

Offshore Electricity Transmission: Tender Rules for Tender Round 4 (TR4)

Tender Document

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Overview:

We are running a competitive tender exercise to appoint an Offshore Transmission Owner (OFTO) for the Burbo Bank Extension project. This is the only project in Tender Round 4 (TR4).

This document sets out the Tender Rules for TR4. It includes the rules applying to developers and bidders and covers areas such as the exchange of information, key requirements, and the consequences of failing to comply with the Tender Rules.

Context

Great Britain continues to be a global leader in the development of offshore wind energy. Since 2009, we have run competitive tenders to select and licence Offshore Transmission Owners (OFTOs) to operate the assets that connect offshore wind farms to the onshore network.

From the outset the offshore transmission regime has encouraged innovation and attracted new sources of technical expertise and finance, whilst ensuring that grid connections are delivered efficiently and effectively. In 2014 we published a study by CEPA/BDO who found that using tendering saved consumers between £200m and £400m in our first tender round. We have also recently published a further study by CEPA¹ which evaluated the benefits of competition delivered by tender rounds two and three. This has indicated further savings to consumers of between £428m and £749m.

We have completed 14 OFTO tenders to date, and another project is currently at the preferred bidder stage. This has resulted in total OFTO investment of approximately £2.8bn in offshore transmission networks. Across Tender Round 4 (TR4) and Tender Round 5 (TR5) – which we expect to commence later this year – we anticipate another six OFTOs will be appointed, with a total value in excess of £2bn.

These Tender Rules are published in line with the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015².

¹ <https://www.ofgem.gov.uk/publications-and-updates/evaluation-of-to-tender-round-2-and-3-benefits>

² The Tender Regulations revoke, subject to Regulation 2, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013.

Associated documents

These Tender Rules should be read in conjunction with the following documents:

- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015³
- Tender stage specific documents, which Ofgem will publish in advance of the start of each of the following stages:
 - Pre-Qualification Stage;
 - Qualification to Tender Stage (if applicable);
 - Invitation to Tender Stage; and
 - Best and Final Offer Stage (if applicable).

Where any of the above documents are updated or amended subsequent to the publication of these Tender Rules, those updated or amended documents shall replace the above documents.

³ <http://www.legislation.gov.uk/uksi/2015/1555/contents/made>

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Executive Summary

The Tender Regulations set out the tender process framework for the granting of an OFTO Licence, including how Ofgem will run a competitive tender process for Generator Build and OFTO Build projects.

This document, in conjunction with the Tender Regulations, sets out the rules with which Developers and Bidders must comply when participating in a Tender Round.

This document includes:

- the rules applying to involvement of Developers and Bidders in a Tender Round;
- the rules applying to participation and exchange of information during a Tender Round;
- the rules applying to each stage of a Tender Round, including the purpose of each stage, the key activities and outcomes and the stage specific requirements of Developers and Bidders;
- an overview of the tender process, including the legislative and regulatory framework and key stages; consequences of failure to comply with these Tender Rules, including where certain events of re-run, cancellation and disqualification apply; and
- in Appendix 1, the disclaimers and notices which apply to these Tender Rules.

In participating in a Tender Round, Developers and Bidders must comply with the Tender Regulations and these Tender Rules. A material breach of the Tender Regulations by a Developer or Bidder would result in disqualification from a Tender Exercise or Tender Round.

1. Introduction to the Tender Process

Chapter Summary

This chapter sets out an overview of the legislative and regulatory framework and the tender process for TR4.

- 1.1 **In reading these Tender Rules, Developers and Bidders should be aware of the important disclaimers and notices in Appendix 1. Definitions of terms used in these Tender Rules are detailed in the Glossary in Appendix 3.**

Regulatory and legislative framework

- 1.2 The key objectives of the competitive tender process are:
- the delivery of fit for purpose transmission infrastructure to connect offshore generation;
 - the provision of certainty and best value to consumers through the competitive process; and
 - attracting new entrants to the sector.

The Electricity Act

- 1.3 Under Section 6(1)(b) of the Electricity Act, the Authority may grant a licence authorising a person to participate in the transmission of electricity. This extends to include offshore transmission. Ofgem also has an ongoing role to ensure compliance of licensees with the provisions of the OFTO Licence.
- 1.4 Section 6C of the Electricity Act empowers the Authority to make regulations which enable it to determine on a competitive basis the entity to whom an OFTO Licence is to be granted. Ofgem will have regard to its principal objectives and general duties when running the tender process.
- 1.5 Schedule 2A of the Electricity Act (inserted by section 44(4) and Schedule 2 of the Energy Act 2008) entitles Ofgem to make a property transfer scheme and recover its costs for running a competitive tender process. Please refer to paragraph 1.31 for further details on the Schedule 2A Property Transfer Scheme.

The Tender Regulations

- 1.6 The Tender Regulations set out the process for competitive tenders that apply to the grant of offshore transmission licences.

- 1.7 The key changes to the tender process introduced under the Tender Regulations with regards to a generator build tender exercise, relative to the process under the 2013 Tender Regulations, are set out below:
- (a) The term “Relevant qualifying bidder” has been described;
 - (b) The Authority shall recover its costs in accordance with the Tender Regulations, as opposed to in accordance with a cost recovery methodology published by the Authority; and
 - (c) Particular obligations on the Developer in respect of an OFTO Build qualifying project effective from the PB Stage to facilitate the timely conclusion of a Tender Exercise.

The Tender Rules

- 1.8 The Tender Regulations set out the process and rules with which Developers and Bidders must comply when participating in a Tender Round for the grant of OFTO Licences. The Tender Rules set this out in further detail and describe certain matters which are dealt with in the Tender Regulations, however the Tender Rules are not a substitute for a proper understanding of the Tender Regulations. All Developers, Bidders and other interested parties are strongly encouraged to become thoroughly familiar with the Tender Regulations in addition to these Tender Rules.
- 1.9 Ofgem’s role in managing the competitive tender process is set out in the Tender Regulations and detailed further in these Tender Rules and includes:
- determining which projects (i.e. Transmission Assets) qualify for a Tender Round, and are therefore Qualifying Projects;
 - running competitive Tender Exercises for Qualifying Projects in order to determine Successful Bidders who will be granted OFTO Licences for each Qualifying Project; and
 - calculating the economic and efficient costs which ought to have been incurred in connection with developing and constructing the Transmission Assets for each Qualifying Project.
- 1.10 These Tender Rules apply specifically to Generator Build projects. In the event of an OFTO Build tender being requested, Ofgem will publish a separate set of tender rules.
- 1.11 The purpose of these Tender Rules is to set out further detail regarding the tender process, including the requirements, expectations and obligations of Developers and Bidders. The Tender Rules are not intended to create additional rules which are not provided for in the Tender Regulations.

Other guidance

- 1.12 In addition to the Tender Rules, the Tender Regulations also require Ofgem to publish rules particular to the EPQ, ITT and BAFO Stages, if applicable, of a Tender Exercise. Ofgem intends to publish the stage-specific rules in advance

of the start of each of these stages, if applicable, for each Tender Exercise in this Tender Round.

- 1.13 In the event of any conflict between a) these Tender Rules b) the Tender Regulations or c) any of the stage-specific documents, then the following order of precedence applies:
- 1 Tender Regulations
 - 2 Stage-specific documents
 - 3 Tender Rules.
- 1.14 Further information on the Tender Regulations and the Tender Rules are available on Ofgem's website⁴.

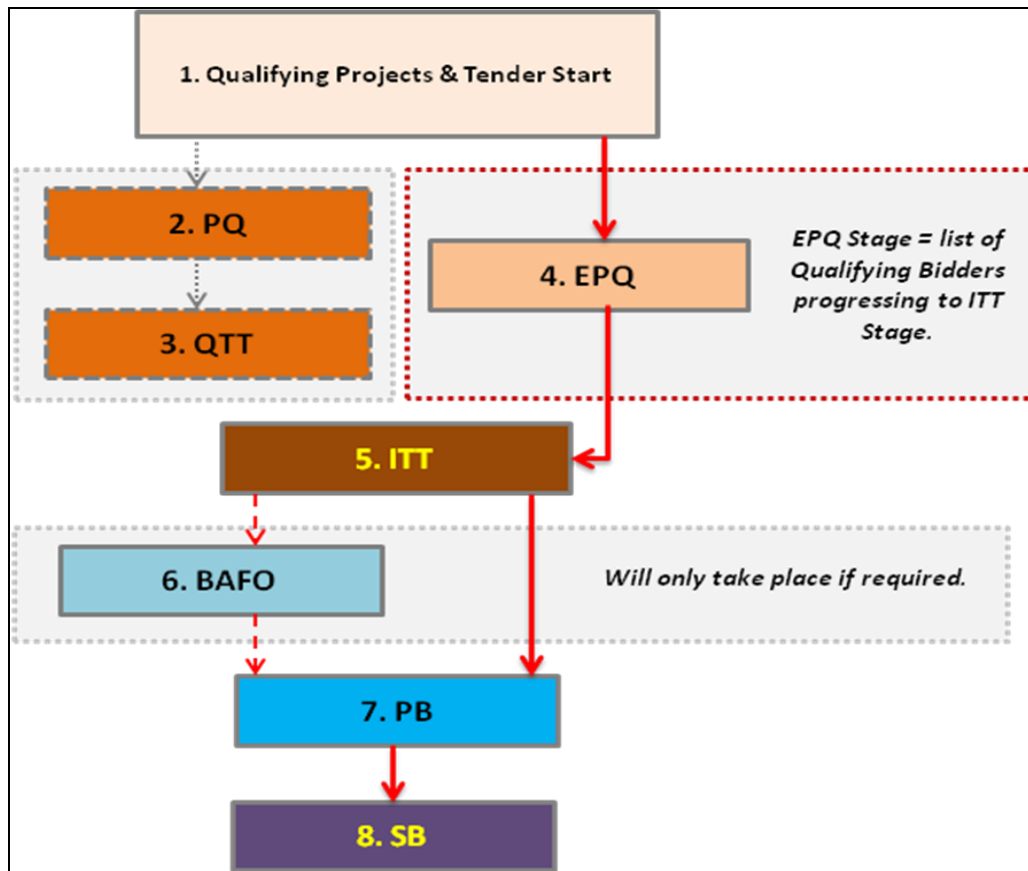
Overview of the tender process

Key stages of a Tender Exercise

- 1.15 The Tender Round runs from the date specified in the notice issued by the Authority under regulation 12(1) of the Tender Regulations confirming its intention to commence a Tender Exercise (as may be amended pursuant to regulation 12 (2) or 12(3) of the Tender Regulations) through to grant of a OFTO Licence.
- 1.16 The Tender Round will include the following key stages:
- (a) Qualification of projects: Projects which do not qualify for this Tender Round will have the opportunity to be considered for subsequent Tender Rounds;
 - (b) Tender entry;
 - (c) Enhanced Pre-Qualification (EPQ) Stage;
 - (d) Invitation To Tender (ITT) Stage;
 - (e) Best And Final Offer (BAFO) Stage (if applicable);
 - (f) Preferred Bidder (PB) Stage; and
 - (g) Successful Bidder (SB) Stage.
- 1.17 Further details of each stage are set out in Sections 5 to 9 of these Tender Rules, while an outline of the process is detailed as per Figure 1.

