

Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements

Decision

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Overview:

This document represents our next step to introduce competitive tendering to onshore electricity transmission. Following our assessment of the responses to our consultation in May 2016, we present here our decisions on specific policy areas related to the arrangements for projects in RIIO-T1.

The focus of this document is on the criteria and process for identifying when a competitive tender can be run, the pre-tender arrangements under a late competitively appointed transmission owner (CATO) build tender model, and measures for conflict mitigation. This document focuses on the more immediate arrangements needed to set up the new competitive regime for any projects tendered during RIIO-T1.

We intend to publish further details on the regime over the coming six months, including a further consultation on how we will run tenders and the market offering for a CATO.

This document is aimed at parties interested in the competitive regime, including potential bidders, incumbent network operators, interested consumer groups, as well as other relevant stakeholders.

Context

Great Britain's onshore electricity transmission network is currently planned, constructed, owned and operated by three transmission owners (TOs): National Grid Electricity Transmission (NGET) in England and Wales, SP Transmission in the south of Scotland, and Scottish Hydro Electric Transmission in the north of Scotland. We regulate these TOs through the RIIO (Revenue = Incentives + Innovation + Outputs) price control framework. For offshore transmission, we appoint TOs using competitive tenders.

The incumbent TOs onshore are currently regulated under the RIIO-T1 price control, which runs for 8 years until 2021. Under this price control, we developed a mechanism for managing the assessment of large and uncertain projects called 'Strategic Wider Works' (SWW). The incumbent TOs are funded to complete 'pre-construction' works, and then subsequently follow up with applications for construction funding when the need and costs for the project solidify. As part of our decision on the RIIO-T1 price control, we set out that projects brought to us under the SWW regime could be subject to competitive tendering.

We previously undertook the Integrated Transmission Planning and Regulation (ITPR) project, which reviewed the arrangements for planning and delivering the onshore, offshore and cross-border electricity transmission networks in GB. Through the ITPR project, we decided to enhance the role of the system operator (SO) to play an increased role in identifying the long term needs of the system and to develop and assess options to meet those needs. In September 2015 we set out our decision to change the SO/onshore TO licences to give effect to these roles. We also decided through the ITPR project to increase the role of competitive tendering where it can bring value to consumers. In particular, we decided to extend the use of competitive tendering to onshore transmission assets that are new, separable and high value. As part of our Final Conclusions, we included our assessment of the impact of introducing competitive tendering onshore.

Following the ITPR project, we set up our Extending Competition in Transmission (ECIT) project to implement competition in onshore electricity transmission. We published a consultation on our proposed arrangements for competitive onshore tendering in October 2015. In May 2016 we consulted on our process for identifying projects, pre-tender arrangements under a late CATO build, and our proposals for conflict mitigation measures. We also published an updated impact assessment. We consulted in August 2016 on our tender process and market offering, and are currently reviewing stakeholders' responses. We will continue to develop the competitive onshore regime, with a view to being ready to run competitive tenders from 2018.

Associated documents

Extending competition in electricity transmission: tender models and market offering, August 2016

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-tender-models-and-market-offering>

Extending competition in electricity transmission: criteria, pre-tender and conflict mitigation arrangements, May 2016

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-criteria-pre-tender-and-conflict-mitigation-arrangements>

Extending competition in electricity transmission: arrangements to introduce onshore tenders, October 2015

<https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-proposed-arrangements-introduce-onshore-tenders>

Criteria for onshore transmission competitive tendering, May 2015

<https://www.ofgem.gov.uk/publications-and-updates/criteria-onshore-transmission-competitive-tendering>

Integrated Transmission Planning and Regulation project: Final Conclusions, March 2015

<https://www.ofgem.gov.uk/publications-and-updates/integrated-transmission-planning-and-regulation-itpr-project-final-conclusions>

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Executive Summary

We are continuing to develop the detailed arrangements to implement competitive tendering for new, separable and high value onshore electricity transmission assets. We consulted on our initial proposals in October 2015, and again during 2016 (May¹ and August²) on specific arrangements for the regime in RIIO-T1.³

This document focuses on the more immediate arrangements needed to set up the new Competitively Appointed Transmission Owner (CATO) regime for any projects we tender during RIIO-T1. We have focused on late CATO build⁴ because any SWW projects tendered during RIIO-T1 have already been developed and progressed by the incumbent TOs, and the TOs have been funded for pre-construction activities through the price control. We will consult on the detailed arrangements for RIIO-T2⁵ at a later stage.

Our May 2016 consultation focused on the criteria for tendering, pre-tender and conflict mitigation arrangements. Having considered responses, as well as wider engagement with stakeholders, this document sets out our decisions on the proposals set out in our May consultation, including:

- **How we identify projects for competitive tender** – the detailed criteria for competition, identification of projects through the system operator's (SO) network options assessment (NOA), our principles for project packaging, and our decision-making processes.
- **The role of the TO** – pre-tender roles and responsibilities, tender support activities, and funding arrangements.
- **How to ensure a level playing field** – the conflict mitigation arrangements for bidders where they have been developing the projects.

¹ https://www.ofgem.gov.uk/system/files/docs/2016/05/ecit_may_2016_consultation_0.pdf

²

https://www.ofgem.gov.uk/system/files/docs/2016/08/extending_competition_in_electricity_transmission_-_tender_models_and_market_offering_0.pdf

³ RIIO-T1 is the current price control period for the three electricity transmission owners (TOs) (and the system operator (SO)) in GB. The period runs from 1 April 2013 to 31 March 2021.

⁴ Under late CATO build, the tender would be to construct, own and maintain assets that have already been scoped and gained consent by another party. An 'early CATO build' would include the appointed CATO undertaking those scoping and consenting activities, as well as the construction, ownership, and maintenance.

⁵ RIIO-T2 will run from 2021-2029 and applies to projects that would commence construction during that period.

This document is intended to provide clarity to stakeholders who are interested in this regime, and the potential investment opportunities that it provides. It is our intention that this also provides clear indications for TOs on the specific roles and obligations we expect them to undertake as part of this process, and how this will be funded. Alongside this document we have published an informal consultation on the modification of SO/TO licences to implement the policies described in this document.

How we identify projects for competitive tender

A competitive tender may be run for projects that meet the following criteria:

- New – a completely new transmission asset or a complete replacement of an existing transmission asset.
- Separable – the boundaries of ownership between the competed assets and other (existing) assets can be clearly delineated.
- High value – a fixed threshold set at £100m of expected capital expenditure of a project at the point of our initial assessment of whether to tender the project.

We will consider other factors when making our decision during RIIO-T1, including assessing the project's deliverability and transferability. We will also consider how we can most efficiently package a project for tender.

During RIIO-T1, projects submitted to us through the Strategic Wider Works (SWW) regime are eligible for competition. We will make our initial tender decision when we assess the need for these projects.⁶ If we decide that a project may be suitable for tender (an 'initial tender decision'), the TO will return with a complete tender specification at our final assessment point (the Final Tender Checkpoint (FTC)). Following consideration at the FTC, we will make a final decision whether to commence a tender.

In the future, the NOA will be the primary route that identifies projects for tendering. The SO will take a more active role in developing its own options for inclusion in the NOA, where not already identified by incumbent parties. We propose to make changes to the SO licence conditions to implement this.

⁶ We expect this to be at their Initial Needs Case (INC) stage. Where projects are sufficiently advanced there will not be an INC. For those projects, we would make our assessment at the Final Needs Case when submitted by the TO.

The role of the TO

1.1. Where we decide to tender a project in RIIO-T1, the developing TO will be required to:

- Undertake the relevant preliminary works.
- Produce the tender specification outputs by the start of the FTC, and place the outputs into a data room.
- Provide support during the tender, including responding to bidder clarifications and maintaining the data room with up-to-date information.

