markets Authority is the regulator of gas and electricity markets in Great Britain. Ofgem is the Office of Gas and Electricity Markets, which supports the Authority in performing its statutory duties and functions. Whilst the terms 'Ofgem' and the 'Authority' are used interchangeably in this Document, it is the Authority which is responsible for exercising the relevant statutory power.

³ This can be found via the following link:

www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf

successful Qualifying Bidder will be determined as the Preferred Bidder for that particular Qualifying Project.

Associated documents

Please refer to page 11 to 13 of this document for a list (including relevant links) to various documents associated with this Invitation to Tender Document.

Contents

| | |
|--|-----------|
| 1. Overview of the Invitation to Tender (ITT) Stage | 6 |
| Legal Framework | 6 |
| ITT Document | 6 |
| Right to Vary a Tender Exercise | 7 |
| Costs | 7 |
| Miscellaneous | 8 |
| Indicative timetable for the London Array Project | 8 |
| Information available to Qualifying Bidders | 10 |
| Certification of Transmission System Operators | 14 |
| 2. Instructions to Qualifying Bidders | 15 |
| ITT Questionnaire | 15 |
| Clarifications | 15 |
| ITT Submissions | 16 |
| Qualifying Bidder/ Developer interaction during the ITT Stage | 19 |
| Financial Model Requirements | 22 |
| Assumptions for ITT Submissions | 23 |
| 3. Invitation to Tender Questionnaire | 27 |
| 4. Evaluation of ITT Submissions | 51 |
| Conditions Precedent | 51 |
| Evaluation Process | 51 |
| ITT Evaluation Criteria | 54 |
| Selection of Preferred Bidder and next steps | 62 |
| Appendices | 64 |
| Appendix 1 – Disclaimer and Notices | 65 |
| Appendix 2 – The Authority’s Powers and Duties | 69 |
| Appendix 3 – Glossary | 72 |

1. Overview of the Invitation to Tender (ITT) Stage

Section Summary

This section provides Qualifying Bidders with an overview of the process Ofgem will follow during the ITT Stage for the London Array Project in the second transitional Tender Round.

Legal Framework

- 1.1. The [Tender Regulations](#)⁴ provide the legal framework for the competitive Tender Exercises. These came into effect on 29 July 2010.
- 1.2. In accordance with the Tender Regulations, Ofgem has published [Tender Rules](#) for the second transitional Tender Round⁵ in order to inform Qualifying Bidders about how Ofgem intends to run the second transitional Tender Round and to set out the requirements, expectations and obligations on parties involved. Chapters 3 and 8 of the Tender Rules also set out general rules that apply to the ITT Stage.
- 1.3. This ITT Document has been issued by the Authority pursuant to regulation 15(2) of the Tender Regulations and applies to the London Array (Phase 1) Project in the second transitional Tender Round.

ITT Document

- 1.4. The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder as set out at paragraph 4.56) in respect of the London Array Project to whom Ofgem would be willing to grant an Offshore Transmission Licence. This ITT Document sets out the requirements which Qualifying Bidders must demonstrate at the ITT Stage. The ITT Stage for the Lincs Project started in July 2011 and is currently in progress. The ITT Stage for the Gwynt-y-Môr project is expected to commence in Spring/ Summer 2012. A separate ITT Document will be issued for the Gwynt-y-Môr project. The ITT Stages are being run separately as a result of their respective target dates for completion of the Transmission Assets.

⁴ <http://www.legislation.gov.uk/ukxi/2010/1903/contents/made>

⁵ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Tender%20Rules%20for%20the%20Second%20Transitional%20Tender%20Round.pdf>

1.5. This document sets out:

- the rules particular to the ITT Stage;
- the indicative timetable for the ITT Stage for London Array, including an overview of the key activities;
- information available to Qualifying Bidders to compile their ITT Submissions;
- the instructions that apply to the ITT Questionnaire, and the date, time and manner in which a completed ITT Questionnaire should be submitted to Ofgem;
- the ITT Questionnaire; and
- the criteria against which Ofgem will evaluate ITT Submissions.

1.6. Subject to paragraph 4.48, this ITT Document does not amend anything in the Tender Rules.

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

Right to Vary a Tender Exercise

1.8. Subject to the provisions of the Tender Regulations, Ofgem reserves the right to vary any element of a Tender Exercise, issue supplementary documentation or make additional arrangements at any time during a Tender Exercise in order to clarify any issue or amend any aspect of the Tender Exercise. Any such variation shall only take effect so as to actually vary the Tender Exercise if confirmed in writing.

1.9. Any such supplementary documentation issued by Ofgem during a Tender Exercise will be deemed to form part of this ITT Document to the extent indicated in the amendment. Ofgem may decide to extend a Tender Exercise and postpone any ITT Submission deadline in the event of any such amendment.

Costs

1.10. Each Qualifying Bidder will bear its own costs of participating in a Tender Exercise and will be responsible for meeting the costs incurred by Ofgem in administering that Tender Exercise in accordance with the Tender Regulations and as prescribed in the Cost Recovery Methodology.⁶ At the ITT Stage, the

⁶<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Cost%20Recovery%20Method>

amount which each Qualifying Bidder must pay for all Qualifying Projects in Tranche A of the second transitional Tender Round is based on a two part sliding scale up to a maximum of £50,000. See paragraphs 1.11 to 1.13 of Schedule 1 of the Cost Recovery Methodology for details.

- 1.11. All Qualifying Bidders have paid the requisite fee and no further payment is required for your participation in the ITT Stage for all Qualifying Projects in Tranche A of the second transitional Tender Round.
- 1.12. Ofgem is under no obligation and shall not accept any liability for any costs, expenses, damages or losses incurred by any Qualifying Bidder, including without limitation any unsuccessful Qualifying Bidder, in connection with a Tender Exercise.

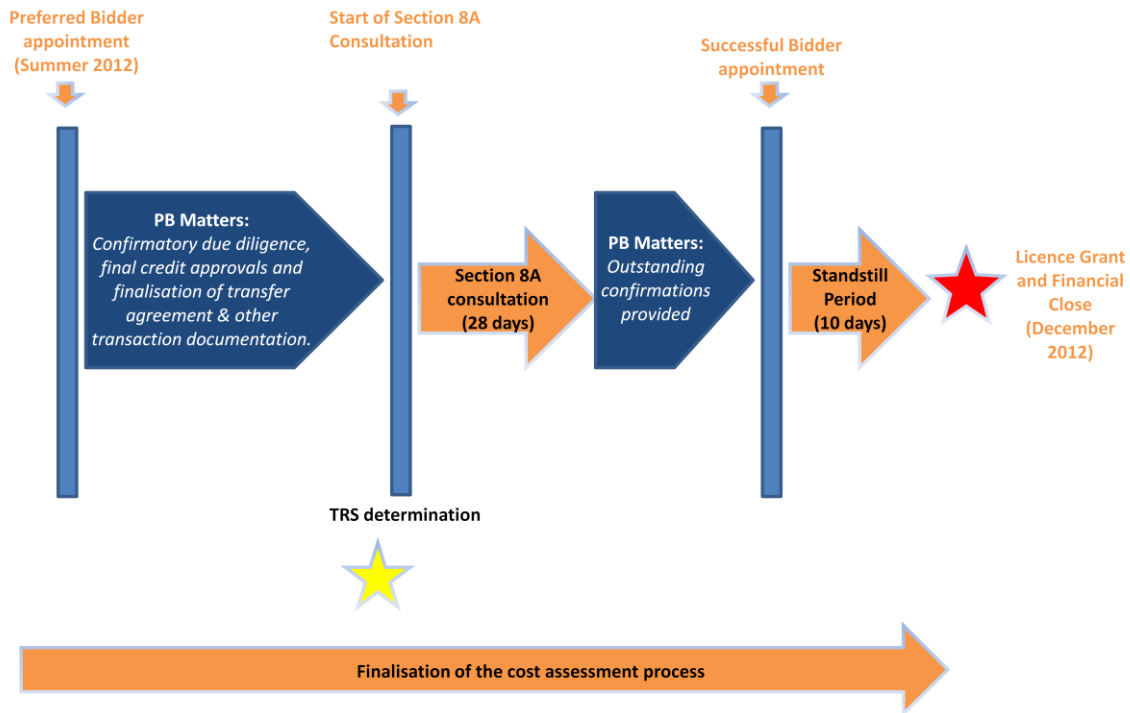
Miscellaneous

- 1.13. Ofgem is not bound to accept any ITT Submission made by a Qualifying Bidder. If a Qualifying Bidder withdraws or is disqualified from one or more Tender Exercises or Ofgem cancels a Tender Exercise (in each case in accordance with the Tender Regulations), Ofgem shall not incur any liability for any losses whatsoever (whether in contract, tort or otherwise and including direct, indirect and consequential losses) towards any Qualifying Bidder or any of their Related Parties.

Indicative timetable for the London Array Project

- 1.14. Set out below is the indicative timetable for the remaining stages of the Tender Exercise for the London Array Project. This timetable is based on the anticipated timeline for completion of construction of the Transmission Assets for London Array, which is expected in August 2012 as set out in the IM for London Array, as well as supplemented by experience gained from the first transitional Tender Round as to the process from the appointment of the Preferred Bidder through to achieving transfer of the Transmission Assets. This indicative timetable is provided for information purposes only.
- 1.15. Ofgem reserves the right to vary and/or update this timetable at any time, for example if new information is forthcoming in respect of the project timeline. Any such variation will be communicated to Qualifying Bidders via the Portal. Further information on the Portal can be found in the Tender Rules.

Overall Transaction Process



Timetable for ITT process

| Milestone | Date |
|---|------------------------------|
| ITT Document made available by Ofgem | 30 November 2011 |
| Developer/Qualifying Bidder briefing | 6 December 2011 |
| Qualifying Bidders provide mark-ups of Draft Project Transfer Agreement and Ancillary Documents | 3 January 2012 |
| Qualifying Bidders provide mark-ups of commercial offer | 3 January 2012 |
| Developer/ Qualifying Bidder meetings on Draft Project Transfer Agreement and commercial offer | w/c 9 or w/c 16 January 2012 |
| Final commercial offer issued to Qualifying Bidders | 1 February 2012 |
| Final Project Transfer Agreement issued to Qualifying Bidders | 7 February 2012 |
| Deadline for Qualifying Bidder clarifications to Ofgem | 27 February (noon) |
| Anticipated date to freeze Data Room | 7 March 2012 |
| ITT Submissions due | 21 March 2012 (noon) |

Information available to Qualifying Bidders

Project Data Room

- 1.16. Ofgem has established an electronic Data Room for the London Array Project at www.ofgem.bravosolution.co.uk. The Data Room has primarily been populated with information from the Developer although information from other third parties is also included, as well as information from Ofgem; Ofgem is not responsible for the contents provided by other parties. The Data Room includes information made available previously during the Tender Exercise and new information.
- 1.17. Any changes to the Data Room will be communicated to Qualifying Bidders by updated indexes.
- 1.18. The information provided by the Developer has been collated into a number of different folders within the Data Room. A detailed index is provided in the "Read Me First" folder of the Data Room, and is accessible at the top level of the folder structure.
- 1.19. In order to provide sufficient time for information in the Data Room to be considered in developing Bids, we intend to freeze the contents of the Data Room two weeks before the date scheduled for ITT Submissions.

Updated Draft Project Transfer Agreement and Ancillary Documentation

- 1.20. The Developer has uploaded a Draft Project Transfer Agreement for the London Array Project in the Data Room. It has been amended by the Developer following Qualifying Bidder feedback during the QTT Stage and as a result of further internal development by the Developer. The Developer has also provided Ancillary Documentation (where available).
- 1.21. We will liaise with the Developer during the ITT Stage to review the development of the Transfer Agreement. This will include reviewing the extent to which the Transfer Agreement is consistent with the Guidance on the Transfer Agreement⁷ and may include discussing with the Developer the manner and extent to which the Developer proposes to address issues raised by the Qualifying Bidders.
- 1.22. Before the end of the ITT Stage, we will issue the Final Project Transfer

⁷<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=13&refer=Networks/offtrans/rttt>

Agreement prepared by the Developer to Qualifying Bidders via the Portal.