⁴ <http://www.ofgem.gov.uk/Pages/OfgemHome.aspx>

Figure 1: Overview of Process for TR4



Variation of a Tender Exercise

- 1.18 Where regulation 34(2) applies, in that Ofgem determines it is impracticable for any documentation or notice to be delivered or action to be taken in accordance with the Tender Regulations by the time, date or manner specified, Ofgem may decide to extend a Tender Exercise and postpone any Submission date in the event of any such amendment.
- 1.19 Where the above paragraphs apply, Ofgem will seek to notify Developers and Bidders in a reasonable time period.

Cost Estimate/Assessment

- 1.20 The Tender Regulations provide for Ofgem to calculate, based on all relevant information available to it at the time, the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project.
- 1.21 Where the construction of the Transmission Assets has not reached the stage when those Transmission Assets are available for use for the transmission of electricity, this calculation will take the form of an estimate of the costs which ought to be incurred in connection with the development and construction of those Transmission Assets.

- 1.22 For the purposes of commencing a Tender Exercise for a Qualifying Project, Ofgem will consider the cost information that Developers have provided in respect of their Qualifying Projects. This is done in order to derive the Initial Transfer Value for inclusion in the EPQ Document released to Bidders at the EPQ Stage of the Tender Exercise. As part of our analysis of the Developers' cost information, we will raise any specific questions or concerns with the Developer. Use of this information at the EPQ Stage is not an endorsement by Ofgem of the basis on which the Developer derived their estimated costs or any assumptions or methodology that the Developer used in their calculations; it will simply be used for the purpose of commencing the Tender Exercise.
- 1.23 Once the EPQ Stage has commenced, Ofgem may request further information from Developers to calculate, for each Qualifying Project, our estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets. This estimate is the Indicative Transfer Value which will be included in the ITT Document for the purposes of Bidders' ITT Submissions.
- 1.24 Ofgem may require further information, by a specified date, for the purposes of enabling Bidders to take into account the most accurate estimate of costs in respect of a Qualifying Project in order to meet the requirements of a particular stage. Where the Developer provides information after the specified date, Ofgem may decide not to take that information into account in undertaking the estimate and subsequent assessment.
- 1.25 The Developer must pay Ofgem's costs associated with the estimate of costs, including any updates to it, as set out in the Tender Regulations.
- 1.26 Where the construction of the Transmission Assets has reached the stage that they are available for use for the transmission of electricity, Ofgem shall assess the costs which ought to have been incurred in connection with their development and construction. The assessment of costs shall be used by Ofgem to determine the value of the Transmission Assets to be transferred to the Successful Bidder in respect of a Qualifying Project, namely the Final Transfer Value.
- 1.27 Ofgem intends to commence the process for the assessment of costs during the PB Stage of a Tender Exercise for a Qualifying Project.
- 1.28 It is expected that Ofgem's assessment of costs and determination of the Final Transfer Value for a Qualifying Project will be concluded prior to the grant of an OFTO Licence to a Successful Bidder. If, under exceptional circumstances, this is not possible, Ofgem may adjust the Tender Revenue Stream to reflect the difference (if any) between the Indicative Transfer Value and the Final Transfer Value following the completion of the Authority's final assessment of costs (where this occurs after the licence is granted).
- 1.29 The Successful Bidder must pay the costs associated with Ofgem's assessment of costs, as set out in the Tender Regulations.

Schedule 2A Property Transfer Scheme

- 1.30 The Energy Act 2008 inserted Schedule 2A to the Electricity Act to empower Ofgem to make a property transfer scheme for Generator Build Qualifying Projects. The purpose of a Schedule 2A Property Transfer Scheme is to effect the transfer of property, rights and liabilities required by an OFTO to perform its functions, for example in situations where commercial agreement has not been reached, upon application by a Bidder or Developer .
- 1.31 A Preferred Bidder or Successful Bidder, as applicable and/or Developer may apply to Ofgem for a property transfer scheme pursuant to paragraph 3 of Schedule 2A to the Electricity Act. If the application were successful, Ofgem would make a scheme to transfer property rights and liabilities from the Developer to the Successful Bidder.
- 1.32 Ofgem would only expect these powers to be exercised as a last resort, with parties exhausting all possibilities to negotiate commercial arrangements before applying for a Schedule 2A property transfer scheme.
- 1.33 Pursuant to paragraph 5(2) of Schedule 2A of the Electricity Act no application for a property transfer scheme can be made after the end of a transitional period, meaning on or after 19 May 2025⁵.
- 1.34 The process, timing, terms and other matters in relation to property transfer schemes are set out fully in Schedule 2A to the Electricity Act.

Re-run, Cancellation and Disqualification from a Tender Exercise

- 1.35 The Tender Regulations specify certain events which may result in re-run, cancellation and disqualification from a Tender Exercise⁶.
- 1.36 These Tender Rules highlight some outcomes arising from such a re-run, cancellation and disqualification from a Tender Exercise. However, Developers and Bidders are strongly encouraged to become thoroughly familiar with the relevant sections of the Tender Regulations relating to re-run, cancellation and disqualification events.

Re-run

- 1.37 Where Ofgem is satisfied that any of the events of re-run as set out in Schedule 7 of the Tender Regulations are occurring or have occurred in respect of a Qualifying Project, the Tender Exercise may be re-run from the beginning of the Tender Exercise or from a particular stage.

⁵ Extended by the Electricity (Extension of Transitional Period for Property Schemes) Order 2013

⁶ Schedules 7, 8 and 9 of the Tender Rules respectively

- 1.38 Should Ofgem be unable to identify a Preferred Bidder, Reserve Bidder or Successful Bidder following a re-run, Ofgem may either;
- further re-run the Tender Exercise from the beginning or from a particular stage; or
 - cancel the Tender Exercise.

Cancellation

- 1.39 Where Ofgem is satisfied that any of the events of cancellation as set out at Schedule 8 of the Tender Regulations are occurring or have occurred in respect of a Qualifying Project, it may publish a notice cancelling that Tender Exercise from a Tender Round following a period to allow for representations. Where such notice is published, that Tender Exercise is finished.
- 1.40 Where Ofgem decides that the Tender Exercise for a Qualifying Project is finished, Ofgem may seek to appoint an OFTO through the OFTO of Last Resort mechanism referred to below.
- 1.41 The cost consequences of cancellation for Developers and Bidders are set out in the Tender Regulations.

Disqualification

- 1.42 Where Ofgem is satisfied that any of the events of disqualification as set out in Schedule 9 of the Tender Regulations are occurring or have occurred, and that the occurrence would materially affect the outcome of a Tender Exercise or a Tender Round, it may disqualify a Developer or Bidder from the Tender Exercise or Tender Round.
- 1.43 If a Bidder is disqualified, Ofgem will not consider any Submission from that Bidder for the purpose of determining the Successful Bidder for the relevant Qualifying Project to which that Tender Exercise or Tender Round relates.
- 1.44 The cost consequences of disqualification for Developers and Bidders are set out in the Tender Regulations.

OFTO of Last Resort

- 1.45 There may be instances, including following cancellation of a Tender Exercise, where Ofgem would appoint an OFTO of Last Resort. Developers and Bidders should familiarise themselves with Ofgem's OFTO of Last Resort guidance⁷.

⁷ <https://www.ofgem.gov.uk/publications-and-updates/guidance-offshore-transmission-owner-last-resort-mechanism>

2. Participation Rules

Chapter Summary

This chapter sets out the main involvement of Developers and Bidders in a Tender Round and the rules regarding:

- contact between Developers and Bidders,
- contact with Ofgem,
- Bidder Groups and changes to Bidder Groups,
- tender costs,
- withdrawal from a Tender Exercise, and
- the Third Package.

Developers

2.1 Under the Tender Regulations the main involvement of a Developer in the tender process is to:

- satisfy the Qualifying Project requirements and Tender Entry Conditions for its project – see Section 5 for further details;
- provide necessary information to enable Ofgem to estimate and then assess the costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project – see Section 1 for further details;
- population of the data room and presentation of key information (Draft Transfer Agreement and Information Memorandum) to facilitate effective information provision;
- make payments and provide Security to Ofgem; and
- use its reasonable endeavours to enable the Preferred Bidder / Successful Bidder to resolve all relevant matters (to the extent that resolution of those matters depends on the actions of the Developer) to enable the transfer of Transmission Assets for that Qualifying Project, including providing relevant information - see Sections 8 and 9 for further details.

2.2 Developers should organise themselves internally in preparation for the Tender Exercise, for example, by ensuring that they obtain board approvals, meet any deadlines set out by Ofgem in relation to the above activities and comply with the requirements of each stage of a Tender Exercise.

2.3 Developers should note that the following are included as events of disqualification under Schedule 9 of the Tender Regulations:

- offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem or a Bidder (or any related party of these) in relation to any actions or omissions;
- engaging in any anti-competitive behaviour with any Developer or Bidder;

- contacting a Bidder or Qualifying Bidder outside the requirements of the Tender Rules or the Tender Regulations;
- a breach of any warranty or undertaking provided to Ofgem in accordance with the Tender Regulations, unless remedied within a specified period as notified to the Developer by Ofgem;
- failure to provide information to Ofgem, as requested under regulation 4(3) or 6(5) of the Tender Regulations; and
- failure to comply with the Developer obligations specified in regulation 22 of the Tender Regulations, as outlined in Section 11.

2.4 This list is not exhaustive and Developers are therefore strongly encouraged to become familiar with all the events of disqualification and cancellation detailed in the Tender Regulations.

Bidders

2.5 Under the Tender Regulations the main involvement of a Bidder in the tender process is to:

- make submissions to Ofgem where and when required at each stage of a Tender Exercise – see Sections 6 to 9 for further details;
- respond to clarification requests from Ofgem regarding Submissions within a reasonable period – see Sections 6 to 9 for further details;
- make payments to Ofgem at each relevant stage of a Tender Exercise, as advised in the Tender Regulations – see Sections 6 to 9 for further details; and
- provide all relevant information to, and resolve all relevant matters with the Developer and any other relevant parties for the transfer of Transmission Assets for a Qualifying Project for which they are the Preferred Bidder / Successful Bidder - see Sections 8 and 9 for further details.

2.6 Bidders should note that the following are included as events of disqualification under Schedule 9 of the Tender Regulations:

- a material breach of the Tender Rules;
- offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem, the NETSO, a Developer or another Bidder (or any related party of these) in relation to any actions or omissions;
- submission of any evidence that that is false or misleading;
- collusion between two or more Bidders in relation to their Submissions;
- engaging in any anti-competitive behaviour with any Developer or Bidder;
- contact by a Bidder with Ofgem outside the requirements of the Tender Rules, any stage specific rules, or the Tender Regulations; and

- contact by a Bidder with NETSO outside the requirements of the Tender Rules, any stage specific rules, or the Tender Regulations.
- 2.7 This list is not exhaustive and Bidders are therefore strongly encouraged to become familiar with all the events of disqualification and cancellation detailed in the Tender Regulations.