1.2. We will fund the TO for activities required as a result of running a tender, for example producing the tender specification and supporting the tender. We will determine the level of this funding through an ex-post cost assessment at the end of the tender.

How to ensure a level playing field

We want to ensure that there is a level playing field for all bidders participating in a tender. We have identified that conflicts may arise where a bidding party undertakes the preliminary works for a project that will be tendered.

We will implement conflict mitigation measures for TOs, where they choose to bid on a project they have developed, across three areas:

- Conduct – the TO must act transparently, without affording an unfair commercial advantage to its own bidding arm.
- Business separation – the TO must demonstrate it has taken appropriate measures in the following areas: IT system separation, restricting employee transfer, managerial separation, physical separation, and financial separation.
- Scrutiny – the TO must produce a conflict mitigation methodology for our approval, and submit regular compliance reports.

The TO must confirm its intention to bid and begin to implement conflict mitigation arrangements within eight weeks of us making an initial tender decision (or within a time period that we specify), and no later than six months before the date specified for the FTC.

We will also require appropriate levels of conflict mitigation to be put in place by other bidders, where they have been involved in preliminary works for a project that will be tendered. These include confidentiality agreements to gain access to

confidential information, and a 'conflicts of interest' declaration to be approved by no later than the pre-qualification stage of the tender. Failure to sufficiently mitigate conflicts will result in exclusion from bidding.

Next Steps

We are now consulting on our proposed licence changes to give effect to the decisions in this document with a view to implementation by Summer 2017.

In December 2016 we intend to publish a consultation on National Grid Electricity Transmission's (NGET) North West Coast Connections (NWCC) project, setting out our views on the project's needs case and suitability for competition.

We expect to publish a further consultation in Spring 2017 on our tender models and market offering work.

1. Overview

Context

1.1. We continue to consider that (as supported by our updated May 2016 impact assessment) there are significant benefits from tendering new, separable and high value transmission assets.⁷ As such we aim to achieve the following objectives through introducing competition to onshore electricity transmission:

- Provide value for consumers, protecting them from undue costs and risks.
- Deliver transmission infrastructure necessary to address system needs.
- Bring about timely, economic and efficient development of the GB electricity transmission system.
- Create a strong competitive field by attracting new entrants and new approaches to the design, construction and operation of transmission infrastructure.

1.2. Our work is currently focusing on the pre-tender arrangements and the late tender model ('late CATO build') for projects in RIIO-T1.⁸ Under late CATO build a tender would determine the CATO to construct, own, and operate the assets, after completion of the preliminary works⁹ (eg early design, consenting) for the project. We also intend to apply the CATO regime to projects in RIIO-T2 and beyond, and will explore in due course whether there are other tender models that will also deliver our objectives.

⁷ Throughout this document, where we refer to "assets" and "projects" being tendered, it should be noted that the subject of a competitive tender is in fact the "relevant licence", to construct and operate assets which satisfy the new, separable and high value criteria. This equally applies to phrases concerning our assessment of assets or projects for competitive tender. Where we refer to "criteria for competitive tender", "the tender criteria" and "criteria for tendering", in each case this means the new, separable and high value criteria which we currently anticipate being set out in secondary legislation.

⁸ The RIIO-T1 Price Control runs from 2013 to 2021.

⁹ Preliminary works are the development works required to progress a project during its early stages, for example high level design, consenting, and land rights acquisition.

Where does this document fit into the wider CATO programme?

How this fits into our work programme

1.3. In May we published our consultation "*Extending competition in electricity transmission: criteria, pre-tender and conflict mitigation arrangements*". We received 12 non-confidential responses to that consultation, and these are available on our website¹⁰. Most stakeholders were supportive of our proposed arrangements. Throughout this document we address substantive comments on particular areas of policy and indicate the extent to which policy has changed as a result of responses. For the most part, responses have directed the detail of implementation rather than a departure from the policy.

1.4. This document sets out decisions in three main areas relating to our arrangements for CATOs in RIIO-T1:

- Project identification process – how we identify projects for tendering and make our decisions.
- Pre-tender obligations and framework – the role of the relevant TO in developing the tender specification and support the tender, and associated obligations and funding arrangements.
- Mitigating conflicts of interest – the conflict mitigation arrangements for bidders where they have been developing the projects.

1.5. Our decisions are highlighted in bold in this document, and are also summarised in Appendix 1.

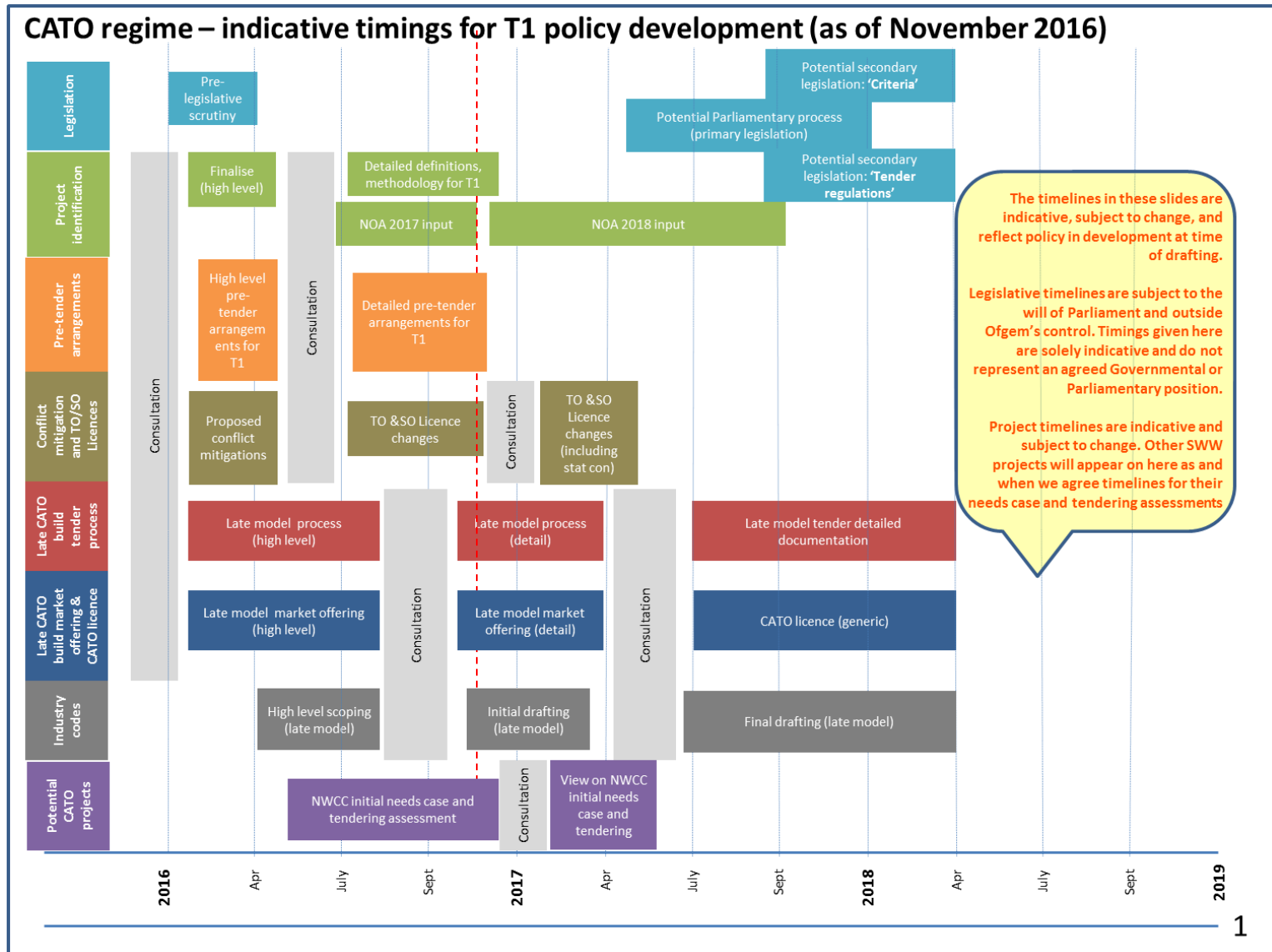
1.6. These policy areas are reflective of the work-plan we published in our May consultation, updated in Figure 1 below. We stated in the May consultation that the indicative work programme to implement competition and run the first tender is influenced by the timetable for legislation coming into force and suitable projects coming forward. We have made amendments to our work-plan since with a view to running the first tender from 2018. We expect to say more on our work-plan for tendering RIIO-T2 projects in 2017.

