

# Offshore Electricity Transmission: Cost Recovery Methodology for Tender Round 3

## Final decision

**Publication date:** 26 February 2014

**Contact:** Dan Rock

**Team:** Offshore Transmission, Financial  
Analysis

**Tel:** 020 7901 1815

**Email:** [daniel.rock@ofgem.gov.uk](mailto:daniel.rock@ofgem.gov.uk)

### Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant an OFTO Licence to an OFTO on the basis of a competitive tender process. Ofgem is responsible for managing this process.

This document sets out the Cost Recovery Methodology for TR3, which is the first competitive Tender Round under the Enduring Regime held in order to grant OFTO Licences. TR3 is expected to commence in early 2014.

## Context

---

With the government setting an ambitious target that 15 per cent of the UK's energy needs to be met from renewable sources by 2020, a dynamic approach was needed to deliver the substantial investment required in transmission. In the case of offshore wind, the Department of Energy and Climate Change, together with Ofgem, established the competitive regulatory regime for offshore transmission in June 2009. Under the regime we run the competitive tender process to select and licence OFTOs.

The Tender Regulations for the Enduring Regime came into force on 22 February 2013<sup>1</sup>. Any project which meets the Qualifying Project requirements after 31 March 2012 is part of the Enduring Regime. The Tender Regulations provide for Ofgem to calculate and recover the costs it incurs in running the tender process from the participants in the tender process. This document sets out the methodology which applies for the recovery of costs relating to Qualifying Projects in TR3.

## Associated documents

---

This cost recovery methodology applies to TR3 and should be read in conjunction with the following documents:

- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013<sup>2</sup>
- Tender Rules for Tender Round 3

---

<sup>1</sup> The Tender Regulations revoke, subject to Regulation 2, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010.

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2013/175/contents/made>

# Contents

---

<b>Executive Summary</b>	<b>4</b>
<b>1. Cost Recovery Methodology</b>	<b>5</b>
Introduction	5
Legal framework	5
Ofgem's Costs	6
Tender set-up costs	6
Recovery of tender costs	6
Tender Exercise costs incurred in relation to a specific Qualifying Project	6
Costs incurred in relation to the Tender Round as a whole	7
Cost estimates and assessments	7
VAT	8
Payments and Security	8
Cost Consequences of Withdrawal, Cancellation and Disqualification	8
Withdrawal	9
Cancellation	9
Disqualification	10
Aggregation	10
Interest	11
Additional payments	12
Financial governance	12
<b>2. Schedule 1: Payments and Security</b>	<b>13</b>
Developer's payment and Security	13
Bidders' payments	13
Payment Details	14
Charging Schedule	14
Developer Security	15
Successful Bidder Payment	15
<b>3. Schedule 2: Form of Letter of Credit and Form of Demand</b>	<b>17</b>
Form of Letter of Credit	17
Definitions	17
Issuing Bank's agreement	17
Expiry	18
Payments	18
Delivery of Demand	18
Assignment	18
ISP 98	18
Governing Law	18
Jurisdiction	18
Form of Demand	19
<b>Appendix 1 - Glossary</b>	<b>20</b>

## Executive Summary

---

The Tender Regulations set out the tender process framework under the Enduring Regime for the grant of an OFTO Licence in respect of both Generator Build and OFTO Build projects. The first competitive tender process under the Enduring Regime is TR3.

Ofgem incurs costs in running the tender process. The Electricity Act enables Ofgem to recover these costs through the tender process.

In accordance with the Tender Regulations, Ofgem publishes a Cost Recovery Methodology for each Tender Round which sets out the costs which we expect to recover during a tender process and how we propose to recover them from participants

This document is the Cost Recovery Methodology for the calculation and recovery of Ofgem's costs in relation to Tender Exercises in TR3. It sets out

- details of the costs which Ofgem incurs in administering Tender Exercises;
- the methodology for recovering these costs; and
- details of how and when payments must be made by Developers and Bidders.

# 1. Cost Recovery Methodology

---

## Introduction

### Legal framework

1.1. Section 6C of the Electricity Act enables the Authority to make regulations to run competitive tender processes for the grant of OFTO Licences. The Tender Regulations came into effect on 22 February 2013 and revoked the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010<sup>3</sup>.