Bidder Groups

- 2.8 Bidders may be a single person or may wish to collaborate with other persons to form a Bidder Group.
- 2.9 Where a Bidder is acting on behalf of a Bidder Group, it must have express authority to act in this regard.
- 2.10 For TR4, Bidder Groups are expected to be finalised prior to the making of ITT Submissions.
- 2.11 If a Bidder Group is chosen as the Preferred Bidder for a Qualifying Project, Ofgem would expect a special purpose vehicle or similar to be established prior to the grant of the OFTO Licence. This is because Ofgem is required to identify the person to whom an OFTO Licence is to be granted.

Changes to a Bidder Group

- 2.12 Where a Bidder Group wishes to change its membership it must notify Ofgem in writing as soon as reasonably practicable. Any change to the membership of a Bidder Group will not be recognised until Ofgem has given its permission for the change.
- 2.13 Where a Bidder Group seeks to change its membership after the EPQ stage and before the ITT Stage, Ofgem will reassess whether the revised Bidder Group meets the criteria set out in the EPQ Document as part of its ITT Submission. Ofgem will permit that change provided that the new membership meets the selection criteria set out in the EPQ Document.
- 2.14 Where a Bidder Group seeks to change its membership after an ITT Questionnaire it may be permitted, provided that:
- Ofgem determines that the change would be fair and equitable to all Bidders in that particular Tender Exercise; and
 - the new membership meets the evaluation criteria, as set out in the EPQ Document the ITT Document or the BAFO Document.
- 2.15 Where a Bidder Group seeks to change its membership after its appointment as the Preferred Bidder, it may be permitted, provided that:
- Ofgem determines that the change would be fair and equitable to all Bidders who were invited to participate in the previous stage of the Tender Exercise;

- the new membership meets the evaluation criteria, as set out in the later of the ITT Document or BAFO Document; and
 - written confirmation is provided that the notifications required in the PB Matters remain resolved.
- 2.16 Ofgem may refuse permission to a change in a Bidder Group where that Bidder Group fails to demonstrate that it is able to fulfil the criteria which led to its inclusion at the previous stage of a Tender Exercise or where Ofgem determines that it would not be fair and equitable to other Bidders.
- 2.17 Bidders should note that any change to the membership of a Bidder Group that has not been approved by Ofgem may result in disqualification from a Tender Exercise, as detailed in the Tender Regulations.
- 2.18 Where Ofgem has permitted any change to the membership of a Bidder Group, it may give notice to the Bidder Group of the amount of any relevant payment payable to Ofgem as advised by the Tender Regulations.

Developer/Bidder Contact

- 2.19 Developers and Bidders should note that collusion or anti-competitive behaviour between a Developer and a Bidder, or between Bidders, is an event of disqualification under the Tender Regulations.
- 2.20 Bidders are expressly prohibited from contacting Developers, or vice versa, in relation to any aspect of the Tender Round, a Tender Exercise or any Qualifying Project. Additionally, a Bidder should not attempt to contact another Bidder in relation to any aspect of a Tender Exercise or a Qualifying Project.
- 2.21 Where, in advance of the PB Stage of a Tender Exercise, Ofgem decides to hold an event to which Developers and Bidders are both invited (for example to provide Developers with an opportunity to explain their commercial proposals on operations and maintenance and/or insurance to Bidders), Bidders and Developers may not discuss or raise questions in relation to aspects of the Qualifying Project or Tender Exercise other than those specified in the agenda / event papers.
- 2.22 Developers will be provided with the contact details of the Preferred Bidder for their Qualifying Project once the Preferred Bidder is appointed. Contact between the Developer and Preferred Bidder for a Qualifying Project is therefore permitted at that stage in order to finalise the commercial agreements for asset transfer. See Section 9 for further details.

Contact with Ofgem

- 2.23 If a Bidder wants to contact Ofgem in relation to any aspect of a Tender Exercise, prior to the PB Stage, it must do so via the Portal (see Section 4). A Bidder must not attempt to contact Ofgem or any of its Advisers in relation to any aspect of a Tender Exercise in any other way, unless Ofgem specifically instructs otherwise.

- 2.24 Ofgem may, at the start of each stage, issue a schedule of meetings which may include briefing events or workshops, to Bidders and/or Developers which they should attend. This schedule will set out the purpose and required attendees for each meeting.

Costs

- 2.25 Each Developer and 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 such Tender Exercise in accordance with the Tender Regulations.
- 2.26 Failure by a Developer to make a payment or provide Security as required by Ofgem is an event of cancellation under the Tender Regulations. Unless Ofgem has permitted that payment or Security to be made or provided within a further period notified by Ofgem, which will be no later than the tender commencement date.
- 2.27 Failure by a Bidder to pay any amount required by Ofgem pursuant to the Tender Regulations, unless that failure has been remedied within a period not exceeding ten days notified to the Bidder, is an event of disqualification under the Tender Regulations.
- 2.28 Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by any Developer or Bidder, including without limitation any unsuccessful Bidder, for any costs, expenses, damages or losses incurred in connection with a Tender Exercise.
- 2.29 The cost consequences for a Developer or Bidder of withdrawal or disqualification from a Tender Exercise or Tender Round, or cancellation of a Tender Exercise, are detailed in the Tender Regulations. Developers and Bidders are strongly encouraged to become thoroughly familiar with the relevant sections of both documents.
- 2.30 Any Developer payment required to be made to Ofgem in relation to a Tender Exercise in accordance with the Tender Regulations, must be made by a person within Section 6D(2)(a) of the Electricity Act. This means that where the Developer comprises a group of entities, the entity which must make the payment to Ofgem is that which holds the connection offer or the benefit of that connection offer, whether or not it is a part of the Developer Group.

Withdrawal from a Tender Exercise

- 2.31 The rights which Developers and Bidders have to withdraw from a Tender Exercise are set out in the Tender Regulations summarised below.

Developers

- 2.32 A Developer may withdraw its Qualifying Project from a Tender Exercise at any time by giving written notice to Ofgem. Under the Tender Regulations,

withdrawal by a Developer is an event of cancellation, and Ofgem may cancel the Tender Exercise for the relevant Qualifying Project.

Bidders

- 2.33 A Bidder who decides to withdraw from a Tender Exercise at any stage must give written notice to Ofgem as soon as possible after it has made the decision to withdraw.
- 2.34 Where a Bidder fails to make an ITT Submission or a BAFO Submission, as applicable, by the date and time specified by Ofgem, they shall be deemed to have withdrawn from the relevant Tender Exercise.
- 2.35 If a Bidder or Bidder withdraws from a Tender Exercise in respect of a particular Qualifying Project, it may only be re-admitted to the Tender Exercise for that Qualifying Project or another Qualifying Project if:
- it joins a Bidder Group which is an existing Bidder or Bidder; and
 - Ofgem consents to its addition to such Bidder Group.
- 2.36 If a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from a Tender Exercise it will not be re-admitted to the Tender Exercise for that Qualifying Project.

Third Package

- 2.37 The government has implemented the Third Package into domestic legislation through Third Package Regulations. The measures of the Third Energy Package aim to ensure that the benefits of a competitive energy market can be realised. A key requirement of the Third Energy Package is ownership unbundling, meaning the separation of transmission interests (ownership and operation of transmission systems) from generation, production and supply activities. The Third Package Regulations have amended the Electricity Act to include the requirement for electricity transmission licensees to be certified as complying with the full ownership unbundling requirements.
- 2.38 The Third Package Regulations designate the Authority as the body with the responsibility for administering the certification process. A person who holds a Transmission Licence and participates in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be given must ensure that they are certified by the Authority throughout that period. Offshore Transmission Licensees need to be certified by the Authority as complying with the full ownership unbundling requirements.
- 2.39 All Bidders are advised to make themselves aware of the requirement for certification and to review the Third Package Regulations. Further information on the procedure for processing applications for certification under the

ownership unbundling requirements can be found in the open letter dated 10 November 2011⁸ and the open letter dated March 2015⁹, issued by Ofgem.

- 2.40 It is important to note that any decisions the Authority takes in relation to this Tender Round are taken in its role as manager of the competitive tendering process pursuant to Section 6C of the Electricity Act and the Tender Regulations. Unless otherwise notified by Ofgem, any decision the Authority takes in relation to this Tender Round should not be taken as a decision, or any indication of what decision may be taken, on certification.
- 2.41 Ofgem is not able to advise Bidders as to the provisions of the Third Package Regulations and strongly recommends that Bidders seek appropriate independent legal advice in this respect. However, Ofgem would welcome engagement with Bidders in relation to applications for certification.

⁸ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=95&refer=Europe>

⁹ https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/certification_arrangements_in_great_britain_following_amendments_to_the_ownership_unbundling_requirements_of_the_gas_act_1986_and_the_electricity_act_1989_1.pdf

3. Information Exchange

Chapter Summary

This chapter sets out the types of information to be exchanged between Developers and Ofgem and between Bidders and Ofgem. It also sets out the rules and processes for exchanging this information and the systems used by Ofgem to facilitate the secure exchange of information.

Information provided by Developers and Bidders

- 3.1 Developers and Bidders are required to provide information to Ofgem during the Tender Round pursuant to the Tender Regulations. Developers and Bidders are reminded that it is an event of disqualification under the Tender Regulations to submit any information to Ofgem which is false or misleading. Where this is caused by an error or omission, Ofgem may accept the provision of further information correcting or rectifying such.
- 3.2 For Developers, the data that may be required includes, but is not limited to:
- information related to a proposed project or Qualifying Project for the purposes of satisfying the Qualifying Project requirements and Tender Entry Conditions;
 - information related to establishing a Data Room;
 - sufficient information to enable Ofgem to issue a PIM (if applicable) and IM;
 - responding to clarification requests from Ofgem;
 - assisting Ofgem during the evaluation process;
 - information in relation to Ofgem's estimate and assessment of costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project (see Section 1); and
 - provision of reports, as required by Ofgem, in connection with the development of relevant generating assets and the Qualifying Project.
- 3.3 For Bidders, the data that may be required includes, but is not limited to:
- information included in Submissions to Ofgem (including concerning the members and structure of their Bidder Group, where relevant); and
 - responding to clarification requests from Ofgem in relation to Submissions.
- 3.4 By participating in the Tender Round each Bidder and Developer shall be deemed to consent to the disclosure by Ofgem to its Advisers of any information given to Ofgem, either before or during the Tender Round by that Developer or Bidder.

- 3.5 Where Ofgem requires a Developer to provide further information, Ofgem shall specify the date by which such information is to be provided.

Tender Submissions

- 3.6 Ofgem will detail in the documentation made available to Bidders at the start of each stage of a Tender Exercise what information Bidders are required to submit, in what form/manner and by when.
- 3.7 Only one Submission is permitted per Bidder per Qualifying Project and all Submissions must be made via the Portal (see paragraph 3.29 and Appendix 2).
- 3.8 Bidders must ensure that:
- the information they submit is true, accurate and complete; and
 - they act as the principal in the Tender Exercise in making their Submission and not as an agent for any undisclosed party.
- 3.9 Submissions may be made by a single person or by a Bidder Group. Bidder Groups are required to appoint a lead member or organisation authorised to make Submissions on behalf of the Bidder Group. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with the relevant requirements of the stage documentation.
- 3.10 Where Ofgem provide templates for Submissions on the Portal, all Submissions must be made in the templates provided and Ofgem will not accept Submissions in any other form. This includes font type and size other than those specified and exceeding specified page limits.
- 3.11 All Submissions must be made by the specified deadline for each stage. Ofgem will not accept any late Submissions. If any unforeseen issue (e.g. technical issues with the Portal) prevents a Submission from being made by the specified deadline, then the Bidder or Bidder must notify Ofgem of any such issue within a reasonable period before the specified deadline.
- 3.12 Ofgem is not bound to accept any Submission made by a Bidder.
- 3.13 Once a Submission has been made, the Bidder will receive confirmation that it has been received. Ofgem will not open any Submission until after the applicable deadline for making the Submission has expired.
- 3.14 Ofgem will check if each Submission is complete. If Ofgem identifies any omission(s) from the information required to be provided, it will notify the Bidder. That Bidder will then have 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 Submission following receipt of the requested information. Ofgem may disqualify a Bidder's Submission if any omitted information requested is not provided within the required time.