1.7. In August we published our consultation "*Extending Competition in Electricity Transmission: Tender Models and Market Offering*". We are currently reviewing stakeholder responses to that consultation, and continuing to develop our detailed proposals for late CATO build. We expect to publish further information for consultation in Spring 2017

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-criteria-pre-tender-and-conflict-mitigation-arrangements>

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Figure 1 - Indicative ECIT Timings for RIIO-T1 Policy Development



Regulatory Framework for CATOs

1.8. This document sets out the principle of our policy decisions for the regime. We have been developing the framework to support this regime on the basis that the Electricity Act 1989 would need to change. We consider that a legislative underpinning would provide strong support and clarity for competitive tendering. We have set out in Appendix 2 our view of the indicative framework for implementing the CATO regime through legislation. Alongside this document, we have published an informal consultation setting out proposed licence modifications to implement our policies, within this legislative context. We will also look to develop guidance over 2017 for the decisions in this document and for the licence modifications, where appropriate.

1.9. We are continuing to work with the Department for Business, Energy and Industrial Strategy (BEIS) on arrangements to implement this policy. In the interim we continue to progress the indicative CATO work programme accordingly. As such, we expect to consult by the end of this year on our initial views on whether to tender the North West Coast Connections assets.

1.10. We will continue to consider the most appropriate framework to support the regime and to best implement our policies, however it is our view that the principles set out in this decision would remain consistent across any final implementation framework.

Licence modifications

1.11. Alongside this document we have published an informal consultation on proposed modifications to the SO/TO licences to implement the decisions in this document. We will be working with the relevant licence holders and wider industry to further develop those licence changes, and encourage interested parties to respond to that consultation, prior to us commencing a statutory consultation.

1.12. The licence consultation is the first stage in a series of changes we expect may need to be made to licences; for example we will be creating a CATO licence, and may need to implement further changes to the SO/TO licences in T2 to give effect to the regime.

1.13. We expect to publish a statutory consultation on our proposed licence modifications in Spring 2017.

RIIO-T2 arrangements and wider SO framework

1.14. We are further considering pre-tender SO conflict mitigation measures for CATO projects in RIIO-T2. Any such role must be considered in the context of the SO's wider role and incentive framework. We are continuing to work with BEIS on whether there is a case for further separation of the SO, looking not just at the SO role in onshore competition, but across all its activities. In the interim, we would like

TOs to inform us, as soon as possible, about any projects in their pipeline (T1 or T2) that might meet the criteria for tendering and that we're not currently aware of, so we can decide on arrangements for taking those forward.

NOA methodology

1.15. We will be working with the SO as they implement changes to the NOA methodology to address the decisions in this document. This also includes making changes to the NOA licence condition C27, the amendments to which can be seen in the supporting licence consultation. The next NOA report based on the existing methodology will be published in January 2017. NGET expects to publish a consultation on its NOA methodology in 2017.

Potential CATO Project Pipeline

Specific projects in RIIO-T1

North West Coast Connections

1.16. The North West Coast Connections (NWCC) project is a proposed transmission project to connect a nuclear power station in Cumbria. Earlier this year NGET submitted an Initial Needs Case (INC) to us for the project under the SWW process. The INC is an opportunity for us to review whether there is a need for the project, and how the TO has narrowed down its proposed design. NGET is currently consulting on its proposed design for NWCC as part of the planning process,¹¹ and further information about the project is available on NGET's website.¹²

1.17. Alongside our assessment under the SWW process, we have also been assessing the project's suitability for tendering. We expect to consult in December 2016 on our initial view on whether the project is suitable for competition. Following that consultation, in the Spring of 2017 we will set out our intention as to whether or not the project will be tendered, whether as a whole or in part (the 'initial tender decision'). This will not represent a formal decision until such time as a regulatory framework for tendering is in place. Once this is in place we may reaffirm our decision.

Hinkley-Seabank Connection

1.18. We expect to receive a revised Final Needs Case (FNC) submission under the SWW process from NGET about its Hinkley-Seabank project to connect EDF's Hinkley

¹¹ NGET is currently carrying out its required consultations under sections 42 and 47 of the Planning Act, 2008

¹² <http://www.northwestcoastconnections.com/>

Point C nuclear power station in Somerset. As set out in the May document, where projects have not had an INC, we will make our tendering assessment at the FNC stage. We currently expect to be able to provide our views on the needs case and on tendering in the Summer of 2017.

Other T1 projects

1.19. In the RIIO-T1 Final Proposals we said that we would potentially compete any SWW projects that meet the criteria for tendering. For a full list of potential SWW projects, refer to our website and the most recent NOA report.¹³ More detail about the status of those projects can be seen on the developing TOs' websites.

Next Steps

1.20. Following this document we will continue engaging with stakeholders in a variety of ways as we further develop the CATO regime. Specifically, we are keen that:

- Stakeholders respond to the informal licence consultation.
- Interested parties contact us to arrange bilateral meetings if they wish to clarify any of the points in here, or further explore any of these areas.
- We can continue to engage wider groups of stakeholders as appropriate, for example through workshops we run with the Energy Networks Association (ENA) on CATOs.

¹³ <http://www2.nationalgrid.com/UK/Industry-information/Future-of-Energy/Network-Options-Assessment/>

2. Project identification process

Chapter Summary

This chapter sets out our decisions on the process for identifying projects suitable for competition. In particular, the criteria which projects will be assessed against, the routes to identify a pipeline of projects and our approach to assessing the suitability of projects for tendering during RIIO-T1.

Overview

2.1. In our May consultation we provided more detail of the proposed criteria which will determine whether a project is suitable for competitive tender and how we intend to apply the criteria. We also set out our proposals for the routes for project identification and our proposals for project packaging.

2.2. In this chapter we confirm our decisions on the proposals set out in May, following consideration of responses to our consultation. We asked for respondents' views on a number of detailed aspects and describe how we have considered responses.

Project Identification

Draft criteria

2.3. In our May consultation we provided more detailed definitions of the proposed new, separable and high value criteria to identify projects suitable for competitive tendering.¹⁴ This provided further clarity and detail on the high level criteria set out in our May 2015 open letter and our October 2015 consultation. Our current expectation is that the criteria would be defined in secondary legislation made by the Secretary of State, and therefore would be subject to a process of Parliamentary scrutiny. As such, until that process is complete, we refer to the criteria as "draft criteria". We are currently working with BEIS to support the development of draft regulations in which the criteria would be set out.