1.2. The Tender Regulations provide the legal framework for the process which Ofgem will run for the grant of OFTO Licences. The rules of this process are set out in the Tender Rules<sup>4</sup>, published separately by Ofgem prior to the Tender Round commencing.

1.3. This Cost Recovery Methodology is published by the Authority pursuant to regulation 11(4) of the Tender Regulations and applies to TR3.

1.4. By accepting and participating in a Tender Round, each Bidder and Developer agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations and in the Tender Rules. A material breach of the Tender Regulations or the Tender Rules by a Bidder or Developer would give Ofgem the right, under the Tender Regulations, to disqualify that Bidder or Developer from the Tender Round.

1.5. Section 6D of the Electricity Act<sup>5</sup> contains key provisions with regard to the offshore transmission regime, specifically in terms of Ofgem's powers to fully recover its direct and administrative support costs associated with running a Tender Round. The Electricity Act enables the Authority to:

- Secure a financial commitment from Developers in respect of any potential liability the Developer may have. This commitment is referred to as the "Security";
- Secure payments from Developers and Bidders to cover Ofgem's costs of running a Tender Exercise. These payments are referred to as "payments"; and

---

<sup>3</sup> Please note that, in accordance with regulation 2 of the 2013 Tender Regulations, certain Qualifying Projects from the first two Tender Rounds will be subject to the 2010 Tender Regulations. However, for the avoidance of doubt, Tender Exercises for all Qualifying Projects in TR3 will be subject to the 2013 Tender Regulations.

<sup>4</sup> The Tender Rules are published alongside this document and will be available on the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

<sup>5</sup> Inserted by section 44 of the Energy Act 2008.

Electricity Act 1989: [http://www.opsi.gov.uk/acts/acts1989/Ukpga\\_19890029\\_en\\_1](http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890029_en_1)  
Energy Act 2008: <http://www.legislation.gov.uk/ukpga/2008/32/contents>

- Secure a payment from the Developer to cover costs incurred in relation to undertaking a cost estimate; and
- Secure a payment from the Successful Bidder to cover costs incurred in relation to undertaking a cost assessment.

1.6. The principles set out in this Cost Recovery Methodology will be kept under review in light of any material changes in circumstances, and may be subject to change, for example if there is a material change to the forecast of the anticipated direct costs incurred in relation to a Tender Exercise.

## Ofgem's Costs

### Tender set-up costs

1.7. The Electricity Act does not state explicitly when costs may start to be recovered. However, under normal Government practice<sup>6</sup>, set-up expenditure may be incurred and hence is recoverable under Section 6D of the Electricity Act.

1.8. Set-up costs relating to preparation for the Tender Round include (but are not necessarily limited to):

- Tender project staff costs;
- External expert advice;
- Legal costs (internal and external);
- IT Systems; and
- Ofgem overheads.

1.9. Set-up costs that arise for Tender Rounds to be held in the Enduring Regime will be recovered from the initial enduring Tender Rounds to the extent they are not recovered elsewhere.

### Recovery of tender costs

1.10. Tender costs include the costs which are incurred in relation to a Tender Exercise in respect of a specific Qualifying Project, and an appropriate proportion of costs incurred in relation to the Tender Round as a whole.

### Tender Exercise costs incurred in relation to a specific Qualifying Project

1.11. The direct costs (for example, external expert advice, advertising, bank charges) which are incurred in relation to a Tender Exercise for a specific Qualifying

---

<sup>6</sup> HM Treasury: *Managing Public Money*; [http://www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm)

Project will be allocated to a specific stage of the Tender Exercise. Staff costs will be apportioned to each stage based on a general time apportionment methodology.

1.12. A contingency amount will be included to provide for additional costs arising from uncertainty and unpredictable events such as tender re-runs and legal challenge to the process. The level of contingency is based upon the optimism bias indicated in the supplement to the Green Book guidance issued by HM Treasury<sup>7</sup>. Payments made by Bidders and Developers will be based on a forecast of these anticipated costs.

1.13. The forecast costs will be reviewed at least annually to reduce the risk of significant over/under recovery over time. This may result in a change to this Cost Recovery Methodology, as set out in paragraph 1.6. As described from paragraph 1.36, an aggregation exercise at the end of the Tender Round will ensure that costs for Bidders and Developers will reflect actual tender costs incurred and any excess payments received will be repaid in accordance with the Cost Recovery Methodology.