- 3.15 If, at any time following the making of a Submission, there are any material changes, whether made or proposed, to the information provided in the relevant Submission, or a Bidder becomes aware that information previously submitted is no longer true or accurate, such Bidder must advise Ofgem as soon as is reasonably practicable. Where a Bidder informs Ofgem, or if Ofgem otherwise becomes aware, of any such material change or proposed change, Ofgem shall be entitled to re-evaluate that Bidder's Submission in light of that material change or proposed change, subject to Ofgem being satisfied that proceeding with the re-evaluation would be fair and equitable to all Bidders.

Clarifications and Responses

- 3.16 All clarifications and responses must be made via the Portal (see paragraph 3.29 and Appendix 2).

Clarification requests from Bidders

- 3.17 If a Bidder needs clarification in respect of a stage or document in a Tender Exercise, it may request clarification from Ofgem. Ofgem will endeavour to provide a response as soon as reasonably possible, although it is likely that the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested. Ofgem will endeavour to provide responses to all clarifications received prior to the clarification deadline specified in the stage specific rules. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the Submission deadline.
- 3.18 Ofgem may, where appropriate, forward a Bidder's clarification request to a Developer, to the NETSO or to The Crown Estate for a response. Where it does so, the identity of the Bidder that raised the clarification will remain confidential. In all instances 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. No direct interface is permitted between a Bidder and a Developer, the NETSO or The Crown Estate (or vice versa) in respect of a clarification.
- 3.19 Ofgem's default position is, for reasons of transparency and fairness, to make responses to Bidders' clarifications available to all Bidders involved at the relevant stage of a Tender Exercise, although the identity of the Bidder that raised the clarification will remain confidential. However, if Ofgem considers that a Bidder's clarification is sufficiently specific and confidential to that Bidder, Ofgem may at its discretion opt to provide its response solely to that Bidder.

Clarification requests from Ofgem

- 3.20 Ofgem may issue a clarification request to a Bidder or a Developer, for example where information is unclear. Developers and Bidders must respond to clarification requests issued by Ofgem within the period specified by Ofgem. Failure by a Bidder to respond to a clarification request within the period specified by Ofgem risks any clarification response from the Bidder not

being considered as part of Ofgem's evaluation of their Submission at that stage of the Tender Exercise. As part of the Tender Entry Conditions (see Section 4), Developers are required to provide an undertaking in writing to respond to queries from Ofgem within a reasonable period during a Tender Exercise. Failure to do this is an event of cancellation under the Tender Regulations.

Evaluation of Submissions

- 3.21 Ofgem will publish details on evaluation criteria and process in the documentation issued at each stage of a Tender Exercise.
- 3.22 Ofgem will evaluate Submissions made by Bidders at each stage of a Tender Exercise against evaluation criteria in the following broad areas (although evaluation will not necessarily be limited to these areas):
- economic and financial standing;
 - technical capability; and
 - legal standing.

Confidentiality and Publicity

- 3.23 Bidders are required to sign a Confidentiality Agreement with the Developer in the required form in respect of each relevant Qualifying Project prior to receiving the relevant project information at the EPQ Stage.
- 3.24 The Confidentiality Agreement will cover information received during the EPQ and all subsequent tender stages.
- 3.25 Bidders and Developers must comply with their obligations under such an agreement and ensure compliance by their representatives including directors, employees, advisers and subcontractors, as provided for under such agreement.
- 3.26 Developers and Bidders shall not undertake (or permit to be undertaken) at any time during a Tender Round any publicity activity with any section of the media in relation to the Tender Exercise for 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.

Transfer Agreement

- 3.27 Under the Tender Regulations, a Developer must complete a Transfer Agreement, as far as possible, with all relevant information available to it, for its Qualifying Project. Ofgem intends to share Developers' project-specific draft Transfer Agreements with Bidders at the EPQ Stage in order to inform their EPQ Submissions, provided Ofgem is satisfied that the project-specific

Transfer Agreement is sufficiently advanced at the time. The project-specific Transfer Agreements will also inform Bidders' ITT Submissions and discussions on asset transfer between Preferred Bidders and Developers during the PB Stage of a Tender Exercise.

- 3.28 For this Tender Round, Ofgem will provide Developers with guidance on what Ofgem might expect to see in Transfer Agreements¹⁰. This guidance is intended to assist Developers in the development of the Transfer Agreement for their Qualifying Project.

The Portal

- 3.29 Ofgem operates the Portal to provide access to information on this Tender Round and to enable interested parties to participate in this Tender Round. It provides a channel for both communication and data exchange at all stages of the Tender Round. The Portal, which is provided by BravoSolution, meets all of the requirements as defined by HM Government Information Security Standard and CESG (National Technical Authority for Information Assurance).
- 3.30 Ofgem will use the Portal to circulate to relevant Bidders the documentation, instructions and information relating to the different stages of a Tender Exercise. The table below illustrates the parties that will have access to particular documents via the Portal at specific stages of a Tender Exercise.

Document/Information relating to a Qualifying Project	Access given to
PIM	Bidders and other interested parties registered on the Portal
EPQ Document	Bidders and other interested parties.
IM ¹¹ and draft Transfer Agreement	Bidders who have signed the relevant Confidentiality Agreement and Conflict of Interest Statement(s)
ITT Document	Shortlisted Bidders
BAFO Document (if applicable)	Selected Bidders
Data Room(s)	Bidders (Bidder view) Developers (Developer view)

- 3.31 Developers will be required to upload any information or data relating to their Qualifying Project into the Data Room. The Data Room is a secure electronic data storage area, which will be made available to relevant Bidders through the Portal. Each Qualifying Project will have its own separate Data Room,

¹⁰ See Guidance on the Transfer Agreement

¹¹ For Tender Round 4, the Burbo Bank Extension Vendor Due Diligence Transmission Assets report (VDD Report) is being issued in place of an Information Memorandum. The Developer has also provided enhanced details in the Preliminary Information Memorandum. Taken together, these documents are considered to contain a similar level of information as would have been provided in the Information Memorandum.

which will be maintained by Ofgem with information provided by the relevant Developer.

- 3.32 Bidders will be required to submit to Ofgem any information or data relating to a Tender Exercise by uploading it to the Portal.
- 3.33 As detailed earlier, all Submissions, clarifications and responses must also be made via the Portal.
- 3.34 Further details on the Portal, including how it can be accessed and how it should be used, are set out in Appendix 2.

4. Qualifying Projects and Tender Entry

Chapter Summary

This chapter sets out project qualification requirements and the Tender Entry Conditions that must be satisfied under the Tender Regulations before Ofgem can commence a Tender Exercise.

Introduction

- 4.1 Ofgem may only commence a Tender Round in respect of those projects that have met the Qualifying Project requirements. The key activities associated with determining the projects that qualify for a Tender Round are summarised below.

Request to Commence a Tender Exercise

- 4.2 A Developer who wishes Ofgem to commence a Tender Exercise in respect of its project must submit a written request to Ofgem to that effect, stating whether the proposed project is intended to meet the Qualifying Project requirements for a Generator Build project or an OFTO Build project.
- 4.3 Where a Developer requests that Ofgem commence a Tender Exercise in respect of its project, Ofgem will determine whether that project is a Qualifying Project. Requests made to Ofgem for qualification into this Tender Round relate to Generator Build projects only. Developers therefore need to provide Ofgem with evidence demonstrating that their projects meet the Qualifying Project requirements set out in paragraph 2 of Schedule 1 to the Tender Regulations, which apply to Generator Build projects (and are summarised below).
- 4.4 In practice, Ofgem and the Developer of a potential Qualifying Project are likely to have held a number of informal discussions before a Developer formally requests that Ofgem commence a Tender Exercise for its project. These early discussions, whilst not mandatory, provide a valuable opportunity for both parties to share information regarding the project and manage expectations in terms of whether a project is likely to qualify. The prior sharing of information also helps Ofgem expedite the formal evaluation of a project against the Qualifying Project requirements, as detailed below.

Qualifying Project Requirements

- 4.5 The Qualifying Project requirements for Generator Build projects are detailed in paragraph 2 of Schedule 1 to the Tender Regulations. These Qualifying Project requirements apply to this Tender Round and are that a Developer has:

- (a) entered into a bilateral agreement with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system;
- (b) entered into an agreement for lease of the seabed;
- (c) obtained all necessary consents and property rights for the transmission assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the successful bidder are so assignable;
- (d) completed construction of, or entered into all necessary contracts for the construction of the Transmission assets and ensured that any such contracts are assignable to the successful bidder; and
- (e) secured financing to construct the transmission assets.

Determination of Qualifying Projects

- 4.6 Where a Developer can demonstrate in respect of its proposed project that it has satisfied all the Qualifying Project requirements for a Generator Build project as set out above, then Ofgem will determine such project to be a Qualifying Project for this Tender Round.
- 4.7 If Ofgem determines that a Developer has not satisfied the requirements in paragraph 4.5(c) or (d) above, Ofgem may deem a project to be a Qualifying Project for this Tender Round, provided the developer gives an undertaking to meet the requirement within a period notified by the Authority to the developer.

Notification of Qualifying Projects

- 4.8 Where Ofgem has determined that a proposed project satisfies all the Qualifying Project requirements for a Generator Build project, Ofgem shall notify the Developer. Ofgem has formally notified the successful qualifying projects for TR4.
- 4.9 Where Ofgem has determined that a proposed project is a Qualifying Project subject to the Developer providing an undertaking to meet outstanding requirements as detailed in paragraph 4.7 within the time specified by Ofgem, Ofgem shall notify the Developer:
 - (a) that its request to commence a Tender Exercise relates to a Qualifying Project for Tender Round;
 - (b) of the outstanding Qualifying Project requirements and of the time period within which these outstanding requirements must be satisfied; and
 - (c) of the requirement to provide written updates as requested by Ofgem summarising progress towards meeting each of the outstanding Qualifying Project requirements. This will include a request that the Developer continue to provide new and updated information to populate the Data Room for their Qualifying Project as and when it becomes available. Ofgem will also notify the Developer of the

expected date of the commencement of the Tender Exercise for its Qualifying Project (subject to the Developer satisfying the outstanding Qualifying Project requirements).