¹⁴ The draft legislation, published by the Government/DECC in January 2016, provide for the Authority to competitively tender a 'relevant licence' which is a) an Offshore transmission licence, b) a transmission licence (other than an offshore transmission licence) which regulates assets which meet criteria or c) a distribution licence which regulates assets which meet criteria.

2.4. We also proposed that the criteria will be periodically reviewed to ensure they are appropriate and maximise the benefits of competition for consumers. We noted this is particularly relevant for the high value criterion to ensure that the benefits continue to outweigh the costs associated with competition.

2.5. Three respondents to the consultation commented on our proposed detailed definitions of the criteria in their responses.

2.6. One respondent requested further detail on how the high value criterion would be applied and if the expected capital expenditure of a project would include allowances for risk and contingencies. **We consider that the expected total capital expenditure of a project should include identifiable and appropriately allocated risk and contingency allowances, in order to be a realistic estimate of the eventual capital cost.** This is consistent with our approach to assessing costs for SWW¹⁵ projects and for offshore transmission¹⁶ and we consider it good practice that the economic and efficient risks are managed in cost estimates through appropriately allocated contingencies.

2.7. Several respondents noted their concern that a competitive tender could delay their connection date. One suggested that the criteria should limit the projects eligible for competition to those which do not include enabling works for a particular generator to remove the risk of a potential delay to their connection. We recognise the concern of generators that the tender process and construction of transmission assets by a CATO could cause potential delays to their connection dates and have developed several mitigations to address this concern.

- In our May consultation we set out the proposed process we will follow when making a decision to tender a particular project, including the assessment of other factors such as deliverability and transferability of works. In paragraphs 2.40-2.42 of this document we describe our decision on that process.
- In our August consultation we set out how the timeline for our proposed late CATO build tender process will align with key project milestones and our assessment of new transmission investment under the SWW process.
- Additionally the structure of the CATO's revenue stream and the package of incentives and obligations placed on it will also ensure the CATO is incentivised to complete on time, and are compare favourably with incentives on incumbent TOs to complete projects under SWW. This is also discussed in our August consultation.

¹⁵ <https://www.ofgem.gov.uk/publications-and-updates/guidance-strategic-wider-works-arrangements-electricity-transmission-price-control-riio-t1-0>

¹⁶ <https://www.ofgem.gov.uk/publications-and-updates/offshore-transmission-cost-assessment-development-update>

2.8. We consider that the arrangements described above will provide sufficient mitigation to ensure connection dates are not delayed. **Therefore we do not consider it appropriate that the criteria should exclude enabling works where the new, separable and high value criteria have been met as these projects represent significant transmission investments and their exclusion could limit the scope of potential benefits for consumers arising from competition.**

2.9. One respondent suggested that the review of the criteria, particularly the high value threshold, be aligned with the price control periods to support TOs' allocation of resources to project development, widen the scope for competition and provide medium-term certainty to stakeholders. **We do not consider it appropriate to set a fixed timetable for the review of the criteria as this review should be driven by changes which will deliver the greatest benefit to consumers and improve the effectiveness of the competitive regime in a timely manner.** We will however work with TOs to ensure review periods and potential impacts on RIIO resourcing arrangements are clear.

2.10. **Our confirmed view of the definitions of the draft criteria are:**

- **New** – a completely new transmission asset or a complete replacement of an existing transmission asset.
- **Separable** – the boundaries of ownership between these assets and other (existing) assets can be clearly delineated. Transmission assets do not need to be electrically contiguous or electrically separable from other assets to be considered separable. However, the SO may on a case-by-case basis propose electrical separability at project interfaces, if the SO considers there is a cost-benefit justification for this.
- **High value** – a threshold set at £100m of expected capital expenditure of a project at the point of our initial assessment of whether to tender the project. The £100m threshold will be a fixed nominal value and not indexed to a reference year, and project value will be assessed in the price base of the year of the assessment.

Asset transfer

Transfer of preliminary works / non-physical assets

2.11. **In our May consultation we confirmed that non-physical assets necessary for the development of competed transmission assets such as preliminary works, property rights, or access agreements should be transferred to the CATO.** The majority of respondents to the consultation supported this proposal. Some respondents noted that the process for transferring these assets to the CATO will need to be clearly defined before the start of a tender and it should also be clear what, if any, warranties are associated with these assets. In our recent August consultation we provided further detail about how we propose

to manage the transfer of these non-physical assets/preliminary works to the CATO. We will provide more detail on the arrangements for transfer, and how we propose to allocate and manage hand-over risk in our upcoming Spring consultation.

Transfer of existing (physical) transmission assets

2.12. In our May consultation we proposed that where new CATO assets are developed in close proximity to existing (physical) transmission assets owned by existing TOs, in the majority of cases the necessary access to the existing transmission assets required by the CATO could be managed through standard industry practices, such as interface agreements between the CATO and the existing asset owner. We stated that in limited instances it may be appropriate to transfer existing transmission assets to the CATO for the purposes of efficient construction and operation, or where access agreements are insufficient.

2.13. The majority of respondents to the consultation were supportive of this proposal and agreed that the circumstances where the transfer of existing transmission assets would be required would be limited. Respondents suggested some possible examples of where this might take place could include spare bays in existing substations, instances where the project requires the decommissioning of existing assets, and the transfer of earthing and isolating devices or short sections of busbar. Almost all respondents agreed that existing industry codes and commercial interface agreements would be sufficient to ensure the necessary access for construction and operation in most circumstances. Several noted that if any transmission assets were to be transferred to the CATO these should take account of any impact on network operation and coordination, as well as the appropriate risk allocation between the parties. One respondent suggested that some physical, albeit non-transmission, assets should also be capable of being transferred to the CATO, such as necessary long-life civil structures.

2.14. We confirm our view that standard industry arrangements will be sufficient to manage the necessary access to existing transmission assets, but that in limited cases some marginal transfer may be required.

2.15. We expect to set out the specific process and arrangements for the transfer of assets (both physical and non-physical) in our Spring consultation. This will cover both the processes for identifying these assets as well as the process for transferring them to the CATO.

2.16. Where new CATO assets are developed in close proximity to a third party's assets (eg a distribution network operator), we consider that existing industry standards and commercial arrangements would be applied at any interfaces or 'crossings/interactions' to facilitate efficient construction and operation. **We do not expect that any physical transfer of third party assets would be needed, however we will consider on a project-by-project basis whether any transfer would be beneficial for consumers. We will do this through discussion with the third party in the first instance.**

NOA and project identification routes

Routes for project identification

2.17. As we have previously set out, we will assess SWW projects proposed to us by TOs during RIIO-T1 to determine whether they are suitable for competitive tendering. This decision-making process is discussed later in this chapter (from paragraph 2.33). In future, as determined in the ITPR final conclusions, projects which meet the criteria for competition will principally be identified through the SO's NOA process.¹⁷ The SO will make recommendations on whether a project meets the criteria in the NOA report. This decision was not previously implemented within the introduction of the NOA in 2015 as the criteria definitions were not sufficiently developed, however we are working with the SO to implement this decision through the development of the NOA methodology and the proposed modification of the NOA licence condition C27.

2.18. The NOA process focuses on projects which are considered to be wider works reinforcements and those which will result in boundary increases. However, for projects that would begin construction during the RIIO-T2 period, any assets which are new, separable and high value may be tendered. This may include transmission projects not currently identified in the NOA such as those to enable generation or demand connections and other transmission projects. In our May consultation we proposed establishing a process to require the SO to identify transmission projects included within a generator connection offer and non-load driven works which would meet the criteria for competitive tendering.

2.19. Respondents were broadly supportive of our proposal that transmission works required to facilitate generator connections which meet the criteria should be identified by the SO. There was a preference that these projects would be either integrated into the NOA process or identified along the same timescales as the NOA assessment and published alongside the report.