### **Costs incurred in relation to the Tender Round as a whole**

1.14. In respect of the Tender Round as a whole, there will be a recovery of Ofgem's overheads. The overhead calculation is a single percentage of direct costs to recover indirect costs, i.e. general overheads. General overheads cover Ofgem's administrative support functions such as accommodation, HR, IT, facilities management, finance etc.

1.15. The fixed overhead rate for each Tender Round will be reviewed at least annually to reduce the risk of significant over/under recovery over time. This may result in a change to this Cost Recovery Methodology, as set out in paragraph 1.6.

### **Cost estimates and assessments**

1.16. Under the Tender Regulations, Ofgem shall undertake an estimate and assessment of the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the Transmission Assets that will be transferred from the Developer to the Successful Bidder in respect of a Qualifying Project. This process will enable the Authority to determine the transfer value for these assets. The Tender Regulations also enable Ofgem to recover its costs of undertaking these cost assessment exercises<sup>8</sup>.

1.17. For the estimate of economic and efficient costs (the "Indicative Transfer Value"), the Developer will be liable for costs after Ofgem has undertaken the estimation<sup>9</sup>. This amount will be recoverable by the Developer as part of the final cost assessment.

---

<sup>7</sup> [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

<sup>8</sup> In accordance with regulations 4 and 5 of the Tender Regulations

<sup>9</sup> In accordance with regulation 5(1) of the Tender Regulations

1.18. For the assessment of economic and efficient costs (the "Final Transfer Value"), the Successful Bidder will become liable for costs either prior to the grant of an OFTO Licence to the Successful Bidder or as soon as reasonably practicable after the Tender Exercise has been held<sup>10</sup>. These costs will be recoverable via an adjustment to the terms of the project specific version of the OFTO Licence. An estimate of the costs payable by the Successful Bidder associated with determining the Final Transfer Value will be provided to the Successful Bidder during the PB Stage.

1.19. Costs include (but are not necessarily limited to):

- Tender project staff costs;
- Consultancy costs;
- Legal costs (internal and external); and
- Ofgem overheads.

#### **VAT**

1.20. Ofgem is not required to charge VAT on the amounts to be recovered. Running the Tender Round is a statutory service and therefore outside the scope of VAT.

### **Payments and Security**

1.21. As set out above, Ofgem may require Bidders and Developers to pay for the costs that Ofgem incurs in relation to the Tender Round and, in the case of Developers, provide Security in respect of any potential liability the Developer may have.

1.22. The payment and Security details for Tender Round 3 are set out in Schedule 1.

### **Cost Consequences of Withdrawal, Cancellation and Disqualification**

1.23. The Tender Regulations set out the cost consequences of:

- Withdrawal by a Bidder from a Tender Exercise;
- Cancellation of a Qualifying Project from a Tender Round; and
- Disqualification of a Developer or Bidder from a Tender Exercise.

---

<sup>10</sup> In accordance with regulation 5(2) of the Tender Regulations



1.24. For further details on each of these events, please refer to regulations 22 to 26 and Schedules 7, 8 and 9 of the Tender Regulations.

1.25. The cost consequences of each event are described in more detail below. In summary, they ensure that Ofgem will be able to recover its costs where an event has occurred through no fault of its own.

### **Withdrawal**

1.26. If a Bidder withdraws from a Tender Exercise, any payment (including any interest which it may have accrued but excluding any non-refundable payments) which that Bidder has paid to Ofgem in relation to the Tender Exercise will only be repaid to the Bidder where the aggregate of the payments received from the Bidder exceeds the costs incurred.

1.27. If a Developer withdraws from a Tender Exercise for any reason, Ofgem will treat this as an event of cancellation.

### **Cancellation**

1.28. The Tender Regulations set out the events where Ofgem may determine to cancel a Tender Exercise. They also allow Ofgem to re-run a Tender Exercise where appropriate. The Tender Regulations set out the circumstances which may lead to a re-run of a Tender Exercise separately from those which could only lead to cancellation. If a re-run is unsuccessful in appointing a Preferred Bidder, Reserve Bidder or Successful Bidder, Ofgem may consequently determine to cancel that Tender Exercise.