- 4.10 Once the Developer considers it has fully satisfied the outstanding Qualifying Project requirements, it should notify Ofgem in writing. If Ofgem determines that the Developer has satisfied the outstanding Qualifying Project requirements, it will notify the Developer:
- a) that its project is a Qualifying Project for this Tender Round;
 - b) of the Tender Entry Conditions it must satisfy; and
 - c) of the level of payment and Security required before Ofgem can commence a Tender Exercise for its Qualifying Project.
- 4.11 If a Developer fails to satisfy the outstanding Qualifying Project requirements within the period specified by Ofgem, Ofgem may cancel the Tender Exercise in accordance with the provisions of the Tender Regulations.

Developer Payment and Security

- 4.12 Prior to the commencement of a Tender Exercise for a Qualifying Project, Ofgem will notify the Developer of the payment required in relation to Ofgem's costs for running the Tender Exercise (and the date by which this payment must be made). Further details are provided in the Cost Recovery Note.
- 4.13 Ofgem will also notify the Developer of the Security that must be provided to Ofgem, as described in the Cost Recovery Note.
- 4.14 The consequences of not making payment or providing Security to the timelines specified by Ofgem include:
- cancellation of a Tender Exercise from a Tender Round, as further detailed in Section 2 of these Tender Rules; and
 - the Tender Exercise not being commenced, as Ofgem will not commence a Tender Exercise for a Qualifying Project until the Developer pays Ofgem the specified amount, and provides the specified level of Security.

Tender Entry Conditions

- 4.15 Once Ofgem is satisfied that all Qualifying Project requirements for a Generator Build project have been met, Ofgem will notify the Developer of the information it will require in order to be satisfied that the Tender Entry Conditions are met. The notification will include a request for specific information that a Developer must submit, by specified deadlines, so that Ofgem can determine whether each Tender Entry Condition has been met. Once Ofgem is so satisfied, a Tender Exercise can commence for the Qualifying Project.

- 4.16 Developers must satisfy all the Tender Entry Conditions by the date notified by Ofgem. Some of these Tender Entry Conditions must be satisfied prior to commencement of the Tender Exercise for a Qualifying Project, whereas Ofgem may permit others to be satisfied by a later date. Where this is the case, Ofgem will notify Developers accordingly.
- 4.17 Where Developers do not meet the Tender Entry Conditions by the specified date, Ofgem may cancel the Tender Exercise for their projects.
- 4.18 Paragraph 2 of Schedule 2 to the Tender Regulations sets out the Tender Entry Conditions for Generator Build projects. A list of these Tender Entry Conditions is set out below.

Information Memorandum (IM)

- 4.19 The Developer must provide information to Ofgem's satisfaction to enable Ofgem to issue an IM for the Qualifying Project.¹² The IM is the project information document released by Ofgem to Bidders at the EPQ Stage. The IM will be released once the Bidders and Developer have entered into the Confidentiality Agreement and signed the Conflicts of Interest Declaration as referred to below.
- 4.20 Although completion of a PIM is not a tender entry condition, Ofgem will also release a PIM at the EPQ Stage. The PIM contains only high level information in relation to a Qualifying Project. The PIM will be available on Ofgem's website for interested parties to consider prior to requesting the EPQ Document. In order to enable Ofgem to produce the PIM, each Developer will be provided with a standard form template and instructions for completion.
- 4.21 Ofgem will need to be satisfied that the information provided for both documents is appropriate and adequate and Ofgem may require further information from the Developer.

Data Room

- 4.22 The Developer must provide information to Ofgem's satisfaction to enable Ofgem to establish a Data Room for a Qualifying Project. The Developer will have provided information about its Qualifying Project which Ofgem used to assess its Qualifying Project status; however, further information will be required in order to fully establish the Data Room for bid purposes. To this end, Ofgem will provide Data Room Guidelines which Developers should adhere to when populating the relevant Data Rooms over the course of the Tender Exercise for their Qualifying Projects.

¹² For Tender Round 4, the Burbo Bank Extension Vendor Due Diligence Transmission Assets report (VDD Report) is being issued in place of an Information Memorandum. The Developer has also provided enhanced details in the Preliminary Information Memorandum. Taken together, these documents are considered to contain a similar level of information as would have been provided in the Information Memorandum.

Confidentiality Agreement & Conflicts of Interest Declaration

- 4.23 The Confidentiality Agreement is an agreement to be made between the Developer and each Bidder for its Qualifying Project relating to the disclosure of confidential information during a Tender Exercise.
- 4.24 The Conflicts of Interest Declaration is also required to be signed by Bidders
- 4.25 The Developer must return a signed copy of both the Confidentiality Agreement and Conflicts of Interest Declaration provided to it by Ofgem.

Transfer Agreement

- 4.26 The Developer must complete a Transfer Agreement, as far as possible, with all relevant information available to it. Ofgem will provide Developers with guidance¹³ to assist them in the development of the Transfer Agreements for their Qualifying Projects.

Undertakings

- 4.27 The Developer must give Ofgem a written undertaking that it will:
- provide information updates to Ofgem where information has changed, been updated, or where new information has become available in relation to its Qualifying Project, to enable Ofgem to update the Data Room;
 - respond to all queries from Ofgem (whether arising from Ofgem or from a third party) within a reasonable period;
 - continue to complete the Transfer Agreement with all relevant information available to it;
 - in the event that the Developer decides to participate in any stage of a Tender Exercise as a Bidder in respect of any Qualifying Project for which it is the Developer, it will put in place and maintain appropriate internal information barriers, to Ofgem's satisfaction, to prevent information passing between the Developer and the Bidder;
 - provide reports as required to Ofgem in connection with the development of the relevant generating station and the Qualifying Project; and
 - carry out its activities in respect of the Qualifying Project in an efficient manner, including making available all necessary management, technical, commercial and legal resources to facilitate the making of Ofgem's decision whether to grant an OFTO Licence to the Successful Bidder.

¹³

https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/certification_arrangements_in_great_britain_following_amendments_to_the_ownership_unbundling_requirements_of_the_gas_act_1986_and_the_electricity_act_1989_1.pdf

- 4.28 A breach of any undertaking provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations. A Developer's disqualification from a Tender Exercise constitutes an event of cancellation under the Tender Regulations.

Information Warranty

- 4.29 The Developer must provide Ofgem with a written warranty stating that any information it provides in relation to the IM and Data Room for its Qualifying Project is to the best of its knowledge and belief, having made reasonable enquiries, true, accurate and complete and is not misleading in all material respects.
- 4.30 A breach of any warranty provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations. A Developer's disqualification from a Tender Exercise constitutes an event of cancellation under the Tender Regulations.

Other Conditions

- 4.31 Ofgem is able to specify other Tender Entry Conditions which Developers must satisfy for a Qualifying Project before commencing a Tender Exercise where it deems it necessary. This could include a condition that the Developer must return a signed copy of the confidentiality consent provided by Ofgem (consenting to Ofgem using information provided to it in respect of the Tender Exercise).

Notification of Meeting Tender Entry Conditions

- 4.32 Ofgem will require certain information from the Developer in order to satisfy itself that each tender entry condition for a Qualifying Project has been met. In assessing whether the Tender Entry Conditions have been met, Ofgem may require the Developer to provide additional information.
- 4.33 Ofgem will notify the Developer if it is satisfied that all Tender Entry Conditions have been met.
- 4.34 If a Developer fails to satisfy any of the Tender Entry Conditions by the date specified by Ofgem, Ofgem may notify the Developer and publish a notice stating that the Tender Exercise for that Qualifying Project has been cancelled in accordance with the Tender Regulations.

Commencement of Tenders

- 4.35 As soon as reasonably practicable after:
- (a) Ofgem has determined the Qualifying Projects;

- (b) the relevant Developer has provided the appropriate payment and Security; and
- (c) the relevant Developer has satisfied those Tender Entry Conditions required to be satisfied prior to the publication of the commencement notice,

Ofgem will publish a notice stating its intention to commence a Tender Round for these Qualifying Projects.

- 4.36 The notice will specify the Qualifying Projects included and the date on which the Tender Round will commence.
- 4.37 Ofgem may amend the commencement date of a Tender Round or Tender Exercise in respect of a particular Qualifying Project (to a date which may be earlier or later than that specified in the initial notice referred to above) following consultation with the Developer.
- 4.38 Where Ofgem considers it impracticable to commence a Tender Exercise or Tender Round on the date specified, it shall publish a further notice specifying a revised date for tender commencement for that Tender Exercise or Tender Round.

Tender Commencement Notice

- 4.39 Ofgem shall publish the tender commencement notice confirming its intention to commence a Tender Exercise on the Ofgem website in accordance with regulation 12(1) of the Tender Regulations. In addition, Ofgem may publish a voluntary notice in the Official Journal of the European Union, as well as notices in other relevant publications.

5. Enhanced Pre-Qualification (EPQ) Stage

Chapter Summary

This chapter sets out the key activities of the EPQ Stage. Ofgem has determined not to hold a QTT Stage for TR4.

Introduction

- 5.1 Ofgem has determined not to hold a QTT Stage in TR4 and instead to run an Enhanced Pre-Qualification (EPQ) Stage. The EPQ Stage is the first stage of the Tender Exercise following tender commencement.
- 5.2 The purpose of the EPQ Stage is to identify a suitable shortlist of Bidders to proceed to the ITT Stage. It is anticipated that an EPQ Stage will take approximately six months to complete, to the point of publishing a shortlist of bidders for the ITT stage.
- 5.3 The key activities associated with this stage are summarised below.

Confidentiality Agreements

- 5.4 Ofgem will publish, via the Portal, a Confidentiality Agreement and Conflicts of Interest Declaration in respect of each Qualifying Project, along with instructions that apply to those documents, including the date, time and manner in which the Confidentiality Agreement should be submitted to Ofgem by a Bidder. The Confidentiality Agreement will already have been signed by the relevant Developer, as detailed in Section 4 and should not be amended.
- 5.5 Each prospective Bidder must submit a signed Confidentiality Agreement and Conflicts of Interest Declaration to Ofgem.
- 5.6 In addition to a signed Confidentiality Agreement, each prospective Bidder must confirm that it has no conflicts of interest. Once the signed Confidentiality Agreement and Conflicts of Interest Declaration have been received from prospective Bidders, Ofgem will provide access to the relevant project-specific information.

EPQ Document Published

- 5.7 Ofgem will publish the EPQ Document on the Portal and also on the Ofgem website.
- 5.8 The documentation will include:
 - the rules particular to the EPQ Stage;
 - the stages of the Tender Exercise;

- the timeline for the stage, including an overview of the key activities and steps;
- the EPQ Questionnaire;
- the instructions that apply to the questionnaire, and the date, time and manner in which a completed questionnaire should be submitted to Ofgem;
- other information available to Bidders (see below); and
- the criteria against which Ofgem will evaluate each EPQ Submission.

Information Available to Bidders

Preliminary Information Memorandum

5.9 A generic PIM will be published on the Portal and on the Ofgem website. This will provide background to the offshore transmission regime, including regulatory framework, and other relevant information.

Information Memorandum

5.10 Each Bidder that has entered into a Confidentiality Agreement and provided satisfactory confirmation in respect of conflicts of interest will be granted access (on the Portal) to the IM prepared in respect of each of the relevant Qualifying Projects.¹⁴

Project-Specific Transfer Agreements

5.11 Developers will prepare project-specific Transfer Agreements. Provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at that time¹⁵, Ofgem intends to make it available in addition to the EPQ Document. Project-specific Transfer Agreements will only be made available to those Bidders that have submitted the relevant signed Confidentiality Agreement and satisfactory confirmation in respect of conflicts of interest to Ofgem, as set out above.