2.20. **We will introduce a new requirement on the SO, to identify transmission works included within a generator connection offer that meet the criteria for competitive tender and publish these in a report.** We currently consider that the volume of these sorts of works, which would meet the criteria and would not already be captured by the NOA process, may not be large. However, we consider that competitive tenders of these projects could bring significant benefit to consumers and we wish to ensure the complete pipeline for competitive tender is captured. **Similarly, we also intend to implement this process for demand**

¹⁷ The NOA process is intended to provide a system-wide holistic outlook, to assess and compare solutions to system needs, including providing recommendations on options for competitive tendering. This process should include the publication of an annual report updating a 10-year outlook on reinforcement solutions/options and making recommendations for which of these should be tendered. This report should be consulted on and stakeholders should have the opportunity to input into this process.

connections, though again, we consider the volume of these connections which meet the criteria will be small. We will keep this process under review over time to ensure it is efficient and beneficial to consumers.

2.21. Several respondents, including the incumbent TOs, stated that the pipeline of non-load driven transmission works will not be identified until planning for the RIIO-T2 business plans are developed by the TOs. However, some respondents recognised that it is possible these sorts of works could meet the criteria for competitive tender. As part of our wider development of the monitoring and incentivisation of TOs' non-load projects, we intend to ensure flexibility in how the TOs manage the ongoing maintenance and health of their asset bases. **To that end, we consider it would be more appropriate to review the potential identification of these projects as part of our wider assessment of business plans for RIIO-T2.** However, we acknowledge that the nature of how these assets are managed as flexible portfolios may not lend itself to identifying certain and firm projects to tender – we will consider this further as part of our business plan assessment.

2.22. We are working to implement these changes to the NOA process through engagement with the SO on the future direction of the NOA methodology and through the proposed modification of the NOA licence condition C27. More detail of our implementation of the decision is provided in our supporting licence changes consultation.

SO-identified options

2.23. A conclusion of the ITPR project was that the SO should identify options which are not identified by the TOs, including cross-regional transmission solutions and alternative or reduced build solutions. In our May consultation we confirmed our view that this should also include any options which have been previously proposed by TOs but which they have since abandoned, where the SO considers there is merit in still considering these options from a whole-system perspective. TO respondents to the consultation noted that they would require a clear process to identify when the SO would become responsible for developing an option further. We continue to consider it appropriate to include these options within the scope of SO-led options. We consider that where an option sits across TO regions, it may be more appropriate for the SO to coordinate works across the TOs to progress these options.

2.24. In our May consultation we confirmed our decision, set out initially in the ITPR Final Conclusions and our October 2015 consultation that the SO should be responsible for carrying out 'early development works' required for SO-led options.¹⁸ We consider that 'SO-led' options should be developed with such sufficiency that they

¹⁸ We also confirmed the ITPR conclusion that the SO should be responsible for undertaking the early development works associated with non-developer associated offshore wider works, which would otherwise not have a driving party (see standard condition C27 of the electricity transmission licence).

can be compared to other options under the NOA process. We set out our view that we would expect early development works will include desktop analysis, such as capacity analysis, technology choices and high level routing and not require any field analysis or surveys.

2.25. We sought respondents' views on what specific works should be undertaken as early development works ahead of an options assessment in the NOA process. Most respondents agreed that early development works could be completed through desk-based analysis. Respondents suggested that these should include a needs case report, initial optioneering report, functional specification, single line diagrams, technologies, outline programme plan, cost estimates, initial route corridor study, environmental constraints studies and risk assessments. The incumbent TOs noted that the scale of early development works required are likely to vary with the option's maturity, and given that many options considered in the NOA will not have reached the same maturity, it may not be possible to develop all options to a comparable standard.

2.26. We confirm our decision that the SO should be responsible for undertaking early development works for SO-led options, or where an option may require contributions from more than one TO, the SO should be responsible for coordinating the early development works for that option. Building on our position in May, we consider that these early development works will principally be desk-based analysis. We recognise that the early development works for such SO-led options in the NOA process will largely relate to projects that will be delivered in the RIIO-T2 period. However, due to the 10 year horizon of the NOA we would expect that these options will begin to be identified in the next few iterations of the NOA report, therefore these obligations will need to be applicable within the RIIO-T1 period. We are working to implement this decision through engagement with the SO on the future direction of the NOA methodology and through modification of the NOA licence condition C27. More detail of our implementation is provided in the supporting licence changes consultation.

Projects and packaging

2.27. In May we set out our proposed approach to the packaging of projects suitable for competitive tender. Although we expect that projects will be packaged naturally through their relevant identification routes (eg NOA, connections process), we recognise that we may need to occasionally revise the packaging of projects where appropriate to ensure that projects are scoped in such a way to ensure the best outcomes for consumers and an efficient tender process.

2.28. We set out our proposed key principles for packaging, and sought stakeholders' views on these. When applying these principles we proposed considering the impact on project delivery, the resulting suitability for tendering of the package(s), and market interest.

2.29. The majority of respondents were supportive of our proposed principles of packaging and their application. However, some respondents expressed concern

about the potential for an increase in project delivery time and cost, and the possibility for increased environmental impacts if not applied appropriately. Several respondents suggested that when considering if projects may be suitable for bundling together, the high value criterion should be applied to the resulting aggregated project, rather than requiring each constituent package to be of greater value than £100m, as this may deliver greater savings for consumers. Our current view remains that if projects are to be bundled together, each constituent package should meet the high value threshold. We consider this will ensure a transparent and proportionate approach to packaging during the early stages of the CATO regime; however we intend to keep this policy under review.

2.30. In May we also confirmed our proposal that the SO, as part of the NOA process, should propose the most appropriate project packaging in the first instance. We noted that we would scrutinise this process. Respondents who commented on this proposal were supportive of the approach and noted the benefit of proposals on project packaging being made at an early stage to provide certainty to both incumbent TOs and potential bidders. Respondents also supported our scrutiny of the SO assessment of project packaging to ensure a robust process and mitigate concerns about potential conflicts of interest.

2.31. **We confirm our decision that our approach to packaging projects will apply the key principles described below. When making a decision about the packaging of a particular project we will consider the recommendation made by the SO in the NOA report and also have regard to the impact on project deliverability, and market interest.** Our key principles for project packaging are:

- **Bundling – combining smaller projects:** We will combine one or more projects with a common driver into a single tender where this makes technical or commercial sense and is in the interests of consumers. This would only apply to projects which already meet the high value threshold in the first place.
- **Splitting – separating larger projects:** We will consider if some projects should be split into separate packages, tendered separately, to achieve better outcomes for consumers. We will consider this if a project is particularly high value which could limit the pool of potential bidders, if there is a clear technology split requiring different skills and procurement approaches, or if a multi-phase construction is planned over a long period in discrete and separate locations. Any resulting packages will need to meet the criteria for tendering.
- **Re-packaging – re-specifying scope of projects:** We will consider whether a project could be re-packaged where certain elements of a project do not meet the criteria, for example if:

- the vast majority of a project proposed is brand new or a complete replacement, but a small proportion involved updating/renovating existing assets;
- a project as proposed would not be considered separable, but could be re-packaged through minor re-scoping to make ownership boundaries easier to define; or
- the timing of elements of a RIIO-T1 project vary such that it may be sensible to separate earlier and later components.

2.32. To implement this decision we are working with the SO to ensure the NOA methodology develops to incorporate consideration of project packaging in its assessment of options so that this can be incorporated in the third NOA report to be published in January 2018.