1.29. If a Tender Exercise is cancelled as a result of an event related to a Bidder set out in paragraphs 1(c),(d),(e),(f),(g),(h), (i), (j),(k),(l) or (m) of Schedule 7 or paragraph 1(a) of Schedule 8 of the Tender Regulations then:

- the Developer will be repaid (in whole or in part dependent on the costs incurred up until the stage at which the Tender Exercise is cancelled) the payment made to Ofgem under regulation 9(a) of the Tender Regulations (including any interest which that payment may have accrued) and Ofgem shall release the Security provided by the Developer under regulation 9(b) of the Tender Regulations; and
- the Bidder(s) will not be entitled to be repaid (in whole or in part) any payment which it has made to Ofgem in relation to that Tender Exercise (including any interest which those payments may have accrued).

1.30. Where a Developer fails to make a payment or provide Security, as required in accordance with the Tender Regulations and as calculated in accordance with this Cost Recovery Methodology (unless that failure has been remedied within the period specified by Ofgem in accordance with the Tender Regulations), Ofgem may cancel that Qualifying Project from that Tender Exercise.

1.31. If a Tender Exercise is cancelled as a result of an event related to a Developer, set out in paragraphs 1(a) or (b) of Schedule 7 or paragraphs 1(b),(c),(d),(e),(f),(g),(h) or (i) of Schedule 8 of the Tender Regulations then:

- the Developer will not be entitled to be repaid (in whole or in part) any payment made to Ofgem (including any interest which those amounts may have accrued) and Ofgem may decide whether to call upon the Security provided by the Developer; and
- the relevant Bidder(s) will be repaid (in whole or in part dependent on the costs incurred up until the stage at which the Tender Exercise is cancelled) any amounts (including any interest those amounts may have accrued) paid to Ofgem.

### **Disqualification**

1.32. Ofgem may decide to disqualify a Developer or Bidder from a Tender Exercise in the event that any of the events in Schedule 9 of the Tender Regulations are occurring.

1.33. Where a Bidder fails to make any payment, as required in accordance with the Tender Regulations and as calculated in accordance with this Cost Recovery Methodology, Ofgem may disqualify that Bidder from that Tender Exercise (unless that failure has been remedied within a period not exceeding ten days as specified by Ofgem in accordance with the Tender Regulations<sup>11</sup>).

1.34. If a Bidder is disqualified, it will not be entitled to be repaid (in whole or in part) any amount which it has paid to Ofgem in relation to the Tender Exercise (including any interest which those amounts may have accrued).

1.35. If a Developer is disqualified, it will not be entitled to be repaid (in whole or in part) any payment made to Ofgem (including any interest which those amounts may have accrued). Ofgem may decide whether to call upon the Security provided by the Developer, dependent on the stage of the Tender Exercise that the Developer is disqualified and the costs incurred up until that point.


### **Aggregation**

1.36. In accordance with regulations 29(5) and (6) of the Tender Regulations, Ofgem is required to undertake an aggregation exercise as soon as reasonably practicable after a Tender Round is finished, in order to identify whether the Authority's total tender costs have been exceeded. In this case, Ofgem must repay any excess to the relevant party.

1.37. Ofgem will undertake an aggregation of:

---

<sup>11</sup> In accordance with regulation 30(4) and paragraph 3(a) of Schedule 9 of the Tender Regulations.



## Offshore Electricity Transmission: Cost Recovery Methodology for Tender Round 3

- Payments made by the Developer and Bidders which have not been repaid in the event of withdrawal, cancellation or disqualification; and
- Any Security forfeited by the Developer in the event of cancellation (including withdrawal of a Qualifying Project from a Tender Round) or disqualification.

1.38. It is not anticipated that there will be any refund of the payments in respect of the cost estimates and assessments described from paragraphs 1.16 above, as those payments will be invoiced after the actual costs are known.

1.39. Where the aggregation exercise reveals that the total amount of payments made and Security provided have exceeded Ofgem's total tender costs, Ofgem shall:

- Repay (in whole or in part) the relevant proportion of any excess payment to the relevant Developer or Bidder (including any interest which those amounts may have accrued); and
- Release (in whole or in part) any excess drawn down Security to the Developer (including any interest where the Security provided is a cash deposit).

1.40. The aggregation exercise will be audited by Ofgem's outsourced internal audit service provider as soon as practicable after each Tender Round.

### Interest

1.41. The Electricity Act confirms<sup>12</sup> that any repayment is to include an amount representing interest accrued on the whole or part of the payment.