Developer commercial offers

1.23. The Developer has also uploaded documentation in relation to any additional commercial proposals in the Data Room.

Information from third parties

1.24. Information from other third parties has also been uploaded to the Data Room. This includes information from:

- a) NETSO – The NETSO has provided a number of documents into the Data Room, including the template Transmission Owner Construction Agreement, upstream network data and standard documentation from the industry codes, including the System operator-Transmission owner Code (STC) (including Schedule 10 regarding payments) and a note regarding STC Transmission Services; level of service from OFTO Control Points;
- b) [DECC - Decommissioning Guidance](#)⁸;
- c) DECC – Consents under section 36 of the Electricity Act 1989: Information for Generators and Bidders;
- d) DECC – Ministerial statement providing guidance in relation to the oil and gas clause in the Crown Estate Leases;
- e) The Crown Estate – draft Crown Estate Seabed Lease;
- f) The Crown Estate – Licence to assign
- g) Crown Estate guidance note for insurance purposes dated 24 January 2011;
- h) Crown Estate’s Procedures for granting leases to OFTOs for Round 1 and Round 2 Offshore Windfarm Sites;
- i) Marine Management Organisation letter on FEPA compliance, November 2011;
- j) HMRC Letter dated 14 December 2009 - Transfer of Offshore Transmission Assets – VAT Treatment;

⁸<http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/policy/offshore/orei/file35754.pdf>

- k) HMRC letter dated 11 March 2010 – Round 2 Offshore Windfarms – Offshore Transmission Owner (“OFTO”) Assets Capital Allowances; and
- l) HMRC letter dated 22 March 2011 – Round 2 Offshore Windfarms – Offshore Transmission Owner (“OFTO”) Assets Capital Allowances.
- m) [The Electricity and Gas \(Internal Markets\) Regulations 2011](#)⁹

Information provided by Ofgem

1.25. In addition to the above, Ofgem has made available the following additional information in the Data Room:

- a) [Joint DECC/Ofgem Statement on the Offshore Transmission Regulatory Regime, June 2009](#)¹⁰;
- b) [Final Statement on the Competitive Tender Process, June 2009, Ofgem ref: 71/09](#)¹¹;
- c) [Tender Rules for the Second Transitional Tender Round, November 2010](#)¹²
- d) Instructions to Qualifying Bidders participating in the Second Transitional Round (ITT Stage);
- e) ITT Questionnaire template;
- f) [Standard Licence Conditions of the Electricity Transmission Licence which are applicable to all transmission owners in Great Britain](#)¹³;
- g) [Decision letter on changes to the availability incentive, July 2011](#)¹⁴
- h) Generic Offshore Transmission Owner (OFTO) Licence (Version 1.2), 30 November 2011¹⁵;
- i) London Array specific Offshore Transmission Owner (OFTO) Licence (version 1.2), 30 November 2011
- j) Guidance on the Offshore Transmission Owner Licences for Transitional Tender Round 2, November 2011¹⁶;
- k) [Guidance on the Offshore Transmission Owner \(OFTO\) of Last Resort](#)

⁹ <http://www.legislation.gov.uk/ukxi/2011/2704/contents/made>

¹⁰ <http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf>

¹¹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=85&refer=Networks/offtrans/pdc/cdr/cons2009>

¹² <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Tender%20Rules%20for%20the%20Second%20Transitional%20Tender%20Round.pdf>

¹³ <http://epr.ofgem.gov.uk/index.php?pk=folder380751>

¹⁴ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=30&refer=Networks/offtrans/pdc/cdr/Cons2011>

¹⁵ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

¹⁶ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

[Mechanism, July 2011](#)¹⁷;

- l) Process to Asset Transfer and Licence Grant for the Second Transitional Tender Round (Tranche A Tender Exercises), 30 November 2011¹⁸;
- m) Guidance on the Transfer Agreement, 30 November 2011¹⁹;
- n) Indicative Transfer Value for the London Array Project and comfort on funding letter to London Array dated 25 November 2011;
- o) Cost Reconciliation Report for the London Array Project;
- p) Ofgem Financial Input Sheets;
- q) Instruction Notes for Ofgem Financial Input Sheets;
- r) [Arrangements for responding in the event that a network company experiences deteriorating financial health](#)²⁰;
- s) [Alternative credit rating arrangements open letter](#)²¹;
- t) Example of [Approval of Statement of the Basis of Transmission Owner Charge letter and associated example charging statement](#)²²;
- u) [Proposed modification to ring fence conditions in Network Operator Licences consultation](#),²³ and
- v) [Regulatory Instructions and Guidance](#)²⁴

1.26. Ofgem shall make additional information available in the Data Room during the ITT Stage as appropriate.

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

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

¹⁷<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=18&refer=Networks/offtrans/rttt>

¹⁸ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

¹⁹<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

²⁰<http://www.ofgem.gov.uk/Networks/Policy/Documents1/Position%20Paper%20-%20Responding%20to%20deteriorating%20financial%20health%20FINAL.pdf>

²¹[http://www.ofgem.gov.uk/Networks/offtrans/rott/Documents1/Open%20letter%20regarding%20alternative%20credit%20rating%20arrangements%20for%20Offshore%20Transmission%20Owners%20\(OFTOs\).pdf](http://www.ofgem.gov.uk/Networks/offtrans/rott/Documents1/Open%20letter%20regarding%20alternative%20credit%20rating%20arrangements%20for%20Offshore%20Transmission%20Owners%20(OFTOs).pdf)

²²<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=12&refer=Networks/offtrans/rott/w1>

²³ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=344&refer=Networks/Policy>

²⁴<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=5&refer=Networks/offtrans/pdc/cdr/Cons2011>

Certification of Transmission System Operators

- 1.29. On 10 November 2011 the Electricity and Gas (Internal Markets) Regulations 2011 (the Regulations) came into force which transpose the third package on the liberalisation of EU gas and electricity markets (the Third Package) into domestic law. One of the areas covered by the Third Package is the ownership unbundling of electricity transmission undertakings from electricity generation, electricity supply, gas production and gas supply undertakings. Under the Regulations, transmission system operators will be required to be certified as complying with the ownership unbundling requirements of the Third Package.
- 1.30. The Regulations designate the Authority as responsible for processing applications for certification. Qualifying Bidders are strongly advised to make themselves aware of the requirement for certification and to review the Regulations. More information on the intended procedure for processing applications for certification under the ownership unbundling requirements can be found in the open letter²⁵, issued by Ofgem and dated 10 November 2011. Ofgem is not able to advise Qualifying Bidders as to the provisions of the Regulations and strongly recommends that Qualifying Bidders seek appropriate independent legal advice in this respect.

²⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=95&refer=Europe>

2. Instructions to Qualifying Bidders

Section Summary

This section sets out the instructions to Qualifying Bidders in respect of the ITT Stage, including the ITT Questionnaire, ITT Submissions and the clarification process.

ITT Questionnaire

- 2.1. The ITT Questionnaire, which is included in Chapter 3, has been produced to enable Ofgem to evaluate each Qualifying Bidder's proposals for financing, operating and managing the London Array Project.

Bidder Groups

- 2.2. Questions in the ITT Questionnaire which are required to be completed by the Qualifying Bidder should be answered by, in the case of a Qualifying Bidder which is a single entity, that entity, and in the case of a Qualifying Bidder which is part of a Bidder Group, the lead member of that Bidder Group.
- 2.3. Certain questions in the ITT Document require that information be provided in relation to individual members of a Bidder Group, in which case the lead member of a Bidder Group must provide that information in relation to each Bidder Group member ensuring that such information is clearly identified as relating to that Bidder Group member.

Clarifications

- 2.4. Ofgem's general approach to dealing with clarifications is set out in the Tender Rules. The following sections set out Ofgem's approach to clarifications at the ITT Stage.
- 2.5. Qualifying Bidders may seek clarifications from Ofgem in relation to any aspect of this ITT Document, the Tender Process at the ITT Stage or the information provided in the Data Room. All such clarifications must be made by no later than noon on 27 February 2012 and in accordance with the Instructions to Qualifying Bidders participating in the Second Transitional Round (ITT Stage) published in the Data Room. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the ITT Submission deadline.
- 2.6. Ofgem will endeavour to provide responses as soon as reasonably possible,

although the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested.

- 2.7. Ofgem may, where appropriate, forward a Qualifying Bidder's clarification request to the Developer or to another relevant third party (for example the NETSO). Where it does so, the identity of the Qualifying Bidder that raised the clarification will remain confidential. In such an instance Ofgem will act as the intermediary in any clarification request, i.e. the details of the clarification and the response to it will be managed and provided by Ofgem. With this in mind, Qualifying Bidders should write their clarification in such a way as to ensure that it is sufficiently anonymous so as not to identify them.
- 2.8. Ofgem's default position is, for reasons of transparency and fairness, to make responses to individual Qualifying Bidder clarifications available on the Portal to all Qualifying Bidders. Where Ofgem considers that a Qualifying Bidder's clarification is sufficiently specific and confidential, and/ or a Qualifying Bidder has requested that it is confidential, Ofgem may at its discretion opt to provide its response solely to that Qualifying Bidder.

Ofgem Clarifications

- 2.9. Ofgem may issue a clarification request to a Qualifying Bidder during the evaluation of ITT Submissions. Qualifying Bidders must respond to clarification requests issued by Ofgem within the period specified. Failure by a Qualifying Bidder to respond to a clarification request within the period specified risks the late clarification response not being considered as part of Ofgem's evaluation of the Qualifying Bidder's ITT Submission.

ITT Submissions

ITT Submission Deadline

- 2.10. All ITT Submissions must be submitted via the Portal no later than 12 noon GMT on 21 March 2012. The Portal will be closed at this time and no late ITT Submissions will be accepted. All ITT Submissions must be made in the templates provided and uploaded on the Portal. Ofgem will not accept ITT Submissions in any other form.
- 2.11. The ITT Submission must be completed in English, including any supplementary supporting documentation.
- 2.12. Rules on ITT Submissions can be found in the Tender Rules.

Content of ITT Submissions

2.13. A compliant ITT Submission must contain the following:

- a) responses to all requirements set out in the ITT Questionnaire and ITT Certificate, together with relevant supporting documentation. Responses must be provided in the templates provided on the Portal;
- b) if applicable, a resubmitted PQ and/or QTT Questionnaire, together with required supporting documentation – see 'Changes arising since QTT Submission' below;
- c) the Qualifying Bidder's fully populated financial model provided in Microsoft Excel in either Microsoft Excel Version 2003 or Microsoft Excel Version 2007 format. The model should not incorporate any password protection or protected macros;
- d) fully populated financial input sheets, in accordance with the Instruction Notes for Ofgem Financial Input Sheets; and
- e) a summary of the key outputs for each of the main sensitivities that are required in the financial model referred to in the Qualifying Bidder's responses to Sections 6 and 7 of the ITT Questionnaire.

2.14. Where page limits are indicated in the requirements for a response, these refer to A4 size pages, in a font size no smaller than ten. Any such page limits must be adhered to. Ofgem reserves the right to ignore any additional information submitted in excess of these limits.

2.15. Where a Qualifying Bidder is submitting supplementary documentation in support of any response to the ITT Questionnaire, the Qualifying Bidder is required to ensure that the location of the supplementary documentation is clearly cross-referenced within the text of the relevant sections of the ITT Submission.

2.16. Ofgem reserves the right to amend these requirements during the ITT Stage prior to the ITT Submission deadline and will notify Qualifying Bidders accordingly.

2.17. Each Qualifying Bidder should note that if, after its ITT Submission has been submitted and prior to the notification of Preferred Bidder:

- a) there is a material change or proposed material change in the information provided in its ITT Submission; or
- b) a Qualifying Bidder becomes aware that information previously submitted is no longer true or accurate,

the Qualifying Bidder is obliged to notify Ofgem as soon as reasonably practicable. Where a Qualifying Bidder notifies Ofgem of such, Ofgem will be entitled to re-evaluate the ITT Submission in light of that change.

Variant ITT Submissions

2.18. Ofgem will not accept any variant ITT Submissions.

Changes arising since QTT Submission

2.19. Where any information relating to its PQ Submission or QTT Submission has changed, a Qualifying Bidder must provide updated responses to the relevant question(s) in the PQ Questionnaire or QTT Questionnaire as part of its ITT Submission. This includes where there have been changes to:

- a) Bidder Group configuration and/or membership;
- b) the Qualifying Bidder's advisers; or
- c) any other changes to the Qualifying Bidder's circumstances.

2.20. Updated responses should be provided as a mark-up to the Qualifying Bidder's original PQ Submission and/or QTT Submission. Access to the PQ Questionnaire and/or QTT Questionnaire will be provided via the Portal.

Changes to a Bidder Group

2.21. Ofgem expects that the membership of, and the respective interests in, a Bidder Group will be finalised when that Bidder Group makes its QTT Submission. However, should unexpected or unforeseen circumstances arise leading to the need for a Qualifying Bidder to change its Bidder Group after QTT Submission, Ofgem will determine on a case by case basis whether permitting the change to the Bidder Group would be fair and equitable to all other Qualifying Bidders participating in the Tender Exercise in respect of the London Array Project. Ofgem will notify the Qualifying Bidder of the requirements that need to be met in relation to a change in a Bidder Group.

2.22. Ofgem may refuse permission to a change in a Bidder Group where the Qualifying Bidder fails to demonstrate that it is able to fulfil the criteria which led to its inclusion on the shortlist at the conclusion of the QTT Stage.

2.23. Where Ofgem has permitted any change in the membership of a Bidder Group in accordance with Regulation 28 of the Tender Regulations, it may give notice to the Qualifying Bidder of any payment, payable to Ofgem in connection with this determination as calculated in accordance with the Cost Recovery Methodology.

Qualifying Bidder/ Developer interaction during the ITT Stage

- 2.24. Unauthorised contact between the Developer and Qualifying Bidders, or between Qualifying Bidders, is not permitted in relation to any aspect of the Tender Exercise save to the extent set out below and as further notified to Developers and Qualifying Bidders.