Bidder Clarifications

5.12 If a party who intends to make an EPQ Submission requires clarification in relation to any aspect of the EPQ Document, it may submit such clarification

¹⁴ For Tender Round 4, the Burbo Bank Extension Vendor Due Diligence Transmission Assets report (VDD Report) is being issued in place of an Information Memorandum. The Developer has also provided enhanced details in the Preliminary Information Memorandum. Taken together, these documents are considered to contain a similar level of information as would have been provided in the Information Memorandum.

¹⁵ If the project-specific Transfer Agreement is not sufficiently advanced at the EPQ Stage, then it will be provided at the ITT Stage.

to Ofgem, via the Portal. For further information on Bidder clarifications, see Section 3.

EPQ Submission

- 5.13 Where relevant, Bidders must complete a separate EPQ submission for each Qualifying Project for which they wish to be considered.
- 5.14 Bidders must make their completed EPQ Submissions by the stated deadline, in accordance with the detailed instructions set out in the EPQ Document. These instructions will include details of how and in what form EPQ Submissions should be made. Any Bidders who fail to submit a completed questionnaire shall be deemed to have not partaken fully in that Tender Exercise.

Ofgem Clarifications of EPQ Submissions

- 5.15 Ofgem may ask Bidders to clarify their EPQ Submissions. Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see Section 3.

Evaluation of EPQ Submissions

- 5.16 Ofgem will evaluate each completed EPQ Submission in accordance with the evaluation criteria and process set out in the EPQ Document in order to determine the shortlist of Bidders that will be invited to participate in the ITT Stage.
- 5.17 Ofgem may decline to consider an EPQ Submission where Ofgem determines that it does not comply in any material respect with the requirements specified in the EPQ Document.

Notification to Bidders and Publication of Bidder Shortlist

- 5.18 Ofgem will notify each Bidder, via the Portal, whether its EPQ Submission has been successful or unsuccessful, and will give reasons for its determination.
- 5.19 Following its evaluation, Ofgem will determine which Bidders shall become Qualifying Bidders and invited to participate in the ITT Stage in relation to that particular Tender Exercise.
- 5.20 The notices given to successful Bidders will set out the next steps they will need to take in order to participate in the ITT Stage.
- 5.21 Once all Bidders have been notified, the shortlist of Bidders in respect of each Qualifying Project will be published on the Portal and on the Ofgem website. Ofgem may also make a general public announcement.



Feedback

- 5.22 Ofgem may offer confidential feedback to any Bidder following completion of the EPQ Stage.

6. Invitation to Tender Stage

Chapter Summary

This chapter sets out the key activities of the ITT Stage.

Introduction

- 6.1 The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) in respect of each Qualifying Project. It is anticipated that the ITT Stage will take approximately six months to complete.
- 6.2 The key activities associated with this stage are summarised below.

ITT Document Published

- 6.3 Ofgem will issue the ITT Document to a Qualifying Bidder, via the Portal, in respect of each Qualifying Project for which it has been invited to tender. The documentation will include:
- the rules particular to the ITT Stage;
 - the timeline for the stage, including an overview of the key activities and steps;
 - a description of the information required by Ofgem for the making of an ITT Submission, and the date, time and manner in which this submission should be made to Ofgem;
 - other information available to Qualifying Bidders (see below);
 - the criteria against which Ofgem will evaluate each ITT Submission; and
 - the criteria against which Ofgem will decide whether to hold a BAFO Stage.

Information Available to Bidders

Access to Data Room

- 6.4 Qualifying Bidders will be granted access to the Data Room relating to the Qualifying Project for which they have been invited to tender. The Data Room will be accessed via the Portal.

Project-Specific Transfer Agreement

- 6.5 The project-specific Transfer Agreement, as provided by the Developer, will also be included in the Data Room. Qualifying Bidders will be notified in the

ITT Document of what they are required to do with the project-specific Transfer Agreement.

Qualifying Bidder Clarifications

- 6.6 If a Qualifying Bidder has a clarification in relation to any aspect of the ITT Document, it may submit such clarification to Ofgem. For further information on Bidder clarifications, see Section 3.

ITT Submission

- 6.7 Qualifying Bidders must make their completed ITT Submissions by the stated deadline, in accordance with the detailed instructions set out in the ITT Document. These instructions will include details of how and in what form ITT Submissions should be made.
- 6.8 If a Qualifying Bidder decides not to make an ITT Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision. Any Qualifying Bidders who fail to submit completed questionnaires shall be deemed to have withdrawn from that Tender Exercise.

Ofgem Clarifications of ITT Submissions

- 6.9 Ofgem may ask Qualifying Bidders to clarify their ITT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see Section 3.

Evaluation of ITT Submissions

- 6.10 Ofgem will evaluate each completed ITT Submission in accordance with the evaluation criteria and process set out in the ITT Document in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.
- 6.11 As a result of this evaluation, Ofgem may also determine a Qualifying Bidder to become the Reserve Bidder in respect of a Qualifying Project.
- 6.12 In accordance with the Tender Regulations, Ofgem may decide to run a BAFO Stage. Ofgem's decision on whether to run a BAFO Stage will be made on the basis of the criteria published in the ITT Document.
- 6.13 Ofgem may decline to consider an ITT Submission where Ofgem determines that it does not comply with the requirements specified in the ITT Document.

Notification to Qualifying Bidders

- 6.14 Ofgem will notify each Qualifying Bidder whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project, or

whether its ITT Submission has been unsuccessful and will give reasons for its determination.

- 6.15 Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project and will also publish the name of the Reserve Bidder (if applicable).

Notification of a BAFO Stage

- 6.16 If applicable, Ofgem will notify each shortlisted Qualifying Bidder whether there will be a BAFO Stage for a Qualifying Project, and the applicable details related to that stage.

Bidder Feedback

- 6.17 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 referred to above.

7. Best and Final Offer Stage

Chapter Summary

This chapter sets out the key activities of the BAFO Stage.

Introduction

- 7.1 In accordance with the criteria set out in the ITT Document, Ofgem will decide whether or not to undertake a BAFO Stage for a Qualifying Project¹⁶. The purpose of the optional BAFO Stage is to determine a Preferred Bidder (and possibly a Reserve Bidder) for a Qualifying Project.
- 7.2 The key activities associated with the BAFO Stage are summarised below.

BAFO Document Published

- 7.3 Ofgem will issue the BAFO Document to a Qualifying Bidder, via the Portal, if it has been invited to participate in the BAFO Stage. The documentation will include:
- the rules particular to the BAFO Stage;
 - the timeline for the stage, including an overview of the key activities and steps;
 - a description of the information required by Ofgem for the making of a BAFO Submission, and the date, time and manner in which this Submission should be made to Ofgem; and
 - the criteria against which Ofgem will evaluate each BAFO Submission.

Qualifying Bidder Clarifications

- 7.4 If a Qualifying Bidder has a clarification in relation to any aspect of the BAFO Document, it may submit such clarification to Ofgem. For further information on Bidder clarifications, see Section 3.

BAFO Submission

- 7.5 Qualifying Bidders must make their BAFO Submissions by the stated deadline, in accordance with the detailed instructions set out in the BAFO Document. These instructions will include details of how and in what form BAFO Submissions should be made.

¹⁶ See regulation 19(1) of the Tender Regulations.

- 7.6 If a Qualifying Bidder decides not to make a BAFO Submission for a Qualifying Project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision. Any Qualifying Bidders who fail to submit a completed questionnaire shall be deemed to have withdrawn from that Tender Exercise.

Ofgem Clarifications of BAFO Submissions

- 7.7 Ofgem may ask Qualifying Bidders to clarify their BAFO Submissions. Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see Section 3.

Evaluation of BAFO Submissions

- 7.8 Ofgem will evaluate each completed BAFO Submission in accordance with the evaluation criteria and process set out in the BAFO Document in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of a Qualifying Project.
- 7.9 As a result of this evaluation, Ofgem may also determine which Bidder shall become the Reserve Bidder in respect of a Qualifying Project.
- 7.10 Ofgem may decline to consider a BAFO Submission where Ofgem determines that it does not comply with the requirements specified in the BAFO Document.

Notification to Bidders

- 7.11 Ofgem will notify each Qualifying Bidder whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) for each relevant Qualifying Project, or whether its BAFO Submission has been unsuccessful, and will give reasons for its determination.
- 7.12 Ofgem will also publish the name of the Preferred Bidder for each Qualifying Project that is the subject of a BAFO, and may also publish the name of the Reserve Bidder (if applicable).

Bidder Feedback

- 7.13 Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the BAFO Stage. Ofgem expects that any such feedback will be provided within one month of the notification referred to above.

8. Preferred Bidder Stage

Chapter Summary

This chapter sets out the key activities of the PB Stage.

Introduction

- 8.1 The purpose of the PB Stage is for the Preferred Bidder to resolve certain matters to the Authority's satisfaction before that Preferred Bidder becomes the Successful Bidder in respect of a Qualifying Project. It is anticipated that this stage will take approximately six months to complete, depending on progress with the underlying transmission system being developed.
- 8.2 Ofgem's key role during this stage is to determine the Tender Revenue Stream to be incorporated in the OFTO Licence in respect of a Qualifying Project. Ofgem expects that most of the issues arising during this stage will be for resolution on a commercial basis between the Preferred Bidder, the Developer and any other relevant parties. Ofgem does not propose to review or participate in the development of documents to which it is not a party, or to act as an arbiter of disputes between the parties.
- 8.3 The key activities associated with this stage are summarised below.

Public Notice

- 8.4 At the start of the PB Stage Ofgem will publish a notice for each relevant Qualifying Project confirming the name and address of the Preferred Bidder, and describing, in general terms, the matters to be resolved by the Preferred Bidder (to Ofgem's satisfaction) before that Preferred Bidder becomes the Successful Bidder. These shall include that the Preferred Bidder has:
 - (a) established the necessary arrangements to provide offshore Transmission Services for the Qualifying Project, including having all relevant contractual, funding, regulatory and operational arrangements ready for the transfer of the Transmission Assets and the grant of the OFTO Licence;
 - (b) put in place a bilateral agreement with NETSO to provide transmission services for that particular Qualifying Project;
 - (c) acceded to the System Operator – Transmission Owner Code; and
 - (d) resolved any other matters which Ofgem determines are necessary in relation to the Qualifying Project.

Notification to Preferred Bidders

- 8.5 Ofgem will separately notify each Preferred Bidder of:

- the name of the Reserve Bidder (if applicable);
 - a draft of the matters they will need to resolve (to the Authority's satisfaction) before becoming the Successful Bidder (the draft PB Matters), borne out of the matters referred to in paragraph 8.4; and
 - details of the process and indicative timelines to asset transfer, financial close, the process for finalising the Tender Revenue Stream and the grant of the OFTO Licence.
- 8.6 Ofgem may notify the Preferred Bidder at this point of the details of any on-hold period where that applies for the Qualifying Project – see paragraph 8.11 below.
- 8.7 Preferred Bidders will be provided with an opportunity to discuss the draft PB Matters with Ofgem and to also provide written comments. Ofgem will consider any comments received in determining the PB Matters and may amend the draft PB Matters where it is satisfied that it is appropriate to do so.