1.42. Where the Security is to be returned to the Developer, any interest accrued in a deposit account will be returned together with the principal sum.

1.43. In terms of Ofgem's own bank account, a PGO interest bearing bank account will be opened. Monies will be drawn down from deposit accounts and paid into the PGO account as they fall due. The interest will be taken into account during the aggregation exercise.

1.44. The amount of interest accruing from the PGO account will be calculated with reference to the following:

- PGO interest rate(s);
- Amount(s) held; and
- Length of time in account.

1.45. A typical PGO interest rate calculation could be as follows:

---

<sup>12</sup> Section 6D (1)(e)(ii) and (iii) of the Electricity Act 1989.

Rate 0.3% (example base rate 0.5% less 0.2%) @ refundable amount  
£1,000,000 held for 12 months = £3,000.

### **Additional payments**

1.46. In accordance with the Tender Regulations, additional payments may be payable, to cover direct costs and overheads associated with the relevant event, in the following circumstances:

- Enquiries to the Authority – as described in regulation 31 of the Tender Regulations; and
- Changes to Bidder Groups – as described in regulation 32 of the Tender Regulations.

### **Financial governance**

1.47. The procedures for administering the Tender Round will be subject to review by Ofgem’s internal audit function, the Authority Committee for Offshore Electricity Transmission and, more generally, by the Audit Committee. The National Audit Office is the statutory external auditor of Ofgem and may also wish to review the procedures for administering the Tender Round. As well as providing an opinion on financial statements, the National Audit Office can also examine and report to Parliament on the economy, efficiency and effectiveness of any public spending.

## 2. Schedule 1: Payments and Security

---

### Developer's payment and Security

2.1. Each Developer will be required, before a Tender Exercise is commenced for its Qualifying Project to:

- Make a payment to Ofgem of £50,000; and
- Provide Ofgem with Security in the form of a letter of credit or a cash deposit for an amount calculated in accordance with paragraph 2.10 below.

2.2. Schedule 2 sets out Ofgem's standard form letter of credit and form of demand Ofgem would use if it needed to call on the Security. The Security will be returned to the Developer at the end of the Tender Round where there is no reason for the Developer to forfeit it.

2.3. Developer payments must be made by the person who made the connection request for the purposes of which the Tender Exercise has been, is being or is to be held (i.e. a person within Section 6D(2)(a) of the Electricity Act) whether or not that person is a part of the Developer Group<sup>13</sup>.

### Bidders' payments

2.4. Each Bidder is responsible for its own costs of developing and submitting its Submission(s) during a Tender Exercise. In addition, each Bidder, Preferred Bidder and Successful Bidder will be required to make prescribed payments to Ofgem at the PQ Stage, the PB Stage and the SB Stage (based on a fixed fee and a potential variable component) respectively.

2.5. The timing (and other details) of each of the above payments is in accordance with the charging schedule detailed in paragraph 2.9 below:

- each Bidder will be required to pay Ofgem when it submits its PQ Submission<sup>14</sup>;
- once it has been confirmed as Preferred Bidder for the relevant Qualifying Project, a Preferred Bidder will be required to make a payment to Ofgem; and
- the Successful Bidder will be required to make a payment to Ofgem, based on fixed fee and a potential variable component, on the grant of an OFTO Licence.

---

<sup>13</sup> In accordance with paragraph 29(3) of the Tender Regulations.

<sup>14</sup> The Tender Regulations allow Ofgem to determine not to run a QTT Stage for a particular Tender Exercise where appropriate. In such a situation, we would instead run a more thorough PQ Stage to ensure it is rigorous enough to shortlist bidders to an appropriate number for the ITT Stage. This more thorough PQ Stage is still regarded as the PQ Stage for the purposes of this Cost Recovery Methodology.

## Payment Details

2.6. Deposits made by Developers in respect of cash Security are required to be paid into the following dedicated Ofgem deposit account:

Bank: Lloyds TSB

Account Name: Gas and Electricity Markets Authority Offshore Tender  
Account Number: 00928001  
Sort Code: 30 00 03

2.7. Amounts received in respect of cash security will be held on deposit until such time as they are repayable to the Developer or are drawn down from the deposit account in the event that the Developer forfeits the security amount.