Qualifying Bidder/Developer interaction following release of ITT documentation

- 2.25. As part of Ofgem's role in running the Tender Exercise, the approach set out below and as further notified to Developers and Qualifying Bidders will be used during the ITT Stage to facilitate earlier discussions between the Developer and Qualifying Bidders on the London Array Project and key documentation (supervised by Ofgem).
- 2.26. It is the choice of each Qualifying Bidder as to whether or not it wishes to take up any of the Developer's commercial offers.

Developer briefings

- 2.27. These will take place on 6 December 2011. Information regarding the purpose and content of the day will notified to Qualifying Bidders separately.

Submission of required mark-ups and commentary

- 2.28. Qualifying Bidders are required to provide a mark-up and/ or commentary of the following documents and to indicate whether the issues underlying their proposed changes have high, medium or low impact. Qualifying Bidders must propose any changes to the following documents for the London Array Project via the Portal by no later than 5pm (GMT) on 3 January 2012:
- A. **Draft Project Transfer Agreement and Disclosure Letter** – by way of a drafting mark-up of the Draft Project Transfer Agreement and disclosure letter and a commentary table to a maximum of ten pages;
 - B. **Draft Interface Agreement** – by way of commentary table only, to a maximum of two pages;
 - C. **Commercial offers (Operations and Maintenance Agreement and Insurance Proposals where applicable)**–by way of comment and clarification to a maximum of ten pages.
- 2.29. In providing mark-ups and commentary tables, Qualifying Bidders should be

mindful of the assumptions set out in paragraphs 2.30 to 2.37 of this ITT Document.

Form of Mark Up

- 2.30. Where a mark-up of a document is required, Qualifying Bidders must provide the mark-up as:
- i) a clean document; and
 - ii) a comparison between the mark-up and the original document provided by the Developer,
- both in MS Word format and PDF.

Form of Commentary Table

- 2.31. Where a commentary table is required, Qualifying Bidders must:
- i) prepare the commentary table using the form provided in the Data Room; and
 - ii) provide the commentary table in MS Word format.
- 2.32. Qualifying Bidders are required to indicate in the commentary table whether the issues underlying their proposed changes to the relevant document are:
- a) **High:** Significant commercial/legal impact which will materially affect the Tender Revenue Stream being bid or could materially affect the fundability of the transfer;
 - b) **Medium:** Commercial/legal impact which could affect the Tender Revenue Stream being bid, but not in a material way; or
 - c) **Low:** Amendments which neither affect the Tender Revenue Stream bid nor have a significant commercial impact, but which would make the transaction more desirable and efficient from the Qualifying Bidder's perspective.
- 2.33. As part of the commentary table, where an issue is identified of high or medium significance, the Qualifying Bidder is required to explain the nature of these issues and the impact that it has on the Tender Revenue Stream bid.

Form of comments on tender documentation

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

- 2.35. Any comments on the documents, whether by way of mark-ups or commentary tables, should relate to the subject matter of the relevant document (for example, comments on the Draft Project Transfer Agreement should relate solely to the Transfer Agreement as a mechanism to transfer the Transmission Assets). Any comments which are issues for Ofgem to address, including issues in relation to the Tender Exercise, Offshore Transmission Licence or regulatory regime, should be raised as clarifications in accordance with the procedure set out in paragraph 2.4 to 2.8 of this document.
- 2.36. We intend to issue these mark-ups and commentary tables to the Developer in an anonymised form and we will liaise with the Developer as outlined in paragraph 1.21. For the avoidance of doubt, Ofgem will not be evaluating these mark-ups or commentary tables.
- 2.37. Qualifying Bidders should be aware that failure to comply with the instructions regarding the production of mark-ups and commentary tables may result in their comments not being passed to the Developer.

Qualifying Bidder/Developer interaction following submission of mark-ups

- 2.38. Following submission of mark-ups and commentary tables, Ofgem will co-ordinate individual sessions between the Developer and each Qualifying Bidder to discuss any material issues in relation to the Draft Project Transfer Agreement and the Ancillary Documentation. We will also co-ordinate separate individual sessions between the Developer and each Qualifying Bidder to discuss comments on the commercial offers.
- 2.39. Attendance at the individual sessions is optional for Qualifying Bidders.
- 2.40. A schedule for the Developer briefings and the face to face meetings is included in paragraph 1.15. Further details will be notified in letters to the Developer and each Qualifying Bidder.
- 2.41. All sessions between the Developer and Qualifying Bidders during the ITT Stage will be co-ordinated by Ofgem and shall take place at Ofgem's offices. To ensure fair competition and equal treatment between all Qualifying Bidders and show no preferential treatment to any parties involved in the process, all discussions will be monitored and supervised by Ofgem. Ofgem does not propose to participate in the sessions or to act as an arbiter of disputes between the parties, nor does it propose to endorse any of the positions taken by either the Developer or Qualifying Bidders at the sessions. Ofgem does not propose to answer any questions which arise during the sessions.
- 2.42. In addition to the discussions outlined above, provisions set out in relation to the process for communication between Qualifying Bidders and Ofgem (i.e. clarifications through the Portal at paragraphs 2.4 to 2.8) continue to apply.

Finalisation of documents

- 2.43. The Developer will consider the changes proposed to the Draft Project Transfer Agreement and will prepare the Final Project Transfer Agreement and updated Ancillary Documentation where relevant, which we intend to provide to Qualifying Bidders by 30 January 2012.
- 2.44. Qualifying Bidders will be required to make their ITT Submissions based on, and assuming that, there will be no further changes to the Final Project Transfer Agreement. Qualifying Bidders' firm Tender Revenue Stream bids must be priced on the above basis. Qualifying Bidders will not be permitted to provide a mark up of the Final Project Transfer Agreement with their ITT Submissions.

Financial Model Requirements

- 2.45. In response to Section [7]: Tender Revenue Stream, Qualifying Bidders are required to submit their financial model in accordance with the following specific requirements.

A. Financial Statements

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

- i) Profit and loss statement or income statement;
- ii) Cash flow statement;
- iii) Balance sheet;
- iv) Key financial ratios (e.g. ADSCR, LLCR, IRR, NPV, WACC);
- v) All working schedules used in the calculation of i) to iv) above; and
- vi) A worksheet detailing the components of their Tender Revenue Stream.

B. Discounted Cash Flow Analysis

Qualifying Bidders are required to have a section in their model providing a full 20-year Discounted Cash Flow Analysis. The discount rate to be adopted is the Treasury discount rate (currently 3.5 per cent real), thus in the case of nominal values the discount rate should be increased by the rate of inflation assumed by the Qualifying Bidder. This section should be clearly identified within the contents page to the model.

C. Risk of Error

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

D. Model Integrity

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

2.46. Qualifying Bidders are required to provide a detailed manual and supporting data book explaining the operations of the model and the assumptions adopted in the model, to include those items set out below:

- A. Overview of model and model structure;
- B. Procedure to load the model, including any unusual routines necessary to enable the model to work correctly and optimised appropriately (including stating any 'add-ins' and options that must be activated prior to use of the model);
- C. Explanation of key assumptions in model;
- D. Details of macros and visual basic code (subject to comments below); and
- E. Procedure to optimise the model.

Assumptions for ITT Submissions

Introduction

2.47. This section sets out certain standard assumptions that Qualifying Bidders must use, where relevant, in compiling their ITT Submissions (including for the purposes of financial modelling). This includes financing assumptions, economic assumptions, and certain assumptions specific to the London Array Project.

Financing Assumptions

2.48. Where a Qualifying Bidder's funding structure is dependent on underlying market rates, the following reference rates should be used for the purposes of

the ITT Submission:

| Rate | Source | Time obtained | Rate |
|--|-----------|---------------------------|----------------|
| RPI Swap Rate ^[1] | Bloomberg | 11:00 (BST) 20/10/2011 | 3.393%* |
| Interest Rate Swap Rate ^[2] | Bloomberg | 11:00 (BST) 20/10/2011 | 2.925%* |
| Gilt Rate ^[3] | Bloomberg | 11:00 (BST) 20/10/2011 | 2.535% |
| Index Linked Gilt Rate ^[4] | Bloomberg | 11:00 (BST) 20/10/2011 | -0.125% (real) |

* The RPI Swap Rate and Interest Rate Swap Rate are mid-rates and bidders are required to apply execution spreads as set out in the term sheets requested in Section 6 of the London Array ITT Questionnaire in order to arrive at bid and offer rates.

- 2.49. Qualifying Bidders should be aware that Ofgem reserves the right to update these reference rates during the ITT Stage, as appropriate.
- 2.50. Should a Qualifying Bidder wish to base its ITT Submission on different assumptions to the reference rates quoted above, they are required to raise a clarification via the Portal in the first instance. Depending on the nature of the clarification, Ofgem may make this information available to all other Qualifying Bidders in accordance with the clarification process described in paragraphs 2.4 to 2.8 above. Ofgem will communicate its decision on any such clarification through the Portal.
- 2.51. Qualifying Bidders should note that all reference rates above are quoted before application of any applicable credit or execution spreads. Qualifying Bidders are required to include any spreads and margins in their financial models and in their supporting term sheets for the funding arrangements.

Economic Assumptions

- 2.52. All Qualifying Bidders are required to adopt the following economic assumptions in compiling their ITT Submission:

^[1] This is the twenty year RPI swap mid rate

^[2] This is the mid rate for a twelve year interest rate swap (equivalent to the approximate average life of a 19 year fully amortising debt instrument)

^[3] UKT 4% 2022

^[4] UKTI 1.875%2022

- Discount rate is 3.5 per cent real (see paragraph 2.45B above for use of nominal cash flow data);
- Base date for indexation is 1 September 2012;
- Indexation should be applied in accordance with the Offshore Transmission Licence, i.e. annually each April;
- The Tender Revenue Stream commencement date is the Estimated Transfer Date for the London Array Project;
- The length of the Tender Revenue Stream is 20 years; and
- The financial year end is assumed to be 31 March each year.

London Array Project Assumptions

2.53. The following table sets out data that Qualifying Bidders must assume in compiling their ITT Submission.

| Project | Developer | Indicative Transfer Value | Estimated Transfer Date |
|----------------------|------------------------------|---------------------------|-------------------------|
| London Array Project | E.ON/ DONG Energy/ Masdar | £428.4m | 1 December 2012 |

Deferred Consideration, Security and Interest

2.54. For the purpose of providing their Tender Revenue Stream bids, Qualifying Bidders should assume that 100 per cent of the Indicative Transfer Value will be paid at the date on which the Transmission Assets are transferred and that no deferred consideration will be payable following transfer of the Transmission Assets. Qualifying Bidders should assume that financing is in place at the date on which the Transmission Assets are transferred for 100 per cent of the Indicative Transfer Value.

Taxation

2.55. All accounting and tax assumptions made by Qualifying Bidders are at their own risk and each Qualifying Bidder must undertake after ITT submission not to pass on any costs of changing its accounting and / or tax assumptions within their financial model.

2.56. All assumptions and calculations in respect of taxation should be clearly set out within the financial model.

2.57. Ofgem expects that the asset transfer will be treated as a transfer of going concern under The VAT (Special Provisions) Order 1996 (SI 1995/1268 Art 5) and therefore is outside the scope of VAT. Accordingly no VAT should be

assumed to be payable on the transfer of the assets.

European Investment Bank (EIB) Funding

- 2.58. Qualifying Bidders are invited to include EIB as a source for debt funding of the Transmission Assets relating to the London Array project. EIB funding for second transitional tender round (Tranche A) projects has been provisionally approved but remains subject to final approval by the EIB's Board of Directors and provision of letters of support.
- 2.59. Where a Qualifying Bidder wishes to include EIB as a source for debt funding, it is required to indicate this in its ITT Submission and include the EIB debt funding, supported by any outline terms issued to it by EIB, in its base case financial model provided in response to Section [7A].
- 2.60. Qualifying Bidders should engage directly with EIB during the ITT Stage and obtain outline terms from EIB on a case by case basis. Qualifying Bidders should note that EIB will not provide credit approved terms at this stage in the transaction. Ofgem acknowledges that Qualifying Bidders' commercial funding terms may be subject to EIB involvement at the Preferred Bidder stage. Ofgem encourages Qualifying Bidders to consider EIB funding where this will enable a lower Tender Revenue Stream to be bid.

3. Invitation to Tender Questionnaire

Section Summary

This section sets out the content of the ITT Questionnaire.

- 3.1. The ITT Questionnaire sets out the information that Qualifying Bidders are required to return in their ITT Submission.
- 3.2. All questions are numbered. Qualifying Bidders should provide responses to these questions in the corresponding response template provided via the Portal.
- 3.3. The ITT Questionnaire is structured into the following sections:

| | |
|------------|--|
| Section 1 | Confirmation of PQ Submission and QTT Submission |
| Section 2 | Shareholding Structure |
| Section 3 | Takeover Plan |
| Section 4 | Ongoing Operations |
| Section 5 | Decommissioning |
| Section 6 | Financial Deliverability |
| Section 7 | Tender Revenue Stream |
| Section 8 | Underlying Assumptions |
| Section 9 | ITT Certificate |
| Section 10 | Confidentiality |

- 3.4. Qualifying Bidders are required to tailor their response to the specific characteristics of the London Array Project, based on the information available.
- 3.5. References throughout the ITT Questionnaire to 'you' and 'your' are to the Qualifying Bidder.
- 3.6. The requirements for Sections [1] to [10] of the ITT Questionnaire are set out below.