Decision-making processes

2.33. In our May consultation we set out our proposed process for considering projects brought to us during RIIO-T1, and interactions with the existing SWW framework.

2.34. One respondent raised the risk of a TO bringing an SWW project to us for assessment at a time that may make tendering challenging, for example very late on in the development process. We acknowledge this risk, however believe that the likelihood of it materialising is low, given the incentives on the TOs to engage with us efficiently during the SWW process. We also engage regularly with TOs to understand progress on project development.

2.35. Several respondents raised the risk that the introduction of tendering could lead to delays in project delivery. As described in the 'Initial Tender Decision' section below, we would consider any particular timing constraints when making a decision to tender, and as part of the INC we would scrutinise the delivery programme set out by the proposing TO. We have also noted in our principles for project packaging that, where appropriate, tendering only a part of a project could mitigate this risk while still realising the benefits of competition for consumers.

2.36. **We have decided to implement the following process for decision-making on tendering during RIIO-T1**, which Figure 2 also shows from start to finish:



Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements

- We will assess the suitability of a project for tendering in parallel with our assessment of the SWW INC.¹⁹
- We will consult on our SWW assessment of the INC, the suitability of the proposed assets for tendering, and the potential tendering packaging options at the same time.
- Subject to the outcome of that consultation we will make an initial tender decision identifying the package of any assets to be tendered and when we expect to start the FTC.
- Where we decide not to tender all or part of a project, the remainder of that project will continue under the SWW process, provided that it continues to meet the cost threshold for SWW.²⁰

2.37. Where we make an initial decision to tender a project, the TO will proceed with undertaking the preliminary works for the project and will also prepare the tender specification outputs for the start of the FTC (see Chapter 3 for detail on the tender specification outputs).

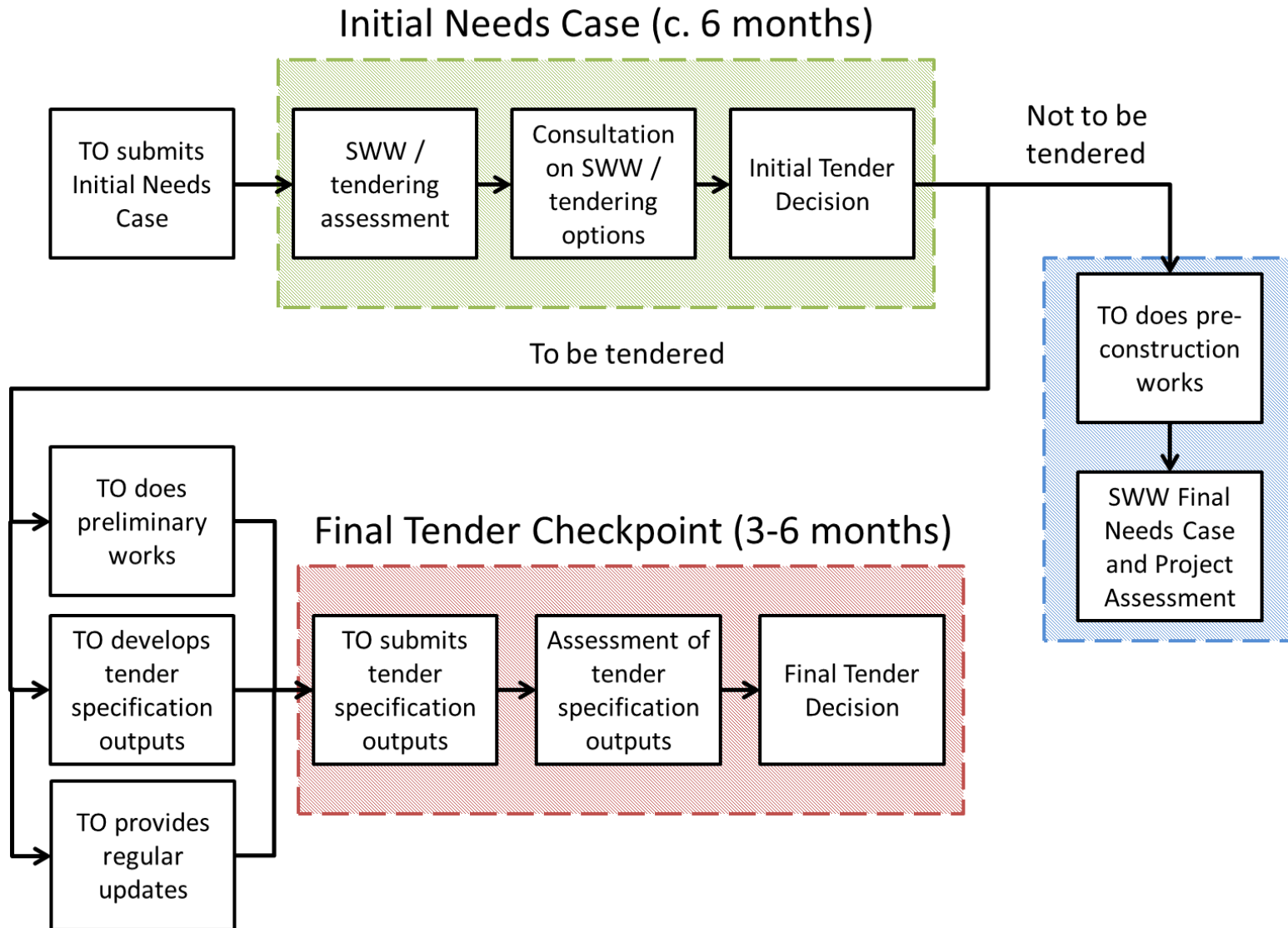
2.38. We expect that the FTC will take approximately six months during which we will further assess the project to confirm its need and suitability for tendering. At close of the FTC we will agree the tender specification and make our final tender decision.

2.39. The process for more mature projects that will only be brought to us for a tendering assessment at the Final Needs Case (FNC) will be slightly different. For those projects, the time between the end of the INC and the FTC would be shorter and the scope of activities different, reflecting that pre-construction works will mostly be finished.

¹⁹ For projects that have already progressed beyond the INC, we will carry out the tendering assessment at the FNC.

²⁰ Where the remainder of a project no longer meets the SWW threshold, the TO may withdraw the project from SWW, and it will be delivered either through other appropriate regulatory frameworks, or in RIIO-T2.

Figure 2 - Process from Initial Needs Case to Final Tender Checkpoint



Initial tender decision

2.40. **We will assess a project's suitability for tendering at the INC (or FNC for more mature projects), alongside the assessment of need undertaken for the purposes of the SWW process.** Our first consideration will be whether or not the proposed assets meet the criteria for tendering. We will then decide whether or not to tender those assets, including considering factors such as the potential deliverability and the effect of any specific project considerations, such as transferability of assets, on the overall consumer benefits case. **At the point we publish our decision, we will also notify the TO of the date of the FTC.** We will set this date based on our assessment of potential tender timings and any impact or constraint on final project delivery, which will ensure that the tender is run at the optimal time.

2.41. We published an updated impact assessment (IA) alongside our May consultation that presented our latest update to the overarching case for competition. We consider this to be a live document which informs our policy decisions. At our initial tender decision we will publish our assessment of the case for tendering the specific project. Given the significance of the first projects to be tendered, we may decide, on a case by case basis, to formalise this assessment of impacts.

2.42. The above process will be reflected in modifications to the TO licences as part of our informal licence consultation. The modification will provide for a project coming off the SWW pathway at the point of the initial tender decision and start the TO's associated pre-tender obligations (see Chapter 3). It will also contain the provision described in 2.36 for the remainder of a project (if applicable) to remain under SWW.