2.8. Payments in respect of fees should be advised on the invoice but otherwise are required to be paid into the following Ofgem account:

Account Name: GBS re Ofgem Offshore Tender  
Account Number: 12316129  
Sort Code: 08-33-00  
Swift Code: CITIGB22  
IBAN: GB12CITI08330012316129

## Charging Schedule

2.9. The table below sets out the fees and Security required during the Tender Exercise:

Process Stage	Participant		
	Developer	Bidder or Qualifying Bidder	Successful Bidder
Developer Security	Reflective of the estimated tender costs for each Qualifying Project	N/A	N/A
Developer payment	£50,000	N/A	N/A
PQ Stage payment (where QTT is to be held)	N/A	£5,000	N/A
PQ Stage payment (where QTT is not to be held)	N/A	£5,000	N/A
QTT Stage payment	N/A	N/A	N/A
ITT Stage payment	N/A	N/A	N/A
Preferred Bidder payment	N/A	£250,000	N/A
Successful Bidder payment	N/A	N/A	£2,400,000
Payment for cost estimate and cost	Circa £50,000	N/A	Circa £100,000

assessment costs <sup>1</sup>			
<u>Table notes</u>			
1 This is an indication only of the costs associated with the cost estimate process and cost assessment process for the Developer and Successful Bidder respectively. The payments will be determined on a project specific basis and invoiced after the actual costs are known.			

### **Developer Security**

2.10. It is intended that the amount of the Developer Security due will be equal to the expected costs (and therefore the expected income) of running the tender for the project in question.

2.11. Ofgem will directly inform Developers of the required level of Security.

### **Successful Bidder Payment**

2.12. The amount each Successful Bidder must pay at Licence Grant will consist of two components:


- a base fee of £2,400,000; and
- a variable fee to reflect additional costs that Ofgem may bear in relation to a particular Qualifying Project in certain circumstances prescribed below. If no such circumstances exist this fee is zero.

2.13. The base fee of £2,400,000 does not scale with asset value as has been the case in previous Tender Rounds. This is because for TR3 there will be just two projects which are expected to be of comparable cost. If those projects were to fall different sides of one of the thresholds in the sliding scale then the relative cost burden for those projects may be inappropriately different. Hence the base fee is fixed independent of transfer value.

#### *Variable Fee*

2.14. If one or more of the following events occur in relation to a particular Qualifying Project, Ofgem may need to increase the amount charged as the Successful Bidder payment for that project to reflect the incremental tender costs incurred by Ofgem as a result of the event:

- the Tender Exercise for the Qualifying Project is re-run from the beginning or a particular stage;
- a BAFO Stage is held in respect of the Qualifying Project;
- any unforeseen circumstances arise in relation to the Tender Exercise, or a particular stage of the Tender Exercise, for the Qualifying Project which result in increased tender costs. For example this may arise as a result of a delay to the date for completion of construction of the Transmission Assets or a delay to the resolution of the PB Matters.



Offshore Electricity Transmission:  
Cost Recovery Methodology for Tender Round 3

2.15. Ofgem will indicate the estimated level of the payment required from the Successful Bidder at the PB Stage, which will include the base fee and any variable fee anticipated at that time. The Successful Bidder payment will be confirmed once the Successful Bidder is appointed prior to the grant of the OFTO Licence.



## 3. Schedule 2: Form of Letter of Credit and Form of Demand

---

### Form of Letter of Credit

To:  
Gas and Electricity Markets Authority  
9 Millbank  
London  
SW1P 3GE

(the "**Beneficiary**")

[Date]

#### **Irrevocable Standby Letter of Credit no.[ ]**

At the request of [ ], [Issuing bank] (the "**Issuing Bank**") issues this irrevocable standby letter of credit ("**Letter of Credit**") in your favour on the following terms and conditions:

#### **Definitions**

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit;

"**Expiry Date**" means [ ];

"**Total L/C Amount**" means [ ];

#### **Issuing Bank's agreement**

1.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand may not be given after the Expiry Date. A Demand must be received by the Issuing Bank by [ ] p.m. (London time) on the Expiry Date.

1.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.

1.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

### **Expiry**

1.4 The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

1.5 Unless previously released under paragraph 1.4 above, on [ ] p.m. (London time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

1.6 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

### **Payments**

1.7 All payments under this Letter of Credit shall be made in pounds sterling and for value on the due date to the account of the Beneficiary specified in the Demand.