Section 1: Confirmation of PQ Submission and QTT Submission

| | |
|---------------------------------------|--|
| [1A] Name of Qualifying Bidder | |
|---------------------------------------|--|

| | | |
|---|--|--|
| [1B] Please confirm whether the information provided in your PQ Submission and/or QTT Submission has changed | | |
|---|--|--|

| | | |
|------|-----|----|
| PQ: | Yes | No |
| QTT: | Yes | No |

| |
|--|
| <p>[1C] To the extent any information has changed, please provide updated responses to the relevant question(s) in the PQ Questionnaire and/or QTT Questionnaire together with any supporting evidence (if applicable). Updated responses should be provided as a mark-up to your original PQ Submission and/or QTT Submission.</p> <p>Please also provide below an overview of the information that has changed.</p> |
|--|

| |
|--|
| |
|--|

Section 2: Shareholding Structure

The response to this section should be provided in a **maximum of five pages** (and in accordance with the requirements set out in paragraph 2.14). Supporting information may be provided in separate appendices.

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

[2A] details of:

- a) the proposed shareholding organisational structure, making clear the identity of the entity that will hold the Offshore Transmission Licence for the London Array Project;
- b) each of the roles, decision-making responsibilities and delegated authority within the shareholding organisational structure; and
- c) the relationship which each Bidder Group member will have within and/or with the OFTO.

[2B] in addition, details of:

- a) the proposed ownership arrangements;
- b) the proposed ownership proportions; and
- c) how you propose to share liability between Bidder Group members (where applicable).

[2C] explain and provide evidence where available of the arrangements to ensure that the entity that will hold the Offshore Transmission Licence will be registered for value added tax (VAT) purposes, in accordance with the relevant provisions of the Final Project Transfer Agreement.

[2D] provide, in relation to your structure:

- a) shareholding agreements;
- b) articles of association;
- c) loan note agreements (as referred to in Section 6D part c); and
- d) other relevant Bidder Group documentation

identifying any conditionality and outstanding items which are still to be agreed and subject to confirmatory due diligence.

Section 3: Takeover Plan

The response to this section should be provided in a **maximum of twelve pages** and in accordance with the requirements set out in paragraph 2.14). Supporting information may be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the initial takeover of the Transmission Assets from the Developer:

[3A] a fully detailed takeover plan identifying the key activities necessary to ensure effective acquisition of the Transmission Assets. This plan should cover the periods from the notification of Preferred Bidder through to Licence Grant and from Licence Grant to three months following asset transfer.

The takeover plan should:

- i) clearly cover the relevant legal, regulatory, commercial, financial, technical and communication activities. The plan should also include the due diligence activities planned up to licence grant;
- ii) be accompanied by a Gantt chart showing the tasks, timings, key milestones, linkages and dependencies across each of the main work areas; timings should be shown to the nearest week.

[3B] in respect of the takeover plan provided in response to [3A], set out how this will be implemented, including (but not limited to) each of the following:

- a) organisational and management team structure;
- b) resources (including technical/operational, administrative, finance and accounting);
- c) procurement strategy;
- d) quality and risk management;
- e) health, safety and environmental management; and
- f) stakeholder engagement.

[3C] the following details on your approach to technical due diligence:

- a) on the basis of the information provided by the Developer, how you would use this to successfully complete your due diligence; and
- b) what criteria you would use to consider the relative risks to the OFTO's ownership of the assets arising from the findings of the technical due diligence, noting the need to achieve a timely and efficient transfer of assets at least cost to the consumer.

[3D]

- a) a takeover risk management register, identifying key business and operational risks and detailing proposed mitigation at the point of asset transfer;
- b) a description of obligations and dependencies on the Developer, NETSO, Ofgem, the Crown Estate, Marine Management Organisation, NGET, landowners and other relevant stakeholders clearly defining the requirement

and likely delivery date; and

- c) an organisation diagram for the team responsible for delivering the takeover plan in this period to include:
 - i) a role description; and
 - ii) responsibilities of each team member,

Summary role descriptions and CVs for key post-holders already/provisionally appointed or a plan of the process for their appointment and any relevant knowledge transfer of the systems and processes in place should be provided separately in an appendix.

Section 4: Ongoing Operations

The response to this section should be provided in a **maximum of 14 pages** and in accordance with the requirements set out in paragraph 2.14. Supporting information may be provided in separate appendices.

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

[4A] Asset management policy and framework

- a) details of the asset management policy that you intend to apply as an OFTO to cover areas associated with:
 - i) asset condition monitoring;
 - ii) required planned and unplanned maintenance regime development;
 - iii) asset replacement planning;
 - iv) spares holdings and management (for both strategic and operational spares); and
 - v) transport logistics.
- b) outline what you see as the advantages of this particular approach and how it would be implemented using the transferred Transmission Assets and records data.
- c) details in relation to novel and/or innovative solutions that you will apply within the OFTO environment for the London Array Project and clarify the impact this has had on your underlying Tender Revenue Stream or stability of the OFTO. In addition, please set out any further innovations you consider it may be possible to introduce over the 20 year term.
- d) an overview of the key deliverables of the asset management policy selected to ensure compliance with industry codes and standards, including inspection plans, routine maintenance schedules, repair plans, contingency plans for major failures, outage planning, security plans, data management, main stakeholder communications together with:
 - i) indicative resourcing needs;
 - ii) response time requirements (where applicable); and
 - iii) the key stakeholder interfaces, frequency and level of coordination required for each activity and/ or deliverable.

[4B] Detailed operations and maintenance arrangements and costs

details of:

- a) the operations and maintenance (O&M) working arrangements you intend to apply including:
 - i) the procurement approach;
 - ii) management arrangements;
 - iii) core skills;
 - iv) expected use of operational partners and/or subcontractors;
 - v) risk management approach, including an indication of where risks are

- managed through insurance arrangements or other means; and
- vi) insurance arrangements. In responding to this you should consult the Offshore Transmission Licence, Crown Estate lease and any other relevant documentation to understand explicit insurance requirements.

In responding to [4B] part a) above, you are required to describe the relationship to the associated O&M assumptions and cost provisions provided in response to Section [8];

- b) your proposal for mitigating against and responding to a Major Failure Event (in circumstances where it would not be an exceptional event under the Offshore Transmission Licence) of the Transmission Assets and how you would cover the financial consequences of such an event;
- c) your proposed arrangements for operational control and 24/7 control room monitoring;
- d) site security requirements including statutory framework, liaison with enforcement agencies and other stakeholders for both normal day to day operation and requirements in an emergency; and
- e) the emergency cover requirements distinguishing between normal day to day operation and Major Failure Events.

[4C] Statutory arrangements and compliance

a plan of how you would monitor and review:

- a) compliance with all applicable health, safety and environmental legislation. Details must be provided in relation to:
 - i) the key regulatory and enforcement bodies involved with safety, health and environmental (SHE) issues; and
 - ii) the organisational and management structure (including functional teams such as a compliance team, audit team) that will be put in place to oversee, manage, communicate and review the SHE compliance related matters of all parties involved (i.e. employees, subcontractors and members of public).
- b) regulatory compliance (e.g. with the Offshore Transmission Licence and relevant industry codes) and reporting. Details must be provided in relation to:
 - i) the organisational and management structures for the London Array Project; and
 - ii) the procedures that will be put in place to oversee, manage, communicate and review the regulatory compliance and reporting related matters both internally and externally. As part of the response to this, you must explain how the O&M provisions will relate to the performance incentive under the Offshore Transmission Licence.

Section 5: Decommissioning

The response to this section should be provided in a **maximum of six pages** (and in accordance with the requirements set out in paragraph 2.14). Supporting information may be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the decommissioning of the Transmission Assets :

[5A] a plan setting out the approach to decommissioning. Details must be provided in relation to:

- a) the process and stakeholder engagement that you intend to adopt in your approach to development of a decommissioning plan and its implementation; and
- b) the proposed technical and environmental approach to decommissioning of the Transmission Assets (both onshore and offshore).

[5B] an outline of how and when you would plan and manage any decommissioning liabilities at the end of the 20 year revenue period.

Details should be provided in relation to your proposals for delivery of decommissioning work at the end of this period, including where the decommissioning work needs to be undertaken by an unlicensed entity.

Section 6: Financial Deliverability

The response to this section should be provided in a **maximum of twelve pages** (and in accordance with the requirements set out in paragraph 2.14). Supporting information may be provided in separate appendices.

Under this section you are required to set out your proposed financing strategy in support of your Tender Revenue Stream (as provided in Section [7]). Your financing strategy must also be consistent with the shareholding structure described in Section [2]. Your financing strategy must reflect the Estimated Transfer Date and your operation and management approach in respect of the London Array Project.

Your proposed financing strategy is also required:

- to clearly state the period and extent to which each source of finance is committed;
- as the Final Transfer Value for the London Array Project has not yet been determined, to provide minimum committed funds adequate to cover the funding required in the scenario where the Final Transfer Value is 120 per cent of the Indicative Transfer Value;
- to include all amounts in pounds sterling.

All Qualifying Bidders must answer question [6A]; Qualifying Bidders should also answer questions [6B] and/or [6C] and/or [6D] where relevant for the different sources of funding used in their ITT Submission.

[6A] Overall financing strategy

All Qualifying Bidders are required to provide, as a minimum:

- a) details of how funding will be sourced, including a table setting out sources and uses;
- b) a detailed plan for securing all relevant funding sources, including how you will secure final credit committee and/or board approvals should you be appointed Preferred Bidder. This plan should include your approach, timing and key milestones;
- c) a summary of the key risks to obtaining these approvals as planned along with details of how you will manage these risks;
- d) details of your arrangements for managing interest, inflation and exchange rate risks;
- e) details of your arrangements for executing these arrangements;
- f) details of the due diligence undertaken to date on behalf of funders along with copies of any relevant reports. Ofgem expects that this will include technical, legal and financial due diligence and other due diligence as necessary;
- g) evidence that your funders have reviewed the due diligence, financial model and your sensitivity analysis. This should also include statements from the funders on their conclusions and level of comfort they have obtained over the

content of these items;

- h) a detailed plan of the confirmatory due diligence (technical, legal, financial – including your approach to model audit - and others as necessary) that you propose to undertake during the Preferred Bidder Stage, including timescales for completion with reference to the London Array Project;
- i) with consideration to current and possible future market conditions which may impact (whether positively or negatively) on funding providers, an overview of how you will ensure, while working with Ofgem on an open and transparent basis that:
 - sufficient funds are available; and
 - funding terms remain competitive, for example through running appropriate competitions amongst funding providers.
- j) details of how you would deal with any delays to asset transfer, in particular, in order to address issues with funding still being available at a competitive rate - you may refer to your response to[6A] i) where relevant;
- k) details of how your financing strategy complies with licence condition E10 (Indebtedness);
- l) details of your proposals for achieving compliance with licence condition E11 (Credit Rating of Licensee). In particular, please identify:
 - i) whether you plan to obtain a credit rating or to seek alternative arrangements (please refer to the alternative credit rating open letter as necessary <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=38&referrer=Networks/offtrans/rott>); and
 - ii) how you would implement your proposals.
- m) details of your approach to satisfying licence condition E17 (Obligations in relation to offers for connection etc). Please note the reference in paragraph 5 (d) of this condition to the limit of 20 per cent of original investment cost and the details in Part C of amended standard condition E12-J4 which describes the mechanism for adjustments to an OFTO's revenue;
- n) details of your approach to complying with licence condition E7 (Restriction on Activity and Financial Ring Fencing); and
- o) details of your approach to funding any changes to the Indicative Transfer Value of up to 20 per cent (in determination of the Final Transfer Value). For the avoidance of doubt, the figure of 20 per cent is not a limit on the level of change to the Indicative Transfer Value which may occur.

[6B] Bank Debt Finance

Qualifying Bidders who are using bank Debt Finance as a source of funding are required to provide as a minimum:

- a) letters of support or a mandate letter from the selected bank finance providers that you plan to use; this should state the amounts of debt to be arranged in respect of the London Array Project (both in aggregate and for each lender); and
- b) a conformed term sheet – this should be attached to the letters of support/ mandate letter.