PB Notice

- 8.8 As soon as reasonably practicable following completion of the activity set out in paragraph 8.7, Ofgem will provide each Preferred Bidder with a PB Notice setting out:
- the final PB Matters;
 - how, and by when, the PB Matters should be resolved; and
 - the amount payable to Ofgem in relation to the PB Stage, as calculated in accordance with the Tender Regulations.

Preferred Bidder Payment

- 8.9 Each Preferred Bidder must make a payment to Ofgem in respect of the Qualifying Project for which it has been identified as the Preferred Bidder.
- 8.10 Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Note. Details of the consequences of not making payment to the timelines specified by Ofgem are set out in Section 2 of these Tender Rules.

Information Available to Preferred Bidders

Information in Relation to Tender Process and OFTO Licence

- 8.11 Ofgem will continue to provide information in relation to the tender process via the Portal, including any updated versions of the OFTO Licence, any further guidance notes and any information in connection with the PB Stage, the assessment of costs and the transfer value of the Qualifying Project.

Access to the Developer's Data Room

- 8.12 To assist in performing their confirmatory due diligence, the Preferred Bidders will be granted access to the Data Room which is maintained and updated by the Developer for the relevant Qualifying Project. This will allow a direct flow of information to be provided by the Developer to the Preferred Bidder. Each Data Room will be accessible via the Portal.
- 8.13 Ofgem will take no responsibility for the content of documents in the Developer Data Room and will not review or comment upon documents in the developer Data Room, other than as required in connection with Ofgem's assessment of costs and determination of the Final Transfer Value.

Section 8A Consultation

- 8.14 Once Ofgem has received certain confirmations from the Preferred Bidder required under the PB Notice it intends to commence a Section 8A Consultation for that particular Qualifying Project.
- 8.15 Ofgem will issue a public notice, in accordance with section 8A of the Electricity Act, to propose a modification to the standard conditions of the OFTO Licence in order to incorporate the OFTO-specific provisions¹⁷ at the time of Licence Grant. This notice is subject to a statutory 28-day public consultation period.

Notification to Preferred Bidders

- 8.16 Following the Section 8A Consultation and once Ofgem is satisfied that the Preferred Bidder has resolved all the PB Matters, the Preferred Bidder will become the Successful Bidder for that particular Qualifying Project, and Ofgem will notify the Successful Bidder accordingly.
- 8.17 Where Ofgem is not satisfied that the Preferred Bidder has resolved the PB Matters, or where the Preferred Bidder fails to make the payment referred to above, or withdraws from the Tender Exercise or is disqualified, Ofgem may publish a notice discontinuing the Tender Exercise with the Preferred Bidder and may determine to treat the Reserve Bidder (if it has determined one) as if it were the Preferred Bidder for that particular Qualifying Project.

Next Steps in the event that the Preferred Bidder does not become the Successful Bidder

- 8.18 Where paragraph 8.19 applies, Ofgem will notify the Reserve Bidder that it has become the Preferred Bidder. The PB Stage will then start again with the new Preferred Bidder, in line with the rules and activities set out in this Section.

¹⁷ In the Offshore Transmission licence, these are Amended Standard Conditions E12-A1 to E12-J12

- 8.19 Where Ofgem has not determined a Reserve Bidder, then Ofgem will re-run the Tender Exercise for that particular Qualifying Project from either a particular stage or from the beginning of the Tender Exercise, if either:
- (a) the Preferred Bidder does not satisfy Ofgem that it has resolved the Preferred Bidder Matters; or
 - (b) the Preferred Bidder withdraws, or is disqualified from a Tender Exercise.

Particular Obligations of the Developer from the PB Stage

- 8.20 In order to facilitate Ofgem's determination of the Successful Bidder for a particular Qualifying Project, the Developer shall from the date specified use its reasonable endeavours to:
- enable the Preferred Bidder to resolve the PB Matters to the extent that the resolution of those matters depends on the actions of the Developer; and
 - enable the Transmission Assets to be transferred to the Successful Bidder.
- 8.21 Failure by a Developer to meet the PB Stage obligations set out in regulation 22 is an event of disqualification under regulation 27 of the Tender Regulations.

9. Successful Bidder Stage

Chapter Summary

This chapter sets out the key activities of the SB Stage.

Notification to Successful Bidders

- 9.1 As soon as possible after Ofgem has notified the Preferred Bidder that it has become the Successful Bidder, it shall publish a notice that:
- confirms its determination to grant an OFTO Licence to the Successful Bidder; and
 - specifies the name and address of the Successful Bidder.
- 9.2 Ofgem will also notify the Successful Bidder as to the amount payable to Ofgem in relation to the SB Stage and by when the payment should be made – see paragraph 9.7 below.

Notification to each Bidder

- 9.3 At the same time as notifying the Successful Bidder, Ofgem will notify each Bidder in relation to the relevant Qualifying Project of its determination to grant an OFTO Licence to the Successful Bidder. This notice will include:
- confirmation of the criteria used by Ofgem to evaluate ITT Submissions during the ITT Stage (or, if applicable, BAFO Submissions during the BAFO Stage);
 - the reasons for Ofgem’s determination, including the characteristics and relative advantages of the successful tender;
 - the result obtained by that Bidder and by the Successful Bidder;
 - the name of the Successful Bidder; and
 - the date when the standstill period (referred to below) is expected to end.
- 9.4 Note that Ofgem may withhold any information to be provided in accordance with the above paragraph where the disclosure of such information would be contrary to law or public interest, or would prejudice fair competition between Bidders.

Standstill Period

- 9.5 Where Ofgem notifies Bidders of its Successful Bidder determination, a standstill period will apply for that Qualifying Project.

- 9.6 The standstill period will not end before midnight on the tenth working day after the date on which the notification described in paragraph 9.3 is given to Bidders.

Successful Bidder Payment

- 9.7 The Successful Bidder must make a payment to Ofgem in respect of the Qualifying Project for which it has been identified as the Successful Bidder.
- 9.8 Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Note. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in Section 2 of these Tender Rules.

Notice of Determination to Grant an OFTO Licence

- 9.9 As soon as reasonably practicable after the end of the standstill period, Ofgem will confirm its determination to grant an OFTO Licence to the Successful Bidder in respect of a particular Qualifying Project. Ofgem will publish a notice to that effect and give notice to the Reserve Bidder that it is being stood down.
- 9.10 Where Ofgem publishes the notice referred to above the Tender Exercise is finished in respect of that Qualifying Project.

Financial Close and Asset Transfer

- 9.11 The Successful Bidder should undertake all relevant process to close activities (for example, execute all final form documents and draw down funds) in order to allow for an efficient process to financial close, asset transfer and grant of the OFTO Licence for the Transmission Assets.
- 9.12 Developers and Bidders should note that the Tender Regulations provide for the Transfer Agreement to be in the form of either an agreement for the transfer of property, rights and liabilities in respect of the Transmission Assets (an asset sale) or an agreement for the transfer of shares in an undertaking which holds the Transmission Assets (a share sale). For further information and guidance in respect of the Transfer Agreement, please refer to the Guidance on the Transfer Agreement¹⁸.

¹⁸ <http://www.ofgem.gov.uk>

Appendices

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Appendix 1 – Disclaimer and Notices

Non-reliance, Accuracy of Information and Exclusion of Liability

- 1.1 It is the responsibility of each Developer to ensure that it has all of the information it needs to satisfy the Qualifying Project requirements and Tender Entry Conditions.
- 1.2 It is the responsibility of each Bidder to ensure that it has all of the information it needs to prepare its Submissions.
- 1.3 While information provided by Ofgem and/or its Advisers in these Tender Rules or otherwise in relation to the Tender Round has been prepared in good faith, neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) in relation to the Tender Round or any information provided by Developers through Data Rooms 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 Tender Rules or based on or relating to its use by a Bidder, a Developer and/or any other interested party.

Use of Information

- 1.4 These Tender Rules are not intended to provide the basis of any investment decision, nor are they intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Bidder, Developer and any other interested party must make its own independent assessment of the Qualifying Project(s) after making such investigation and taking such professional advice as it deems necessary.
- 1.5 The material in the Tender Rules is not and should not be regarded as legal or professional advice. Bidders, Developers and other interested parties should seek their own legal or other professional advice where appropriate.
- 1.6 Nothing in the Tender Rules is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Bidder or any Developer.
- 1.7 Advisers acting for Ofgem in relation to the Tender Round will not regard any Developer or 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

- 1.8 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. Developers should identify which parts, if any, of the information which they provide to Ofgem, either before or during the Tender Round, are provided in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Bidders should identify which parts, if any, of their Submissions are provided to Ofgem in confidence and provide reasons why they consider the information is 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.
- 1.9 Although Ofgem is not under any statutory obligation to consult with a Bidder or Developer 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 Bidder or Developer 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 Bidder or Developer has identified any information as being in its opinion eligible for exemption. For further information and guidance, Bidders' and Developers' attention is drawn to the Codes of Practice issued under Sections 45 and 46 of the Freedom of Information Act 2000¹⁹.

Data Protection

- 1.10 In participating in the Tender Round, Developers and 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 and 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 Developers and Bidders. In order to participate in the Tender Round, Developers and Bidders must agree to such data being collected, held and used.

¹⁹<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Copyright

- 1.11 The information contained in these Tender Rules 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 these Tender Rules is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

National Audit Office

- 1.12 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.
- 1.13 Accordingly, Developers and 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 Portal

Portal User Agreement and ID/Password

Developers

- 1.1 Ofgem will create a use account to access the Portal for each Developer so that they are able to upload information in relation to their Qualifying Project. Each Developer must agree to the terms of use of the Portal by signing the Portal User Agreement before Ofgem provides access to the Portal.
- 1.2 Following acceptance of the terms of the Portal User Agreement, each Developer must identify to Ofgem an individual who will be issued with a username and password to access the Portal. They should also identify a back-up user who can authorise new accounts in the main user's absence. This same individual will act as the main point of contact to Ofgem with regards to the Portal. If a Developer subsequently wishes for additional User(s), accounts to be established they must request authorisation from Ofgem via this point of contact. User accounts set up for Developers can only be used by the Developer to access the Developer section of the Portal relating to their Qualifying Project. Log in details cannot be used to access the Bidder section of the Portal. Where a Developer wishes to participate in the Tender Round as a Bidder, it must register separately as a Bidder.

Bidders and Other Interested Parties

- 1.3 In order to access more detailed information about available tenders or to participate in the Tender Round, Bidders or other interested parties will first need to create a user account by clicking the 'Register here' link on the Portal homepage: <https://ofgem.bravosolution.co.uk>. Before any information can be accessed, each potential Bidder or interested party must agree to the terms of the User Agreement. When first creating an account a new User is required to read and agree electronically to the User Agreement.
- 1.4 Following acceptance of the terms of the User Agreement, potential Bidders or other interested parties must register any and each of their proposed User Agents by providing the required registration data and specifying a user ID for each of them in accordance with the requirements as specified on the Portal. Each User Agent will then be provided with an initial password, which it will be required to change. Once this process has been completed, the User Agent will be able to access the relevant sections of the Portal.
- 1.5 Each Bidder or other interested party must designate a User Agent to manage Portal access by that Bidder's or interested party's other Users (if applicable).