### **Delivery of Demand**

1.8 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter or fax and must be received in legible form by the Issuing Bank at its address and by the particular department or officer (if any) as shown in the Form of Demand.

### **Assignment**

1.9 The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

### **ISP 98**

1.10 Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

### **Governing Law**

1.11 This Letter of Credit and any non-contractual obligations arising out of or in connection with it are governed by English law.

### **Jurisdiction**

1.12 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully,  
[Issuing Bank]

By:



## Form of Demand

To: [ISSUING BANK]  
[Date]

Dear Sirs

**Standby Letter of Credit reference [ ] issued in favour of the Gas and Electricity Markets Authority (the "Letter of Credit")**

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

We certify that the Authority has determined that the sum of £[ ] shall be forfeited from this security [pursuant to The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013/any successor regulations]. We therefore demand payment of the sum of £[ ].

Payment should be made to the following account:

Name: [ ]

Account Number: [ ]

Bank: [ ]

The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory)

(Authorised Signatory)

For

Gas and Electricity Markets Authority

## Appendix 1 - Glossary

---

### **A**

#### Authority

The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

### **B**

#### BAFO Submission

A selected Qualifying Bidder's response to the BAFO document, which is the document delivered to each Qualifying Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO Stage.

#### Best and Final Offer (BAFO) Stage

A stage of a Tender Exercise which the Authority may decide to run after the ITT Stage in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project. This stage starts from the distribution by Ofgem of the BAFO Document to selected Qualifying Bidders, including BAFO preparation, Submission and evaluation, and ending when a Preferred Bidder is selected and notified.

#### Bidder

Any person or Bidder Group that makes a PQ Submission, a Qualifying Bidder, a Preferred Bidder or a Successful Bidder (as applicable).

#### Bidder Group

Two or more persons acting together as a consortium for the purposes of any PQ, QTT, ITT or BAFO Submission to Ofgem in accordance with the Tender Regulations.

### **C**

#### Cost Recovery Methodology (CRM)

This methodology for calculating and recovering the Authority's tender costs in relation to a particular tender round published by the Authority in accordance with regulation 11(4) of the Tender Regulations.

### **D**

#### Developer

Section 6D(2)(a) of the Electricity Act 1989 defines such person as 'the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held'. In practice, such person is also the entity responsible for the construction of the generation assets and, under Generator Build, the transmission assets. Under Generator Build, this is the person who requests that Ofgem commences a Tender Exercise in respect of a proposed project.

#### Developer Group

The Tender regulations define a 'developer group' as two or more persons acting together for the purpose of developing a Qualifying Project.

## **E**

### Electricity Act

The Electricity Act 1989 as amended from time to time.

### Enduring Regime

The regulatory regime for offshore transmission for any project qualifying for a Tender Exercise after 31 March 2012.

## **F**

### Final Transfer Value

The final value determined by Ofgem, using its assessment of the economic and efficient costs that ought to have been incurred in connection with the development and construction of the relevant transmission assets.

## **G**

### Generator Build

A model for the construction of offshore transmission assets. Under the generator build option, the Developer carries out the preliminary works, procurement and construction of the transmission assets. The OFTO operates, maintains and decommissions the transmission assets.

## **I**

### Indicative Transfer Value

Ofgem's estimate of the economic and efficient costs which ought to be incurred in connection with:

- (a) for a Generator Build Tender Exercise, the development and construction of the relevant transmission assets; or
- (b) for an OFTO Build Tender Exercise, obtaining the relevant Preliminary Works.

### Invitation to Tender (ITT) Stage

The stage of a Tender Exercise during which the Authority may determine which Qualifying Bidder becomes the Preferred Bidder or whether to hold a BAFO stage. This stage starts from the distribution of the ITT document to Qualifying Bidders by Ofgem, and includes the preparation, submission and evaluation of ITT Submissions.

### ITT Submission

A Qualifying Bidder's response to the ITT document, which is the document prepared and issued by Ofgem to each Qualifying Bidder invited to make an ITT Submission, and which sets out the rules and requirements of the ITT Stage.

## **L**

### Licence Grant

Following its determination to grant an OFTO Licence to the Successful Bidder, the Authority confirms such determination in accordance with regulation 28(6) of the 2013 Tender Regulations and grants such OFTO Licence to the Successful Bidder pursuant to section 6(1)(b) of the Electricity Act 1989.