Final tender checkpoint / decision

2.43. In our consultation we set out our proposed process for the FTC. This stage is for us to confirm that it is appropriate to proceed with the tender, and that the tender specification and associated outputs are fit for the purpose of running an efficient and robust tender. Respondents did not raise any concerns with the FTC process. One respondent suggested that we consider any gaps in the preliminary works if raised by bidders. This is discussed further in 3.9 and 3.27.

2.44. **Our decision is that the FTC will operate as follows.** We will consider at the FTC:

- The ongoing need for the project.
- Any changes in the scope of the project since the INC.
- The extent and completeness of the relevant preliminary works.
- The content and suitability of the tender specification and associated outputs.

2.45. **The preliminary works and tender specification should be substantially complete by the start of the FTC,** as they form an essential part of our decision about whether a tender is ready to be commenced. However we note that for some projects, specific elements may not be wholly complete, for example the consents, depending on when we set the FTC to start.

2.46. **During the FTC, the TO should respond to any clarification questions we have on the tender specification or preliminary works. Where we confirm our view that the project is suitable for tendering, and agree that the tender specification is substantially complete, we will proceed to commence a tender. If the assessment at the FTC concludes that there is no longer a need for the project, we would not proceed with the tender.**

2.47. We expect to re-consult on our initial tender decision only if there is a substantial change in the proposed project, such that a re-assessment against the criteria and/or deliverability considerations would be needed.

2.48. We will be implementing this process through modifications to the TO licences which can be seen in the informal licence consultation published alongside this document.

Nuclear specific considerations

2.49. We received responses to our consultation from parties with interests in nuclear generation. These comments covered delivery risk, the framework CATOs operate in, impacts on reliability and standards, and the length of CATO revenue term against the expected generator lifetime. These relate to the timing of our tender process and the obligations and incentives we will put on a CATO. We acknowledge generators' concerns about these subjects, and would like to work with those generators and other industry parties to work through the details and manage any risks. We expect to provide more detail through our tender models and market offering workstream, for which we expect to publish a further consultation in Spring 2017.

3. Pre-tender obligations and framework

Chapter Summary

This chapter sets out our decisions on the pre-tender arrangements for late CATO build during RIIO-T1. In particular, the roles and responsibilities of the TO, the tender specification, and the associated funding arrangements for TO and 3rd party works.

Overview

3.1. In our May consultation we set out that for RIIO-T1 projects the TO developing the project to be tendered should be the party responsible for undertaking the preliminary works and tender support activities.²¹ This is because of their position as developer of the project to-date with funding having previously been allocated for these activities through the RIIO-T1 price control.

3.2. In the consultation we asked for respondents' views on aspects of the process and arrangements proposed. We have considered those views, and in the following sections we set out the decisions, noting where consultation responses have influenced our decision, or provided reasons where we disagree.

Roles and obligations in T1

Outline of the TO's role

3.3. Figure 2, Chapter 2 sets out the process for a competed project from our initial tender decision to our final tender decision at the conclusion of the FTC. **From the point that we make an initial tender decision, the TO will be responsible for the following pre-tender activities:**

- Undertaking the preliminary works
- Producing the tender specification outputs

²¹ Preliminary works are the development works required to progress a project during its early stages, for example high level design, consenting, and land rights acquisition. Tender support activities are the activities undertaken by the TO before and during the tender, for example producing the tender specification, responding to clarifications, and updating a data room.

- Providing updates to us on the progress of the preliminary works and the tender specification outputs.

3.4. The tender specification outputs are the documents and data that will be used by bidders when putting together their bids in the tender. In the 'Tender specification outputs' section of this chapter, we set out more detail on our policy decisions on the contents of the tender specification outputs and the TO's role in selecting and producing those outputs. We will ensure that the TO undertakes high quality preliminary works by focusing on the outputs that are produced, which we discuss further in the 'Ensuring quality of works' section below. We will not fund the TO for their preliminary works activities (beyond the funding already provided as part of the SWW ex ante funding for pre-construction activities), only for the pre-tender and tender support activities brought about through running a tender, which are discussed further in the 'Funding' section of this chapter.

3.5. The TO's pre-tender role as described above will be implemented through its licence conditions, the drafting of which is available through the accompanying informal licence drafting consultation.

3.6. Where we decide to commence a tender, the TO will provide tender support, including responding to bidder clarifications and maintaining the data room with up-to-date information. This is discussed further in the 'Tender support' section of this chapter, and will be implemented through relevant tender framework documents.

Ensuring quality of works

3.7. Ensuring the quality of the tender specification outputs and the preliminary works required to deliver them is important to ensure robust bid assumptions, and the running of an economic and efficient tender. Responses to both the May consultation and other industry engagement have reflected that potential bidders are interested in how we will ensure that the preliminary works and other tender support activities are undertaken by the TO in a high quality manner.

3.8. In terms of managing the performance and outputs of the TO undertaking preliminary works and the tender specification, we believe that we can ensure high quality and economic and efficient works through a combination of:

- Placing obligations on conduct in the TO's licence that we can enforce against in the event of poor performance.
- Setting the right tender specification outputs.
- Ofgem scrutiny of the outputs provided by the TO at the FTC, including requirements for remedial works by the TO where outputs are insufficient.
- Having an ex-post cost assessment of tender support and any additional preliminary works we have agreed should be undertaken by the TO to

ensure these have been carried out economically and efficiently (see 'Funding').

3.9. As set out above, **we will scrutinise the contents and suitability of the tender specification outputs during the FTC to assess their suitability for the purpose of commencing and running an efficient tender process.** In doing so, we will look at the accuracy, completeness, and clarity of the information produced. This would be to provide assurance for us and bidders that the outputs are complete and appropriately recorded before the opening of the tender process. However, bidders should still do their own due diligence once the data room is made available to them to satisfy themselves of the robustness of the information provided.

Risk Allocation

3.10. In our May consultation we set out that we consider the right risk allocation between CATOs, TOs and consumers will drive the appropriate behaviours to deliver high quality preliminary works and an efficient tender process. Broadly, we envisage a mix of the TO mitigating its risks contractually, and bidders undertaking their own due diligence during the tender process. We also note that there may be cases where it is most efficient for consumers to bear the impact of certain risks, to better balance the efficiency of this allocation.

3.11. We asked stakeholders for their initial views on risk allocation. Responses generally fell into the following themes: risks during the consenting process, warranties and liabilities associated with the preliminary works, land access rights, impacted third parties, and outage planning. We agree that it is important to understand where these risks sit within the risk allocation framework we are developing.

3.12. In August we published a consultation on our policy proposals around tender process and market offering for late CATO build. This consultation included more detail on our proposals for risk allocation between parties. We are continuing to engage with industry through various channels, including our working groups run through the ENA. We expect to consult in further detail on our risk allocation arrangements, including for preliminary works, in Spring 2017.