Notes:

- Letters of support must state the amounts to be arranged and this should provide at least the amount of bank finance set out in your financial model multiplied by 120 per cent;
- The letters of support/ mandate letter should state any conditionality which is related to the provision of finance. In particular the terms should only be conditional upon:
 - i) fixing the underlying interest and RPI swap rate;
 - ii) agreed financing documentation;
 - iii) confirmatory due diligence; and
 - iv) the Qualifying Bidder being selected as the Preferred Bidder.
- The conformed term sheet should include as a minimum:
 - i) margins on senior debt, with any applicable step-ups/ downs;
 - ii) interest rate swap credit spread (inclusive of execution spread);
 - iii) RPI swap credit spread (inclusive of execution spread);
 - iv) arrangement and commitment fees;
 - v) agency fees;
 - vi) cover ratio requirements including LLCR (loan life coverage ratio), ADSCR (annual debt service cover ratio) (minimum and average) and other financial covenants where relevant;
 - vii) gearing constraints;
 - viii) maximum facility size;
 - ix) loan tenor;
 - x) debt tail required;
 - xi) availability and grace periods;
 - xii) the period for which the funding will be available and the extent to which it is committed; ;
 - xiii) percentage of income proposed to be swapped for any proposed RPI

swap instrument;

- xiv) full lists of conditions precedent, representations and warranties, undertakings, any lender sensitivities, events of default and other provisions customarily found in a 'long-form' term sheet;
- xv) any cash sweeps that are contemplated, what the arrangements are and how they are covered in your financial model;
- xvi) cancellation and prepayment fees where applicable; and
- xvii) other relevant information as would normally be provided for transactions of this nature.

[6C] Other Debt Finance (e.g. capital markets/ bond solution)

Qualifying Bidders who are using other Debt Finance are required to provide as a minimum:

- a) letters of support from any providers or arrangers of other Debt Finance that you plan to use as part of your financing strategy evidencing:
 - i) how you would access the funding and the timing;
 - ii) the extent to which such funding is/will be earmarked for OFTO investment/ appropriately ringfenced; and
 - iii) where applicable, any underwriting arrangements.
- b) a term sheet setting out the terms and conditions for each type of other Debt Finance that you plan to use as part of your financing strategy.

Notes:

- Letters of support must state the amounts of other Debt Finance to be arranged and should provide for at least the amount of other Debt Finance set out in your financial model multiplied by 120 per cent;
- Letters of support should state any conditionality which is related to the provision of finance. In particular the terms should only be conditional upon:
 - i) fixing underlying market rates (e.g. GILTS and Indexed Linked GILTS, where applicable);
 - ii) agreed financing documentation;
 - iii) confirmatory due diligence; and
 - iv) the Qualifying Bidder being selected as the Preferred Bidder.
- The term sheet should include as a minimum, where applicable:
 - i) underwriting, arrangement and other fees;
 - ii) rating agency fees – if applicable – and associated costs;
 - iii) cover ratio requirements and other financial covenants where relevant;
 - iv) any coupon and/or credit spread, in the case of credit spread specifying the instrument you are pricing over;
 - v) gearing constraints;
 - vi) principal amount of the issue;

- vii) maturity date;
- viii) the period for which the funding remains available and the extent to which it is committed; and
- ix) other relevant information as would normally be provided for transactions of this nature.

[6D] Support for Equity and/ or Corporate Finance

Qualifying Bidders who are using Equity and/ or Corporate Finance are required to provide, where applicable:

- a) letters of support from any such provider of Equity and/ or Corporate Finance, stating:
 - i) that the entity providing the support is the ultimate provider of the funds;
 - ii) the extent to which the commitment is confirmed;
 - iii) the amount of funds that they are willing to provide; and
 - iv) the extent to which the funds to be provided are ear-marked for OFTO investment/appropriately ring-fenced.

Note: the amount stated in response to part iii) should provide for at least the full amount of Equity and/or Corporate Finance funding set out in your financial model multiplied by 120 per cent.

The letters of support should also state any conditionality which is related to the provision of finance. In particular terms should only be conditional upon:

- i) agreed documentation;
 - ii) confirmatory due diligence; and
 - iii) the Qualifying Bidder being selected as the Preferred Bidder.
- b) full and complete terms attached to any Equity Finance or Corporate Finance detailing each of the following as relevant:
 - i) any conditionality placed on the offering of such finance;
 - ii) the period for which the offer remains fixed and the extent to which it is committed and the basis upon which any terms will be adjusted after this period;
 - iii) any loan coupons for inter-company debt;
 - iv) the swap credit margin (inclusive of execution spread) if applicable to Corporate Finance (e.g. RPI or interest rate);
 - v) any arrangement or commitment fees;
 - vi) the facility maximum amount;
 - vii) the loan tenor; and
 - viii) other relevant information as would normally be provided for transactions of this nature.

- c) copies of loan note documentation (including subordinated debt or shareholder loans) and any other Equity Finance or Corporate Finance agreements.
Note: these documents should be in final form.
- d) where the financing strategy relies on your Equity or Corporate Finance sources raising new finance, letters of support from appropriate corporate relationship banks and/or bond lead managers should be provided. These letters should:
- i) indicate their assessment of the likelihood that the required finance can be raised from the markets in the time and nature anticipated in your financing strategy;
 - ii) identify any constraints imposed by investors; and
 - iii) indicate the extent to which the funds to be provided are ear-marked for OFTO investment/ appropriately ring-fenced.

In situations where the financing strategy relies on an investment fund raising additional capital, you are also required to provide:

- i) details of the fund raising – amount, level of commitment etc.;
 - ii) details of the timing of the fund raising; and
 - iii) details of how the funding would be appropriately ring-fenced.
- e) where the financing strategy relies on the provision of Corporate Finance, confirmation of the impact of raising new finance on the financial standing of the Corporate Finance provider should be provided.

Where the terms of the Corporate Finance relies upon the credit rating of the Corporate Finance provider, this should be supported by a letter from a board director of the Corporate Finance provider which sets out the anticipated impact on the Corporate Finance provider providing funds as outlined in this financing strategy.

Notes:

- The letter should take into account all relevant factors but in particular the impact of any debt raising exercise which the Corporate Finance provider will need to undertake in order to provide the Corporate Finance as outlined in this financing strategy; and
- The letter should clearly state whether it is believed that the provision of the Corporate Finance is likely to affect the senior long term issuer credit rating or rating outlook of the Corporate Finance provider.

Section 7: Tender Revenue Stream

Qualifying Bidders are required to populate Ofgem Financial Input Sheets 1 to 7 and the Cover in accordance with the Instruction Notes for Ofgem Financial Input Sheets.

Note that responses in relation to this section must be submitted in the template provided by Ofgem, as set out in the Data Room.

[7A] You are required to provide a Tender Revenue Stream bid (the base case) for the London Array Project and supporting financial model. This must assume a constant revenue stream in real terms as at the Estimated Transfer Date for the London Array Project and must be based on the draft Project Availability Standard. It must be based on a 20-year term from the Estimated Transfer Date.

[7B] You are required to provide a revised Tender Revenue Stream, for the scenario where the Final Transfer Value is equal to 120 per cent of the Indicative Transfer Value. Please provide a detailed breakdown of any changes in assumptions which result in an amendment to the base case Tender Revenue Stream coupled with a detailed approach of how any Final Transfer Value variation will be managed.

[7C] Qualifying Bidders are required to provide a revised Tender Revenue Stream, for the scenario where the Final Transfer Value is equal to 90 per cent of the Indicative Transfer Value. Please provide a detailed breakdown of any changes in assumptions which result in an amendment to the base case Tender Revenue Stream.

Qualifying Bidders should submit financial models supporting the Tender Revenue Stream set out in both [7B] and [7C]. The two limits are for assumptions only and should not be taken as an indication of where the Final Transfer Value might be.

Section 8: Underlying Assumptions

- [8A]** You are required to provide your assumptions in arriving at the Tender Revenue Stream provided in response to Section 7, along with a detailed explanation supporting these assumptions. These should include but not be limited to the following:
- a) operations and maintenance costs;
 - b) insurance;
 - c) decommissioning costs;
 - d) operational performance security package for the last five years of the project (in accordance with part B of amended standard condition E12 – J4 of the Offshore Transmission Licence);
 - e) taxation;
 - f) special purpose vehicle (SPV) and/or management costs;
 - g) bid cost recoveries and/or development fees;
 - h) any other income items, including any potential unregulated revenue, terminal values or refinancing assumptions (to be expressed as a “negative cost”);
 - i) cost of Equity Finance, Corporate Finance and Debt Finance service costs including all interest payments and fees (to reflect the financing strategy set out in your response to Section 6); and
 - j) any other relevant foreseen costs.

In response to Section **[8A]**, detailed statements in respect of the following cost components should, as a minimum, cover the following:

O&M costs

You are required to provide a cost appraisal of the proposed O&M arrangements both in real terms and as a percentage of the Indicative Transfer Value. In doing so, you are required to state the assumptions used in deriving the costs including any additional operational spares, outline the basis of those assumptions, and explain how elements of O&M costs per annum (including any costed heads of terms) relate to the 20-year revenue stream in the financial model. In particular, you must distinguish between standard ongoing costs and any amount included to cover events such as Major Failure Events.

You are also required to state what part of the revenue assumptions are to apply to the last five years of the project and what (if any) implications a change in assumptions may have for the total Tender Revenue Stream (to allow it to comply with part B, amended standard licence condition E12-J4).

Insurance

- i) You are required to detail the proposed insurance arrangements you intend to put in place in respect of the Transmission Assets together with revenue streams required for insurance cover. This should include categories of cover, levels of cover, conditions, rating and distinguish between external commercial insurers and any self insurance including deductibles and excess.
- ii) If additional strategic spare equipment (as opposed to additional operational spare equipment covered in part a) above) is intended to be purchased over and above what is included in the Final Project Transfer Agreement, please include the total costs in this section and quantify the impact of these additional costs on the Tender Revenue Stream (£/annum) in the self insurance section in the data input sheet to the financial model.

Decommissioning costs

For the technical and environmental approach to decommissioning detailed in Section 5, you must provide an estimate of associated decommissioning costs as a proportion of the Indicative Transfer Value. In doing so, you are asked to state assumptions used in deriving the costs and outline the basis of those assumptions, and explain how decommissioning costs relate to costs included in the Tender Revenue Stream. You should make it clear what decommissioning assumptions are used to underpin your Tender Revenue Stream bid.

Taxation (including, but not limited to, Corporation Tax, VAT and Stamp Duty Land Tax (SDLT))

Qualifying Bidders should provide a statement setting out any tax assumptions made in the financial model and the basis for these. These should include:

i) Corporation Tax assumptions, including but not limited to:

- A) tax rates;
- B) capital allowances;
- C) disallowed expenditure;
- D) reliefs;
- E) treatment of losses;
- F) treatment of finance costs;
- G) transfer pricing;
- H) withholding tax; and
- I) payment timing.

ii) VAT assumptions:

- A) VAT treatment of outputs;
- B) Exemptions;
- C) recovery of VAT on cost inputs; and
- D) details of where VAT is not recoverable on cost inputs.

iii) SDLT assumptions:

- A) Rates;
- B) Applicable assets and expenditure; and
- C) Exemptions.

iv) Any other relevant tax assumptions.

Qualifying Bidders must indicate whether they have obtained a formal opinion on taxation from their tax advisors or suitably qualified professional which sets out the basis for the treatments adopted within the financial model, and any risks associated with it.

Where a Qualifying Bidder has a formal opinion, please provide this as part of your appendices. The risks associated with the proposed tax treatment and the risk of actual tax reliefs being less than or different from those assumed will remain with the Qualifying Bidder.

SPV and/or management costs

You should provide a breakdown of the key SPV and management costs and briefly outline the activities or risks held by the SPV to which these costs relate. You should also provide a reconciliation of this cost breakdown to the financial model.

Bid cost recoveries

You should provide a breakdown of bid costs between internal and external costs and set out the extent to which they have already been incurred or committed.

Any other income items

- i) This should include any potential unregulated revenue, refinancing and terminal values (to be expressed as a "negative cost") and be reconciled to the financial model;
- ii) You are required to provide the assumptions and any supporting documentation in arriving at any other income items (including terminal values) in your Tender Revenue Stream bid. Where interest income is assumed please identify in the model the balances generating the income and the basis for the rates applied; and
- iii) You are required to explain what arrangements are in place should other income assumed in your base case financial model not materialise, including the impact on financial ratios.

Cost of Finance

- i) This should include but not be limited to the following: details of any contingency funds held within the financing structure and where relevant any specific circumstances that funds are held for, distinct from those held for general purposes; and
- ii) You are required to provide a reconciliation of the cost of finance from the term sheets to the supporting financial model (including relevant worksheet, tab and cell references).

[8B] Where your real Project IRR differs from that provided in your QTT Submission you are required to provide a full explanation of any movement.

[8C] You are required to provide a copy of the sensitivities which have been performed in support of the proposed finance solution, including those reviewed by funders and referenced in response to [6A] (g).

You are also required to provide a table identifying the sensitivities which have been performed on the financial model and include the key ratios and constraints as set

out by the providers of any such finance. If you are providing financing options, you are required to provide sensitivities for each financing solution.