Data Room Uploading and Updating

- 1.6 Each Developer is required to upload on to the Portal, in accordance with the Data Room Guidelines, relevant documents to its project specific Data Room for its Qualifying Project. Ofgem will then confirm the content against the Data Room Guidelines and transfer the documents into the relevant Data Room on the Portal for Bidders to view. The Data Room in respect of each Qualifying Project will be made available to relevant Bidders at the ITT Stage.
- 1.7 In accordance with the Tender Regulations, a Developer (having regard to the instructions in the Data Room Guidelines) is obliged to ensure that the Data Room is continuously updated with the most recent, relevant information. Bidders will be automatically notified if any updates are made to information on the Portal and when new documents are uploaded.

Security requirements

- 1.8 The BravoSolution system is compliant with Government Procurement Service standards.
- 1.9 A Developer, potential Bidder, Bidder, Qualifying Bidder or other interested party must immediately inform the Bravo Helpdesk in the event that any registered Portal User or User Agent ceases to be a representative of the relevant organisation or no longer requires access to the Portal for the purpose of the Tender Round.
- 1.10 Usernames and passwords are strictly personal to the Portal User to which they are given and non-transferable (including to other Portal Users of the same Developer, potential Bidder, Bidder or Qualifying Bidder). Each Developer, potential Bidder and Bidder must ensure that its User Agent(s) do not divulge or disclose their username or password to third parties (including to other Portal Users of the same Developer, potential Bidder, Bidder or Qualifying Bidder). In the event that a Developer, potential Bidder, Bidder or Qualifying Bidder or a User becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they must immediately notify the Bravo Helpdesk.
- 1.11 Any Submission by a potential Bidder or Bidder using the username and password of any of its User Agents will be deemed to be a valid Submission and will be binding on that Bidder. A potential Bidder or Bidder will be responsible for any unauthorised, false or fraudulent submission that is submitted using the user ID and password of one of its User Agents.
- 1.12 Developers, potential Bidders, Bidders, Qualifying Bidders and interested parties and their User Agents will not be able to view or find out the identity of other Developers, potential Bidders, Bidders, Qualifying Bidders or interested parties or their User Agents on, or through the use of, the Portal.

Portal Information and Helpdesk

- 1.13 Help guides are available on the Portal to provide further information about how to use the Portal in relation to the Tender Round.
- 1.14 BravoSolution UK Ltd provides a Helpdesk facility for technical support queries raised by Portal users. Helpdesk staff are instructed only to supervise and maintain the operation of the Portal and Users are not permitted to ask any questions of Helpdesk staff in relation to the Tender Round or in respect of Tender Round information available through the Portal.
- 1.15 The Portal Helpdesk will be open between 8am and 6pm (Monday to Friday, excluding public holidays in England) and can be contacted as follows:

Telephone: + 44 (0)800 368 4850

Email: help@bravosolution.co.uk

Appendix 3 - Glossary

Advisers

In relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, sub-contractors (of any tier) and affiliates.

Authority

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

B

BAFO Document

The document delivered to each Bidder invited to submit a BAFO and which sets out the rules and requirements of the BAFO Stage.

BAFO Submission

A selected Bidder's response to the BAFO Document.

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 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 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 or an EPQ Submission, a Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

Bidder Group

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

C

Confidentiality Agreement

The agreement between a Developer and a Bidder or Bidder in respect of confidential information disclosed in connection with a Tender Exercise.

D

Data Room

In respect of a Qualifying Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Bidders or Qualifying Bidders through the Portal.

Data Room Guidelines

The document published by Ofgem to assist Developers to provide information to Ofgem to enable the population of the Data Room.

Developer

The Tender Regulations define a 'developer' as 'any person within section 6D(2)(a) of the 1989 Act or within a developer group'. 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.

Enhanced PQ (EPQ) Stage

An extended version of the PQ stage of a Tender Exercise that can be used for Generator Build Tender Exercises where the Authority decides not to run a QTT Stage. At the end of this 'enhanced' PQ stage, the Authority will determine which Bidders become Bidders and will be invited to participate in the ITT Stage of the Tender Exercise.

EPQ Document

The document prepared and issued by Ofgem for the purpose of selecting a shortlist of Bidders to progress to the ITT Stage, and which sets out the rules and requirements of the EPQ Stage.

EPQ Questionnaire

The questionnaire that forms part of the EPQ Document.

EPQ Submission

A bidder's response to the EPQ Document.

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:

- (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.

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.

Information Memorandum (IM)

The document prepared by Ofgem for a Qualifying Project containing detailed information for such Qualifying Project which is issued to Bidders at the EPQ Stage or QTT Stage (as applicable), providing they have entered into the applicable Confidentiality Agreement.

Initial Transfer Value

The initial transfer value for a Qualifying Project based on information provided by the relevant Developer.

Invitation to Tender (ITT) Stage

The stage of a Tender Exercise during which the Authority may determine which 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 Document

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.

ITT Questionnaire

The questionnaire that forms part of the ITT Document.

ITT Submission

A Bidder's response to the ITT Document.

L

Licence Grant

Following its determination to grant an Offshore Transmission Licence to the Successful Bidder, the Authority confirms such determination in accordance with regulation 29(5) of the Tender Regulations and grants such Offshore Transmission Licence to the Successful Bidder pursuant to section 6(1)(b) of the Electricity Act 1989.

N

National Electricity Transmission System (NETS)

The system consisting (wholly or mainly) of high voltage electric lines owned or operated by transmission licensees within Great Britain, in the territorial sea adjacent

to Great Britain and in any Renewable Energy Zone and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any interconnector and includes any electrical plant or meters owned or operated by any transmission licensee within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone in connection with the transmission of electricity.

National Electricity Transmission System Operator (NETSO)

The National Electricity Transmission System Operator is the entity responsible for coordinating and directing the flow of electricity over the NETS.

NGET

National Grid Electricity Transmission Plc. NGET owns and maintains the transmission system in England and Wales. It is also the NETSO for GB.

○

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 Offshore Transmission 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.

Ofgem²⁰

Office of Gas and Electricity Markets.

OFTO Build

A model for the construction of offshore assets. Under the OFTO build option, the Developer obtains the connection offer and undertakes high level design and preliminary works. The OFTO constructs, operates, maintains and decommissions the transmission assets.

OFTO of Last Resort

An OFTO appointed outside of a Tender Exercise from existing transmission licensees to provide Transmission Services in respect of particular offshore transmission assets

²⁰ "Ofgem" and "the Authority" are used interchangeably in this document.

in accordance with standard condition B18 of the transmission licence and E21 of the OFTO Licence where there is a significant likelihood that the Developer whose generating station that is, or is to be, connected to those transmission assets would be unreasonably delayed or stranded.

P

PB Matters

The matters to be resolved by the Preferred Bidder to the Authority's satisfaction as specified in regulation 21(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 Notice

The notice issued by Ofgem to each Preferred Bidder under regulation 21(6) of the Tender Regulations setting out:

- (a) the final PB Matters;
- (b) how, and by when, the PB Matters should be resolved; and
- (c) the amount payable to Ofgem in relation to the PB Stage, as calculated in accordance with 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 Offshore Transmission Licence. This stage starts at the date of Ofgem's notice to a 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.

Portal

The electronic tendering Portal described in Section 3 and Appendix 2 of the Tender Rules.

PQ Document

The document prepared and issued by Ofgem for the purpose of selecting a longlist of Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage.

PQ Questionnaire

The questionnaire which forms part of the PQ Document.

PQ Submission

A bidder's response to the PQ Document.

Preferred Bidder (PB)

In relation to a Qualifying Project, the Bidder determined by Ofgem following its evaluation of the submissions received, to which Ofgem intends to grant the Offshore Transmission Licence subject to the satisfaction of the conditions specified by Ofgem in accordance with the Tender Regulations in force at that time.

Preliminary Information Memorandum (PIM)

The document which may be issued by Ofgem via the Portal at the PQ Stage containing high level information in relation to a Qualifying Project.

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 Bidders who have been invited to participate in the QTT Stage.

Q

QTT Document

The documentation prepared and issued by Ofgem for the purpose of selecting a shortlist of Bidders to progress to the ITT Stage and which sets out the rules and requirements of the QTT Stage.

QTT Questionnaire

The questionnaire which forms part of the QTT Document.

QTT Submission

A Qualifying Bidder's response to the QTT Document.

Qualification to Tender (QTT) Stage

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

Bidder

A Bidder or Bidder Group in a Tender Exercise making an EPQ 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.

R

Reserve Bidder

The determined by Ofgem as the second choice Bidder (in accordance with regulations 19(3) or 20 (5) of the Tender Regulations) 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.

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 Offshore Transmission Licence in relation to a particular Qualifying Project.

Section 8A Consultation

The public consultation required by section 8A of the Electricity Act 1989 for any modifications to the standard conditions of the Offshore Transmission Licence to be made at Licence Grant. The modifications are required in order to incorporate the OFTO-specific provisions in the licence. The consultation must run for at least 28 days.

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, an EPQ 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 Offshore Transmission Licence.

System Operator – Transmission Owner Code (STC)

The industry code that defines the high level relationship between the NETSO and Transmission Owners setting out the roles, responsibilities, obligations and rights etc of the NETSO and the Transmission Owners.

T

Tender Entry Conditions

The requirements that a Developer must meet before commencement of a Tender Exercise, as described in paragraph 1 (for Generator Build projects) or paragraph 2 (for OFTO Build projects) of Schedule 2 to the Tender Regulations.

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 Offshore Transmission Licence is to be granted.

Tender Regulations

The Electricity (Competitive Tenders for Offshore Transmission Licences) 2015.

Tender Revenue Stream (TRS)

The revenue established through the tender process, which is the value set out in paragraph 4 of amended standard condition E12-J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) of the OFTO Licence.

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 Offshore Transmission Licences are to be granted for each Qualifying Project subject to such Tender Exercises.

Tender Round 4 (TR4)

The fourth competitive Tender Round for the grant of Offshore Transmission Licences for Generator Build projects.

Tender Rules

These rules published by Ofgem.

The Crown Estate

The body that manages Crown property and that is 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.

Third Package

A package of European Union legislation on European electricity and gas markets that entered into force on 3 September 2009.

Third Package Regulations

The Electricity and Gas (Internal Markets) Regulations 2011.

Transfer Agreement

The agreement to transfer any:

- (a) property interests, rights or liabilities in relation to Transmission Assets;
- (b) shares or other interests in an undertaking in which any property interests, rights or liabilities in relation to Transmission Assets are vested; or
- (c) beneficial interest in any property interests, rights or liabilities or shares or other interests relating to Transmission Assets;

from a Developer to a Successful Bidder in respect of a Qualifying Project subject to a Tender Exercise 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.

Transmission System

Is defined in Section 4(4) of the Electricity Act 1989 as 'a system which consists (wholly or mainly) of high voltage lines and electrical plant, and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another'.

Transmission Services

Those services which are provided or are to be provided to the system operator by another transmission licensee pursuant to standard condition E15 (Obligation to provide transmission services) of the OFTO Licence.