## **O**

### Offshore Transmission Licence (OFTO Licence)

The licence awarded under section 6(1)(b) of the Electricity Act 1989 following a Tender Exercise authorising an OFTO to participate in the transmission of electricity in respect of the relevant Offshore Transmission System. The licence sets out an OFTO's rights and obligations as the offshore transmission asset owner and operator.

### Offshore Transmission Owner (OFTO)

The holder of an OFTO Licence.

### Offshore Transmission System

A transmission system made up of Transmission Assets that is used for purposes connected with transmission of electricity in offshore waters, where offshore waters 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
- (c) waters within an area under section 84(4) of the Energy Act 2004.

### Ofgem

Office of Gas and Electricity Markets.

## P

### PB Matters

The matters to be resolved by the Preferred Bidder to the Authority's satisfaction as specified in regulation 20(4)(a) or (b) of the Tender Regulations, as the case may be, before that Preferred Bidder becomes the Successful Bidder in accordance with regulation 27(a) of the Tender Regulations.

### PB Stage

The stage of a Tender Exercise during which the Preferred Bidder has to resolve certain matters in order that Ofgem may grant the OFTO Licence. This stage starts at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date Ofgem determines that the Preferred Bidder has become the Successful Bidder and publishes a notice to that effect in accordance with regulation 27(2) of the Tender Regulations.

### PGO

Office of the Paymaster General.

### PQ Submission

A bidder's response to the PQ document, which is 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.

### Preferred Bidder (PB)

In relation to a Qualifying Project, the Qualifying Bidder determined by Ofgem following its evaluation of the submissions received, to which Ofgem intends to grant

the OFTO Licence subject to the satisfaction of the conditions specified by Ofgem in accordance with the Tender Regulations in force at that time.

#### Pre-Qualification (PQ) Stage

The stage of a Tender Exercise 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 been invited to participate in the QTT Stage.

### Q

#### QTT Submission

A Qualifying Bidder's response to the QTT document, which is the document 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.

#### Qualification to Tender (QTT) Stage

The stage of a Tender Exercise starting from the distribution by Ofgem of the QTT Document to Qualifying Bidders, including the preparation, submission and evaluation of the QTT Submissions and ending once Ofgem has published the shortlist of Qualifying Bidders who are invited to participate in the ITT Stage.

#### Qualifying Bidder

A Bidder or Bidder Group in a Tender Exercise invited to make a QTT Submission, an ITT Submission, or a BAFO Submission (as applicable).

#### Qualifying Project

An offshore transmission project in respect of which Ofgem determines that the Developer has satisfied the requirements described in:

- (a) for Generator Build projects, paragraph 2 of Schedule 1 to the Tender Regulations, or will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem; or
- (b) for OFTO Build projects, paragraph 1 of Schedule 1 to the Tender Regulations.

### S

#### SB Stage

The period starting at the date of Ofgem's notice to a Preferred Bidder that it has become the Successful Bidder and ending at the date when the Successful Bidder is granted an OFTO Licence in relation to a particular Qualifying Project.

#### Security

Includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.

#### Submission(s)

A PQ Submission, a QTT Submission, an ITT Submission or a BAFO Submission.

### Successful Bidder (SB)

The Preferred Bidder in a Tender Exercise who has resolved the PB Matters to the Authority's satisfaction, such that the Authority intends to grant to it an OFTO Licence.

## T

### Tender Exercise

The competitive process run by Ofgem in accordance with the Tender Regulations in order to identify a Successful Bidder to whom a particular OFTO Licence is to be granted.

### Tender Regulations

The Electricity (Competitive Tenders for Offshore Transmission Licences) 2013.

### Tender Round

One or more Tender Exercises being held or to be held by Ofgem with a view to determining the Successful Bidders to whom OFTO Licences are to be granted for each Qualifying Project subject to such Tender Exercises.

### Tender Round 3 (TR3)

The first competitive Tender Round for the grant of OFTO Licences for Generator Build projects under the Enduring Regime.

### Transmission Assets

Are defined in paragraph 1(3)(a) of Schedule 2A of the Electricity Act 1989 as 'the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system'. The transmission system is expected to include subsea export cables, onshore export cables, onshore and offshore substations, and any other assets, consents, property arrangements or permits required by an incoming OFTO in order for it to fulfil its obligations as a transmission operator.