Section 9: ITT Certificate

| | |
|--|--------------------------|
| <p>Each Qualifying Bidder must have a duly authorised officer of the Qualifying Bidder or Bidder Group indicate his or her confirmation of all of the statements in Sections [9A] to [9I] below by initialling next to each statement and signing where indicated below. An initialled and signed copy of the ITT Certificate must then be uploaded on to the Portal as part of your ITT Submission. In relation to the statement at Section [9D] only, if the duly authorised officer is not able to confirm the statement at Section [9D] then he or she need not initial this statement provided that the Qualifying Bidder provides a written description of the reasons why the duly authorised officer cannot give such confirmation such that Ofgem is satisfied whether to accept the ITT Certificate without that confirmation.</p> <p>"I, acting as a duly authorised officer of* _____ and on behalf of** _____, hereby confirm that:</p> | |
| <p>[9A] The information provided in the PQ Submission and the QTT Submissions remains materially true, accurate, and complete, or has been updated where necessary to the extent that any information has materially changed by providing updated responses to the relevant question(s) in the PQ Questionnaire and/or QTT Questionnaire.</p> | <p>Initial below</p> |
| <p>[9B] The information provided in the ITT Submission is true, accurate, and complete.</p> | <p>Initial below</p> |
| <p>[9C] Neither* _____ —/ *** _____ nor any of [its/their] Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Tender Regulations, the Tender Rules, the PQ Document, the QTT Document, or the ITT Document in preparing or making the PQ Submission, the QTT Submission, or this ITT Submission.</p> | <p>Initial below</p> |
| <p>[9D] We are not aware of any application to place the Qualifying Bidder (or where relevant) any other Bidder Group member, or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced.</p> | <p>Initial below</p> |
| <p>[9E] The Qualifying Bidder is acting as a principal in the Tender Exercise and not as an agent for any undisclosed person and the Qualifying Bidder (and where relevant each Bidder Group member) has expressly authorised me to act on their behalf in making this ITT Submission.</p> | <p>Initial below</p> |
| <p>[9F] The Qualifying Bidder (and where relevant each Bidder Group member) hereby consents to the disclosure by Ofgem to Ofgem's Advisers</p> | <p>Initial below</p> |

| | | |
|---|--|---------------|
| for the purposes of the second transitional Tender Round of any information given to Ofgem either before or during the second transitional Tender Round by such Qualifying Bidder or Bidder Group member. | | |
| [9G] The Qualifying Bidder (and where relevant each Bidder Group member) hereby confirms that they have considered the implications of the Electricity and Gas (Internal Markets) Regulations 2011 and understands that if appointed as a transmission licensee who participates in the transmission of electricity they will be required to comply with the ownership unbundling provisions therein. | | |
| [9H] In compiling this ITT Submission, neither I personally nor the Qualifying Bidder (and where relevant any Bidder Group member) has obtained an unfair commercial advantage including, in particular, such advantage from a preferential or discriminatory arrangement with associated parent companies or affiliates, any user of the Offshore Transmission System or Licensee. | | Initial below |
| [9I] The Qualifying Bidder (and where relevant each Bidder Group member) acknowledges and agrees that knowingly or recklessly making a false, incomplete, or misleading statement in support of this ITT Submission may result in: a) disqualification of the Qualifying Bidder from the Tender Exercise; b) Licence Grant being refused or revoked if the Qualifying Bidder reaches these relevant stages in the process; and c) criminal proceedings being instituted under section 59 of the Electricity Act 1989 (as amended). | | Initial below |
| In providing this statement, I have made all due enquiries on behalf of the Qualifying Bidder or Bidder Group. | | |
| Signed | | |
| Authorised officer of _____ and on behalf of _____ | | |
| Name | | |
| Position | | |
| Dated | | |

* insert name of Qualifying Bidder (if a Bidder Group, the lead member of the Bidder Group)

** insert name of Qualifying Bidder and each of the Bidder Group members if applicable

*** insert name of Qualifying Bidder and each of the Bidder Group members if applicable

Qualifying Bidder Compliance Certificate

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

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

- a) the Qualifying Bidder (and where relevant each Bidder Group member) hereby accepts the standard conditions of the Offshore Transmission Licence;
- b) the Tender Revenue Stream identified in the ITT Submission fully reflects:
 - i) the draft project amended standard conditions of the Offshore Transmission Licence; and
 - ii) the terms of the Final Project Transfer Agreement; and
- c) the Qualifying Bidder (and where relevant each Bidder Group member) hereby accepts that the ITT Submission is firm subject only to the conditions precedent identified in 4.1 of the ITT Document and confirms that it is able to meet the timescales set in paragraph 1.15 of this ITT Document.

| | |
|---|--|
| Signed | |
| Authorised officer of _____ and on behalf of _____ | |
| Name | |
| Position | |
| Dated | |

Section 10: Confidentiality

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

You should identify which part(s) of your ITT Submission are provided in confidence and provide reasons why you consider the information is eligible for exemption under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should therefore be kept confidential. Ofgem is not bound by any such statements but will take them into account in considering whether an exemption applies.

| Section of ITT Submission provided in confidence | Reason(s) for exemption under Freedom of Information Act 2000 |
|--|---|
| | |
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4. Evaluation of ITT Submissions

Section Summary

This section sets out how Ofgem will evaluate ITT Submissions made by Qualifying Bidders. This includes the evaluation criteria Ofgem will apply and the process it will follow to evaluate Bids.

Conditions Precedent

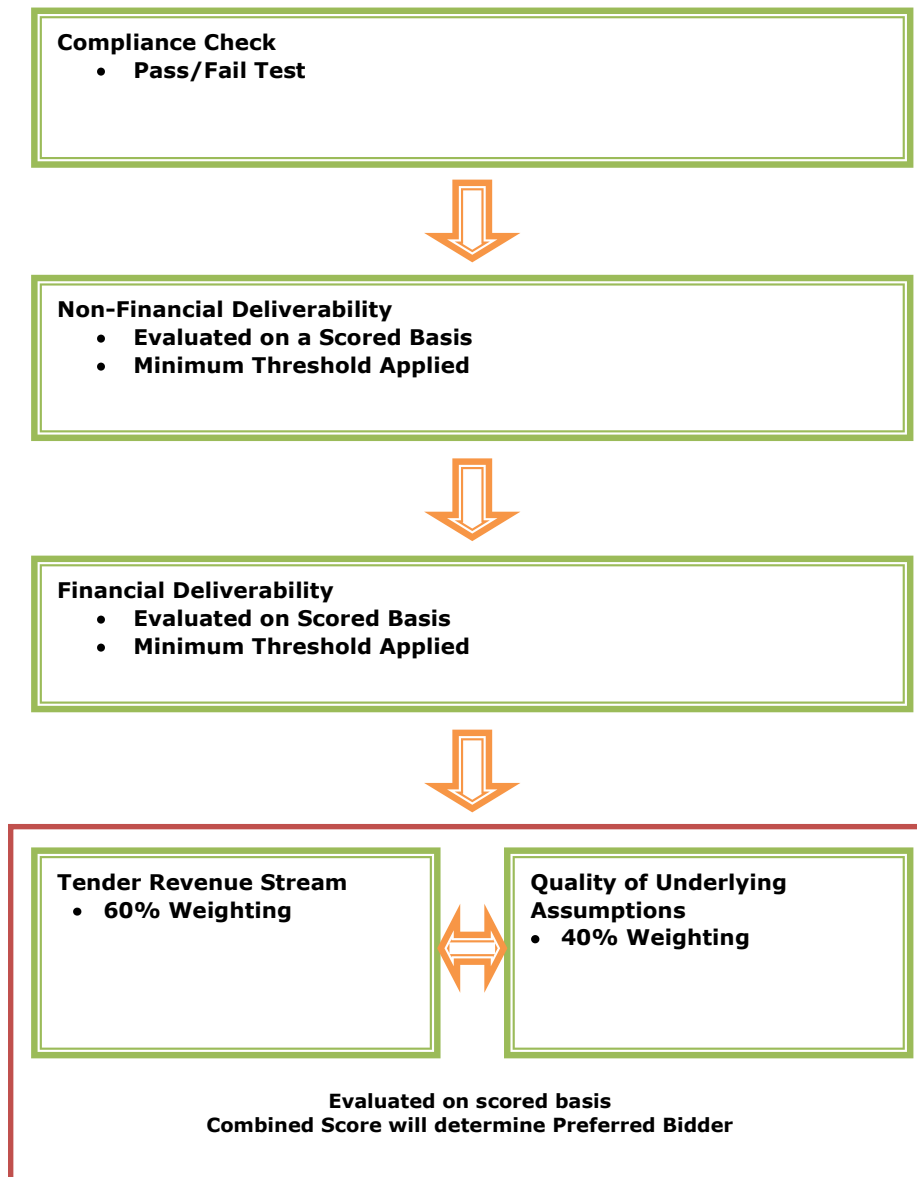
- 4.1. Qualifying Bidders are required to provide a firm bid in their ITT Submission that will be subject only to the following conditions precedent:
- a) To execute the Transfer Agreement (and all ancillary agreements required as conditions or completion deliverables under the Transfer Agreement) within a specific timescale;
 - b) To agree, within a specific timescale, to the grant of the Offshore Transmission Licence from Ofgem;
 - c) To accede to relevant industry codes, to execute the transmission owner construction agreement with NETSO and to execute any necessary interface agreements, where applicable, within a specific timescale; and
 - d) To execute defined project contracts or other documentation within a specific timescale, including:
 - i) Completion of relevant financing documents and confirmatory due diligence,
 - ii) Execution of an operations and maintenance agreement and/or relevant sub-contracts, and
 - iii) Establishment of the SPV (where required).
- 4.2. The timescales for the London Array Project are set out in paragraph 1.15 of this ITT Document.

Evaluation Process

- 4.3. Ofgem will evaluate and score a Qualifying Bidder's ITT Submission for the London Array Project.
- 4.4. The conclusion of Ofgem's evaluation will be the identification of a Preferred Bidder (and possibly a Reserve Bidder) in respect of the London Array Project to whom Ofgem would be willing to grant an Offshore Transmission Licence.
- 4.5. Ofgem will conduct its evaluation over the following sequential stages:
- an assessment of completeness;

- an assessment of compliance;
- an assessment of the Qualifying Bidders’ non-financial deliverability submissions;
- an assessment of the Qualifying Bidders’ financial deliverability submissions; and
- an assessment of the Qualifying Bidders’ Tender Revenue Stream bids combined with an assessment of the quality of the underlying assumptions.

4.6. Ofgem will evaluate responses to the ITT Questionnaire in accordance with the evaluation approach set out in this ITT Document, as illustrated in the following diagram:



Assessment of Completeness

- 4.7. Following receipt of the ITT Submissions, Ofgem will undertake a completeness check of the information received. If this check identifies any omission(s) in the information required to be provided, Ofgem will notify the Qualifying Bidder, who will be given a period of time (to be notified by Ofgem) in which to rectify the omission(s). In this event, Ofgem will only commence evaluation of the ITT Submission following receipt of the requested information.
- 4.8. Ofgem reserves the right to decline to consider a Qualifying Bidder's ITT Submission if any omitted information requested is not provided within the required time.

Assessment of Compliance

- 4.9. Following the completeness check, Ofgem will assess whether ITT Submissions received are compliant. An ITT Submission will be considered compliant if all the information requested under paragraph 2.13 is provided.
- 4.10. You are required to complete the ITT Certificate in Section [9] and Section [10] on confidentiality for compliance; the content of both of these sections is not subject to evaluation.
- 4.11. Ofgem reserves the right to decline to consider a Qualifying Bidder's ITT Submission if it does not comply in any material respect with the requirements specified in this ITT Document.

ITT Evaluation Criteria

4.12. The evaluation criteria for each section of the ITT Questionnaire (as provided in Chapter 3) are as follows:

Non-Financial Deliverability

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

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

Section 2: Shareholding structure

4.15. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place, or will have in place by the time of the Estimated Transfer Date for the London Array Project, a robust and coherent structure for the entity that would be granted the Offshore Transmission Licence.

Section 3: Takeover plan

4.16. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place robust and coherent proposals for the takeover of the Transmission Assets from the Developer by the Estimated Transfer Date for the London Array Project.

Section 4: Ongoing operations

4.17. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place robust and coherent operational plans for the London Array Project.

Section 5: Decommissioning

4.18. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have a thorough understanding of the decommissioning requirements for the London Array Project, and that these are reflected in a pragmatic and deliverable decommissioning programme. As appropriate, this must take into account any decommissioning plans already identified by the Developer.

4.19. Evaluation of non-financial deliverability will be assessed on a scored basis as set out in paragraph 4.30.

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

Financial Deliverability Section 6: Financial Deliverability

- 4.21. ITT Submissions that meet the threshold requirements in terms of non-financial deliverability will then be evaluated in terms of the deliverability of their financial proposals.
- 4.22. Evaluation of financial deliverability (Section 6 of the ITT Questionnaire) will assess proposals submitted by the Qualifying Bidder against the following minimum thresholds:

Extent to which financing is committed

- 4.23. Qualifying Bidders must provide all the information requested in the relevant parts of Section 6 of the ITT Questionnaire, and are required to demonstrate to Ofgem that these financing proposals are deliverable by the Estimated Transfer Date for the London Array Project.

Approach to due diligence

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

Approach to comply with standard licence conditions E10 and E11

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

Approach to financing standard licence condition E17

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

Ability to comply with standard licence condition E7

- 4.27. Qualifying Bidders must demonstrate that they have put in place the necessary arrangements to ensure compliance with Standard Licence

Condition E7 financial ring-fencing, of the Offshore Transmission Licence, and how it will comply.

- 4.28. Evaluation of financial deliverability will be assessed on a scored basis as set out in paragraph 4.30, with Qualifying Bidders required to meet each minimum threshold identified above.
- 4.29. Qualifying Bidders that do not demonstrate to Ofgem's satisfaction that they meet the minimum thresholds will not be considered further.
- 4.30. Evaluation of Sections 2, 3, 4, 5 and 6 will be assessed on a scored basis, with Qualifying Bidders required to meet the minimum thresholds as described. Each of these sections will be scored using the ratings A to D as set out in the Evaluation Scale for Scored Sections at paragraph 4.47. A rating of B and above will equate to a pass.

The Tender Revenue Stream and the Quality of the Underlying Assumptions

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

Section 7: Tender Revenue Stream

- 4.32. Qualifying Bidders must submit their Tender Revenue Stream bid for the London Array Project in accordance with the requirements set out in the ITT Questionnaire and paragraph 2.13. This must be submitted with both the Qualifying Bidders' own financial model and completed financial input sheets for Ofgem's evaluation purposes. These input sheets will be used to inform consideration of the assumptions underlying the Tender Revenue Stream bid.
- 4.33. Ofgem will evaluate the Tender Revenue Stream bid of each Qualifying Bidder on a scored basis as further set out below at paragraph 4.34. Scores will be allocated across Qualifying Bidders for the London Array Project on the basis of the Tender Revenue Stream bids, with the lowest Tender Revenue Stream bid being awarded the highest available score.
- 4.34. To determine the score for the Tender Revenue Stream bid, a numeric score will be allocated to the Tender Revenue Stream bid for the London Array Project submitted in response to Section [7A]. Firstly, we will establish an average Tender Revenue Stream value across all bids that are compliant having passed the threshold requirements of Sections 2 to 6. This average will be allocated a score of five out of ten. The individual Tender Revenue Stream bids received for the London Array Project will then be allocated a numeric

score based on their relationship to this average, with Tender Revenue Stream bids below the average scoring more than five (out of ten), and those above average scoring less than five (out of ten).

- 4.35. Section 7 will be assigned a 60 per cent weighting for the overall score for this stage of the evaluation.
- 4.36. Section 7B and Section 7C will not be evaluated but the information provided will be considered in evaluating Section 8: Underlying Assumptions.

Section 8: Quality of Underlying Assumptions

- 4.37. Qualifying Bidders must submit the assumptions underlying their Tender Revenue Stream bid.
- 4.38. Ofgem will evaluate the quality of the underlying assumptions of the Tender Revenue Stream on a scored basis using the ratings A to D. These will be converted to the corresponding numeric score as set out in the Evaluation Scale for Scored Sections at paragraph 4.47. Scores will be awarded on the basis of the robustness of the underlying assumptions for each cost component, along with an evaluation of the level of certainty provided by Qualifying Bidders in deriving the Tender Revenue Stream from these cost components. The score for this section will be determined taking into account the overall robustness, and therefore cost certainty, of all of the assumptions provided. In considering the overall robustness and cost certainty of the assumptions, Ofgem will take into account:
- your responses to Sections 1 to 6 where they relate to the assumptions; and
 - any interaction between the assumptions and their significance in deriving the Tender Revenue Stream.
- 4.39. Ofgem requires you to provide the sensitivities in Section 8B and 8C to understand the effects on the robustness of your ITT Submission.
- 4.40. Section 8B will not be evaluated but will be taken into account in the evaluation of the underlying assumptions in Section 8A. However, Qualifying Bidders are reminded that the QTT Document set out that Ofgem was minded to treat the Project IRR proposed in your QTT Submission as a cap. On this basis, Ofgem does not expect that the Project IRR submitted as part of your ITT Submission will be higher than that provided in your QTT Submission (apart from any net changes in reference rates between the Submissions). In instances where the Project IRR is higher than that provided in the QTT Submission, Ofgem reserves the right to exclude you, as set out in the QTT Document.
- 4.41. Section 8C will not be evaluated, but will be taken into account in the evaluation of the underlying assumptions in Section 8A.

- 4.42. Section 8 will be assigned a 40 per cent weighting for the overall score for this stage of the evaluation.

Combining Tender Revenue Stream and Underlying Assumptions

- 4.43. The outcomes of the evaluation of the Tender Revenue Stream and the quality of the underlying assumptions will be combined to determine an overall weighted score for the best value bid. Scores will be combined by adding the score from Section 7 multiplied by 60 per cent and the score from Section 8 multiplied by 40 per cent.
- 4.44. The Qualifying Bidder with the highest overall score will be selected as the Preferred Bidder for the London Array Project.

Consideration of Earlier Scores

- 4.45. In instances where Ofgem's evaluation of the Tender Revenue Stream and the underlying assumptions reveals two or more Qualifying Bidders with similar overall scores within a small percentage of each other, Ofgem reserves the right to look at the ratings awarded on non-financial and financial deliverability as a means of determining a Preferred Bidder.

Best and Final Offer (BAFO) Stage

- 4.46. At its discretion, Ofgem may hold a BAFO Stage where Ofgem has been unable to determine a Preferred Bidder at the end of the ITT Stage. In this instance, this will represent an opportunity for the requested Qualifying Bidders to make a BAFO Submission in accordance with the instructions issued by Ofgem at the time.

Evaluation Scale for Scored Sections

4.47. For all scored sections of the ITT Questionnaire (Sections 2 through to 6 and Section 8), responses will be scored against each criterion using a four-mark evaluation scale. The table below sets out the standard of response that correlates to each mark on the scale on a generic basis.

| Evaluation mark | Range of numeric scores (Section 8 only) | Standard of response | Guidance |
|-----------------|--|---|---|
| A | 8-10 | <p>Excellent response: will indicate that, in the judgement of the Authority, the response entirely or almost entirely satisfies the requirements tested by the criterion.</p> | <p>The response entirely satisfies the requirements tested; or</p> <p>Any issues or concerns identified with the response are considered to be immaterial.</p> <p>In relation to Section 8 Underlying Assumptions, there are no outstanding issues to undermine the Tender Revenue Stream bid.</p> <p>In addition the response is likely to demonstrate:</p> <ul style="list-style-type: none"> • innovative proposals; • a clear understanding of project-specific issues (where applicable); • excellent examples of relevant experience; and/ or. • full supporting documentation. |

| Evaluation mark | Range of numeric scores (Section 8 only) | Standard of response | Guidance |
|-----------------|--|---|--|
| B | 5-7 | <p>Good response: will indicate that, in the judgement of the Authority, the response substantially satisfies the requirements tested by the criterion, although the Authority has some minor reservations with regard to certain aspects of the response.</p> | <p>Some issues or concerns identified with the response but these are considered unlikely to significantly impact upon the robustness of the project.</p> <p>In relation to Section 8 Underlying Assumptions, there are some outstanding issues, however they are not expected to materially undermine the Tender Revenue Stream bid.</p> <p>In addition, the response is likely to demonstrate:</p> <ul style="list-style-type: none"> • some recognition of project-specific issues (where applicable); • good examples of relevant experience; and/or • some supporting documentation is provided. |
| C | 2-4 | <p>Basic response: will indicate that, in the judgement of the Authority, the response partially satisfies the requirements tested by the criterion and includes some of the expected supporting documentation, although the Authority either:</p> <ul style="list-style-type: none"> • has a number of significant minor reservations with regard to certain aspects of the response; and/or • there is an absence of supporting documentation; or • one major reservation with regard to a particular aspect of the response. | <p>Significant issues or concerns identified; however it is considered that the associated risks can be managed to maintain the overall robustness of the project.</p> <p>In relation to Section 8 Underlying Assumptions, there are some outstanding issues which are likely to materially undermine the Tender Revenue Stream bid.</p> <p>In addition the response is likely to demonstrate:</p> <ul style="list-style-type: none"> • a lack of recognition of project specific issues (where applicable); and/or • few or poor examples of relevant experience or supporting documentation. |
| D | 0 | <p>Unacceptable response: will indicate that, in the judgement of the Authority,</p> | <p>Significant/fundamental issues or concerns which are considered unlikely to be resolved without an adverse impact on the</p> |

| Evaluation mark | Range of numeric scores (Section 8 only) | Standard of response | Guidance |
|------------------------|---|--|--|
| | | the response does not satisfy the requirements tested by the criterion in a material way, there is no supporting documentation and the Authority has, either a significant number of minor reservations with regard to certain aspects of the response or one (or more) very serious reservation(s) with regard to a particular aspect(s) of the response. | <p>robustness of the project.</p> <p>In relation to Section 8 Underlying Assumptions, there are significant outstanding issues that are highly likely to materially undermine the Tender Revenue Stream bid.</p> <p>In addition:</p> <ul style="list-style-type: none"> • the response wholly or largely does not answer the questions; and/or • there is no supporting documentation. |

Selection of Preferred Bidder and next steps

Notification to Qualifying Bidders

- 4.48. Ofgem will notify each Qualifying Bidder (via the Portal) as to whether its ITT Submission has been successful or unsuccessful. This ITT Document updates paragraph 8.18 of the Tender Rules such that Ofgem will not provide reasons at the end of the ITT Stage for its determination of the Preferred Bidder (or Reserve Bidder, if applicable) or in respect of unsuccessful ITT Submissions. This update to the Tender Rules is intended to ensure consistency with the Tender Regulations.
- 4.49. Pursuant to the Tender Regulations and paragraph 11.5 of the Tender Rules, Ofgem will provide reasons to unsuccessful Qualifying Bidders in relation to its determination to grant an Offshore Transmission Licence to the Successful Bidder once the Preferred Bidder has become the Successful Bidder. Qualifying Bidders at the ITT Stage will however be provided with confidential feedback following completion of the ITT Stage as set out in paragraph 4.57.
- 4.50. The notice given to the Preferred Bidder will set out the next steps it will need to take in order to become the Successful Bidder for the London Array Project.
- 4.51. Once all Qualifying Bidders have been notified, Ofgem will publish the name of the Preferred Bidder in respect of the London Array Project.

Matters to be resolved by the Preferred Bidder

- 4.52. Once a Preferred Bidder has been identified for the London Array Project, it will be notified by Ofgem. Following this notification, the Preferred Bidder will have to satisfy the Preferred Bidder matters in accordance with the timescales notified to the Preferred Bidder.
- 4.53. In addition to the above, the Preferred Bidder will be required to make a further payment to Ofgem in accordance with its published Cost Recovery Methodology.
- 4.54. Qualifying Bidders are advised that the selection of a Preferred Bidder does not in any way oblige Ofgem to grant an Offshore Transmission Licence to that party.
- 4.55. Information on the Preferred Bidder process is set out in the Guidance Note to Asset Transfer and Licence Grant. Further details will also be provided to the Preferred Bidder on appointment.

Reserve Bidder

- 4.56. Ofgem may, at its discretion, identify a Reserve Bidder that it may determine is to replace the Preferred Bidder if the Preferred Bidder fails to satisfy the Preferred Bidder matters, fails to make the Preferred Bidder payment, or withdraws or is disqualified from the Tender Process.

Qualifying Bidder feedback

- 4.57. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the ITT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 4.48.

Appendices

Index

| Appendix | Name of Appendix | Page Number |
|-----------------|---|--------------------|
| 1 | Appendix 1: Disclaimer and Notices | 66 |
| 2 | Appendix 2: The Authority's Powers and Duties | 69 |
| 3 | Appendix 3: Glossary | 72 |

Appendix 1 – Disclaimer and Notices

Introduction

- 1.1 This ITT Document is issued by the Authority and applies to the London Array Project in the second Transitional Tender Round.
- 1.2 By accepting and participating in the Tender Process each Qualifying Bidder agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the ITT Document and the Tender Rules, issued by the Authority.
- 1.3 A material breach of the Tender Regulations, ITT Document or the Tender Rules would give Ofgem the right, under the Tender Regulations, to disqualify a Qualifying Bidder from the Tender Process.

Non-reliance, Accuracy of Information and Exclusion of Liability

- 1.4 Neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Advisers in this ITT Document or otherwise in relation to the Tender Round or any information provided by the Developer through the Data Room or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by a Qualifying Bidder and/or any other interested party.

Use of Information

- 1.5 This ITT Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Qualifying Bidder and any other interested party must make its own independent assessment of the London Array Project after making such investigation and taking such professional advice as it deems necessary.
- 1.6 The material in this ITT Document is not and should not be regarded as legal or professional advice. Qualifying Bidders and other interested parties should seek their own legal or other professional advice where appropriate.

- 1.7 Nothing in this ITT Document is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Qualifying Bidder.
- 1.8 Advisers acting for Ofgem in relation to the Tender Round will not regard any Qualifying Bidder or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

Freedom of Information

- 1.9 The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Qualifying Bidders should identify which parts, if any, of their submissions are provided to Ofgem in confidence and provide reasons why they consider the information to be eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.
- 1.10 Although Ofgem is not under any statutory obligation to consult with a Qualifying Bidder in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Qualifying Bidder of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Qualifying Bidder has identified any information as being in its opinion eligible for exemption. For further information and guidance, Qualifying Bidder's attention is drawn to the Codes of Practice issued under Section 45 and 46 of the Freedom of Information Act 2000²⁶.

Data Protection

- 1.11 In participating in the Tender Round, Qualifying Bidders must comply with the Data Protection Act 1998 and all relevant regulations, together with any codes of conduct and guidance issued by the Information Commissioner. Qualifying Bidders must not do, or cause or permit to be done, anything which may cause or otherwise result in a breach by Ofgem of such requirements. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Qualifying Bidders. In order to participate in the

²⁶ <http://www.justice.gov.uk/guidance/freedom-and-rights/freedom-of-information/code-of-practice.htm>

Tender Round, Qualifying Bidders must agree to such data being collected, held and used.

Confidentiality and Publicity

- 1.12 Qualifying Bidders must comply with their obligations under the Confidentiality Agreement that they signed with the Developer of the London Array Project at the start of the QTT Stage. Qualifying Bidders must ensure compliance by their directors, employees, advisers, subcontractors, etc, as provided for under such agreements.
- 1.13 Qualifying Bidders shall not undertake (or permit to be undertaken) at any time during the Tender Round any publicity activity with any section of the media in relation to any Qualifying Project(s) other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet and e-mail accessible by the public at large and the representatives of such media.

Copyright

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

National Audit Office

- 1.15 The Comptroller and Auditor General of the National Audit Office is the auditor for central government. Ofgem and any documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) may be subject to audit by the Comptroller and Auditor General.
- 1.16 Accordingly, Qualifying Bidders should be aware that for the purposes of the National Audit Act 1983 the Comptroller and Auditor General may:
- a) examine and take copies of documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) and request such information as he may reasonably require; and

- b) has the right to publish information related to the Tender Round (including commercially sensitive information and information marked as confidential) in its reports to Parliament.

Appendix 2 – The Authority’s Powers and Duties

- 1.17 Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (the Authority), the regulator of the gas and electricity industries in Great Britain. This appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).
- 1.18 The Authority's powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008 and 2010) as well as arising from directly effective European Community legislation.
- 1.19 References to the Gas Act and the Electricity Act in this appendix are to Part 1 of those Acts.²⁷ Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This appendix must be read accordingly.²⁸
- 1.20 The Authority’s principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.
- 1.21 The Authority is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with
- the shipping, transportation or supply of gas conveyed through pipes;
 - the generation, transmission, distribution or supply of electricity; and
 - the provision or use of electricity interconnectors.
- 1.22 Before deciding to carry out its functions in a particular manner with a view to promoting competition, the Authority will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner

²⁷ Entitled “Gas Supply” and “Electricity Supply” respectively.

²⁸ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

(whether or not it would promote competition) in which the Authority could carry out those functions which would better protect those interests.

- 1.23 In performing these duties, the Authority must have regard to:
- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
 - the need to secure that all reasonable demands for electricity are met;
 - the need to secure that licence holders are able to finance the activities which are the subject of obligations on them²⁹; and
 - the need to contribute to the achievement of sustainable development.
- 1.24 In performing these duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.³⁰
- 1.25 Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:
- promote efficiency and economy on the part of those licensed³¹ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
 - protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and secure a diverse and viable long-term energy supply, and shall, in carrying out those functions, have regard to the effect on the environment.
- 1.26 In carrying out these functions the Authority must also have regard to:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
 - certain statutory guidance on social and environmental matters issued by the Secretary of State.
- 1.27 The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to any interests of consumers in relation to communications services and electronic communications apparatus or to water or sewerage services (within the meaning of the Water Industry Act

²⁹ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act functions.

³⁰ The Authority may have regard to other descriptions of consumers.

³¹ Or persons authorised by exemptions to carry on any activity.

1991), which are affected by the carrying out of that function.

- 1.28 The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation³² and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

³² Council Regulation (EC) 1/2003

Appendix 3 – Glossary

“Advisers” means in relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors or sub-contractors (of any tier) and affiliates;

“Ancillary Documentation” means the disclosure letter, the Interface Agreement and the other transactional documents to be entered into between the Developer and the Successful Bidder under or in connection with the Transfer Agreement;

“Authority” means the Gas and Electricity Markets Authority;

“BAFO” means the best and final offer that may be requested by Ofgem from some or all of the Qualifying Bidders;

“BAFO Document” means, in respect of the London Array Project, the document which will be delivered to each Qualifying Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO stage;

“BAFO Stage” means the period starting from the distribution of the BAFO Document to selected Qualifying Bidders by Ofgem, and including BAFO preparation, submission and evaluation, and ending when a Preferred Bidder is selected;

“BAFO Submission” means a selected Qualifying Bidder's response to the BAFO Document;

“Bid” means each bid submitted to Ofgem in response to an ITT Document;

“Bidder Group” means two or more persons acting together as a consortium for the purposes of any ITT Submission to Ofgem in accordance with the Tender Regulations;

“Confidentiality Agreement” means a confidentiality agreement in the same form as provided through the Portal;

“Corporate Finance” means any finance (including intercompany loans where the shareholders or parent company are the sole source of finance) to be provided by the Qualifying Bidders without recourse to external parties;

“Cost Recovery Methodology” means the Cost Recovery Methodology for recovering Ofgem's tender costs relating to the second transitional Tender Round, published separately by Ofgem;

“Crown Estate” means the body responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or licence with the Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed;

“Data Room” means, in respect of the London Array Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Qualifying Bidders through the Portal;

"Debt Finance" means any debt which is provided by a party external to the Qualifying Bidder to finance the OFTO. For the avoidance of doubt this includes all limited- and non-recourse bank debt as well as bonds and similar capital markets instruments;

"DECC" means the Department for Energy and Climate Change, which is the government department responsible, among other things, for the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations;

"Developer" means London Array Wind Farm Limited, whose registered office is at No 1 Waterfront Avenue, Edinburgh EH5 1SG (registered in Scotland No. SC213646) being the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act which is developing an offshore generating station and has requested that Ofgem commences a Tender Process in respect of the London Array Project;

"Draft Project Transfer Agreement" means the draft of the Transfer Agreement prepared by the Developer in respect of the London Array Project and provided in the Data Room at the commencement of the ITT Stage;

"Electricity Act" means the Electricity Act 1989 as amended from time to time;

"Electricity Directive" means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009;

"Equity Finance" means any direct equity and mezzanine finance;

"Estimated Transfer Date" means the expected date of transfer for the London Array Project as set out in paragraph 2.53;

"Final Project Transfer Agreement" means the revised draft of the Transfer Agreement prepared by the Developer in respect of the London Array Project and provided in the Data Room during the ITT Stage

"Final Transfer Value" means Ofgem's assessment of the efficient and economic costs which ought to have been incurred in connection with the development and construction of the relevant Transmission Assets;

"Funders" means any party which intends to provide finance to the OFTO for the purposes of financing the OFTO in the event that the Qualifying Bidder becomes the Successful Bidder. For the avoidance of doubt this does not include finance which is incidentally provided;

"IM " means the document prepared by Ofgem for a Qualifying Project containing detailed information for such Qualifying Project which is issued to Qualifying Bidders at the QTT Stage providing they have entered into the applicable Confidentiality Agreement;

"Indicative Transfer Value" means Ofgem's estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets;

“Information Commissioner” has the meaning given to that term in the Data Protection Act 1998 as amended from time to time;

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

“Invitation to Tender Stage” or **“ITT Stage”** means the period starting from the distribution of the ITT Document to Qualifying Bidders by Ofgem, and including tender preparation, ITT Submission and evaluation, and ending when either a Preferred Bidder is selected and notified, or a BAFO Stage is commenced;

“ITT Certificate” means the ITT certificate and Qualifying Bidder compliance certificate set out in Chapter 3, Section [9] of the ITT Document;

“ITT Document” means, in respect of the London Array Project, the document, which will be made available to each Qualifying Bidder invited to make an ITT Submission for the London Array Project and which sets out the rules and requirements of the ITT Stage;

“ITT Questionnaire” means the invitation to tender questionnaire made available at the ITT Stage, as Chapter 3 of the ITT Document, to Qualifying Bidders;

“ITT Submission” means a Qualifying Bidder’s response to the ITT Document;

“Licence Grant” means the grant of the Offshore Transmission Licence by the Authority to the Successful Bidder, pursuant to section 6C of the Electricity Act;

“London Array Project” means the Transmission Assets for London Array (Phase 1), a Qualifying Project in the Tranche A of the second transitional Tender Round;

“Major Failure Event” means failures that result in long repair times for a single item of equipment (for example cable or transformer), a fault, design or installation fault or other events (for example fire) that results in long repair times;

“Marine Management Organisation” means the executive non-departmental public body responsible for contributing to sustainable development in the United Kingdom’s marine area, including a marine licensing regime;

“NETSO” means the National Electricity Transmission System Operator (formally known as the GB System Operator). This role is fulfilled by NGET in accordance with its Electricity Transmission Licence. Under its standard licence conditions, NGET is required to provide Ofgem with certain information and assistance in relation to any Tender Exercise and the Offshore Electricity Transmission System to which it relates;

“NGET” means National Grid Electricity Transmission PLC;

“Offshore Transmission Licence” means a licence granted pursuant to section 6(1) (b) of the Electricity Act in relation to the transmission of electricity offshore, where offshore means:

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;
- (b) waters within an area designated under section 1(7) of the Continental

Shelf Act 1964; and/or

- (c) waters within an area designated under section 84(4) of the Energy Act 2004;

"Offshore Transmission System" means the onshore and offshore transmission system in respect of which an Offshore Transmission Licence is (or is to be) granted or anything which forms part of that system;

"Ofgem" means the office of Gas and Electricity Markets;

"OFTO" or **"Offshore Transmission Owner"** means the holder of an Offshore Transmission Licence;

"Portal" means the Offshore Transmission Electronic Tendering Portal described in section 4 of the Tender Rules;

"PQ Document" means the document prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage;

"PQ Questionnaire" means the pre-qualification questionnaire made available at the PQ Stage, as part of the PQ Document, to entities which have registered on the Portal;

"PQ Stage" means the period starting from the publication of the PQ Document, including the preparation, submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Qualifying Bidders who have prequalified for the QTT Stage;

"PQ Submission" means a Bidder's response to the PQ Document;

"Preferred Bidder" means, in relation to a Qualifying Project, the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the Qualifying Bidder to which it intends (subject to the satisfaction of the conditions specified by Ofgem) to grant the Offshore Transmission Licence;

"Preferred Bidder Stage" means the period starting at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date of Ofgem's notice to the Preferred Bidder that it has become the Successful Bidder;

"Project Availability Standard" means the availability standard as set out in the project specific Offshore Transmission Licence;

"Project IRR" means the internal-post-tax, real forecast project cash flow rate of return;

"Qualifying Bidder" means any person or Bidder Group invited to submit an ITT Submission to Ofgem in response to this ITT Document;

"Qualifying Project" means an offshore generating project in respect of which Ofgem determines that the Developer has satisfied the Qualifying Project

requirements described in paragraph 2 of Schedule 1 to the Tender Regulations or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem.

"QTT Document" means the documentation prepared and issued by Ofgem for the purpose of selecting a shortlist of Qualifying Bidders to progress to the ITT Stage and which sets out the rules and requirements of the QTT Stage;

"QTT Questionnaire" means the QTT Questionnaire published by Ofgem at the QTT Stage, as part of the QTT Documentation, to entities that have registered on the Portal;

"QTT Stage" means the period starting from the publication of the QTT Documentation, including the preparation, submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Qualifying Bidders who are invited to participate in the QTT Stage;

"QTT Submission" means a Qualifying Bidder's response to the QTT Document;

"Related Parties" in relation to a Qualifying Bidder who is a principal undertaking, means any parent or subsidiary undertakings of the principal undertaking or any subsidiary undertakings of the parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and in relation to any Qualifying Bidder means any connected persons of the Qualifying Bidder within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992;

"Reserve Bidder" means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received (and any BAFO Submissions requested), as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem ultimately decide not to grant the Offshore Transmission Licence to the Preferred Bidder;

"Submission" means a PQ Submission, a QTT Submission, or an ITT Submission;

"Successful Bidder" means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence;

"Tender Exercise" means the competitive process run by Ofgem in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in relation to a particular Qualifying Project;

"Tender Regulations" means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010;

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

"Tender Round" means the Tender Exercises run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects;

“Tender Rules” means the Tender Rules for the second transitional Tender Round published by Ofgem pursuant to regulation 9(4) of the Tender Regulations (as amended by any documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Exercise);

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

“Transfer Agreement” means the agreement to be entered into between the Successful Bidder and the Developer to transfer any property interests, rights or liabilities in or relating to Transmission Assets from the Developer to the Successful Bidder in respect of the relevant Qualifying Project subject to a transitional Tender Exercise;

“Transmission Assets” has the meaning given in paragraph 1(3) (a) of Schedule 2A to the Electricity Act;

“Transitional Regime” means Tender Rounds for the grant of Offshore Transmission Licences where the Transmission Assets have been or are being constructed by Developers, and where the Developer meets certain Qualifying Project requirements to the satisfaction of the Authority;

“Transmission Services” has the meaning given in the standard conditions of an Offshore Transmission Licence.