Tender specification outputs

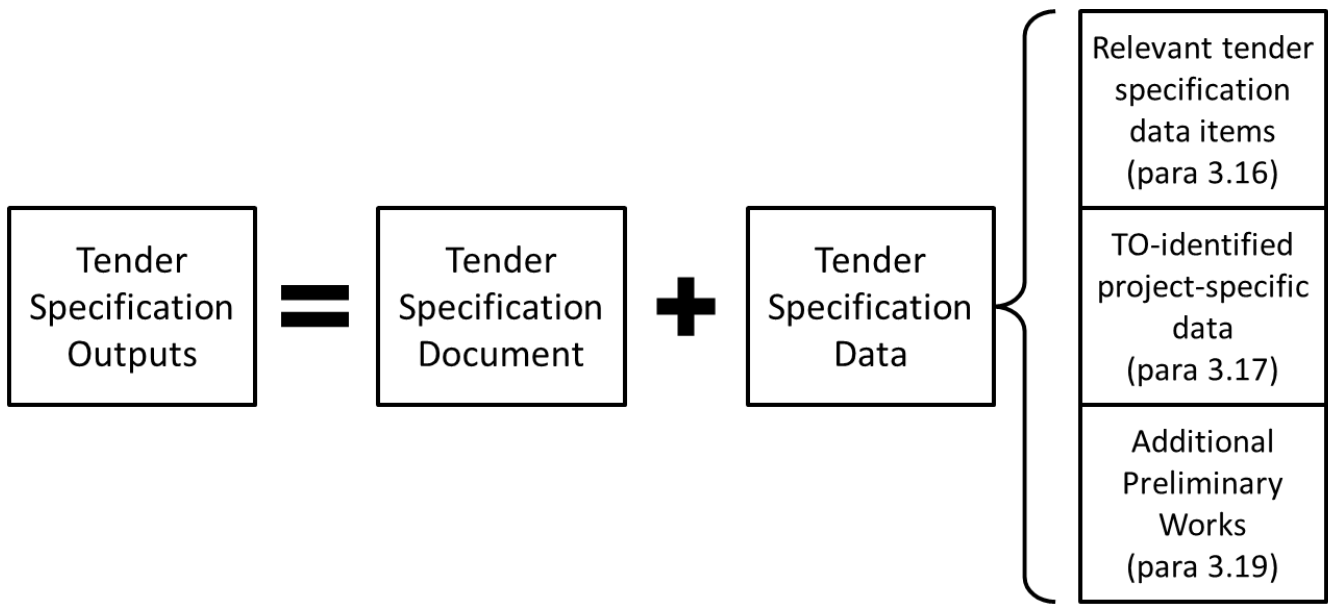
3.13. In the May consultation we provided our consultant TNEI's view on the 'baseline tender specification' to enable a robust tender to take place. The baseline tender specification, which we will now refer to as the 'tender specification outputs', will be the documents and data that the TO will need to produce by the start of the FTC.



3.14. We asked for stakeholders’ views on the scope of the tender specification outputs. From those stakeholder responses and further industry working groups,²² we have further developed our thinking on the contents of the tender specification outputs and how the TOs should develop them.

3.15. **Our decision is that the tender specification outputs, as presented in the TO licence, should be as broad as possible to cover all types of possible CATO project.**²³ Within this, we have made a distinction between the ‘tender specification document’, which would be the chief information record, applicable to all projects, and the ‘tender specification data’ which underpins the document, of which only a selection would be relevant per project. Together, the ‘document’ and the ‘data’ make up the tender specification outputs. Appendix 5 of the licence modification consultation contains the ‘document’ and the ‘data’ lists, which we propose to implement as schedules in the TOs’ licences. We have summarised the constituent parts of the tender specification outputs in Figure 3.

Figure 3 - Components of the Tender Specification Outputs



3.16. **The TO undertaking the preliminary works should exercise its discretion on which are the relevant ‘tender specification data’ for that project, drawn from the longlist of the tender specification data items we have provided.** For example, a wholly onshore project would not require

²² <https://www.ofgem.gov.uk/publications-and-updates/onshore-competition-working-group-tender-specification>

²³ For example, subsea, overhead line, underground.

bathymetric surveys. We expect to engage with the TO early on following the initial tender decision to ensure that the right data will be available for the tender.

3.17. We acknowledge that there may be some project-specific data needed that falls outside of the scope of the tender specification data longlist, despite its wide nature. Where this is the case the TO should notify us, and where we agree, it should provide that data for the tender. This will ensure that bidders are able to access a complete view of the project.

3.18. Respondents suggested other documents or data that they would expect to see during a tender. Some also listed items that should be removed, for example availability of offshore installation vessels. Where we agree we have amended the contents list of the tender specification data longlist, which can be seen in Appendix 5 of the informal licence drafting consultation.

Additional preliminary works

3.19. As set out in the 'Ensuring quality of works' section, we will scrutinise the tender specification outputs to check for quality and sufficiency ahead of the tender. This will ensure that gaps and poor quality are highlighted and rectified before the start of the tender. We have also considered whether requiring additional preliminary works, which are those beyond the scope of the TO's planned preliminary works, would provide specific benefits to a tender. This might include for example works that allow a reduced risk contingency for bidders, such as additional targeted surveys.

3.20. We asked stakeholders for their views on whether these works would be necessary, and what process we could use to identify them. Stakeholders provided some examples, and many suggested that early engagement with bidders would be an appropriate way to get their views.

3.21. As part of putting together a comprehensive scope of tender specification outputs there may be a need for additional preliminary works to be taken forward; however we believe this is best considered on a case-by-case basis for any projects we tender.

3.22. We are keeping the contents of the tender specification data open for more stakeholder input, and we invite stakeholders to review again the contents against the items they would expect to be available by the start of a tender.

Tender support

Data room

3.23. In our May consultation we proposed to use a 'data room' similar to that used for the offshore tendering regime to share project information with bidders. The data room would contain the tender specifications outputs, with access restricted and

subject to confidentiality agreements. The TO would have the responsibility to populate and manage that data room, with our role focused on supervision and managing access. We would also create the basic structure of the data room for the TO to populate.

3.24. Respondents were generally happy with this approach, with one respondent noting that a different structure may be necessary to that used for the offshore tendering process, given the difference between the regimes. We agree that while the scale and content may be different, the concept of using a structured data room is still applicable.

3.25. Some respondents raised questions about the timing of access to this data room. We want to give potential bidders access to the full project data room early in the tender process (subject to confidentiality). However, we consider that sufficient information on the project will be in the public domain before a tender (eg via the planning process), which removes the need for bidders to access the data room until the tender commences.

3.26. Our decision is to proceed with the use of a project data room to share information with bidders during the tender. We will set out more information on the data room after our initial tender decision on a project.

Bidder clarifications

3.27. We set out in our May consultation that we propose to allow bidders to raise clarifications about the available data within the tender specification outputs, and that the TO would be required to respond to these clarifications.

3.28. Respondents to the consultation were generally happy with this approach. Some respondents raised a concern about the timeliness of responses, and one suggested key performance indicators (KPIs) to monitor response times. One respondent raised a related concern about the TO adequately resourcing to be able to respond quickly. We do not expect to implement an explicit KPI process for bidder clarifications, but will monitor the TO response time to check for issues. There will also be obligations on the TO's conduct during the tender process.

3.29. One respondent said we should consider the anonymisation of questions when being put to the TO and published in the data room. We agree, and will replicate the process used for offshore tendering, ie all questions are anonymised.

3.30. Our decision is to use a bidder clarifications process in a tender, with the TO's role being to respond to anonymised questions put to them by Ofgem. We will replicate the process used for offshore tenders, where all clarifications are directed through us, and therefore there are no direct interactions between the TO and bidders.

Funding arrangements

Pre-tender and tender support

3.31. We proposed in the May consultation that we would fund the TO for any additional works required as a result of a tender. This could include the tender support activities (see 'Tender specification outputs' and 'Tender support' sections above) and any additional preliminary works we agree are needed. The majority of respondents agreed with our proposed funding arrangements. One respondent thought that the TO should have its efficient costs funded through the existing regulatory regime. However we believe that the CATO paying for those works is the most direct and appropriate route to recover those costs.

3.32. **Our decision is that we will fund the TO for any additional works required to deliver the tender specification outputs that would not already have been funded via the pre-construction works component of the SWW framework, as part of the RIIO-T1 settlement. The CATO will pay the TO for these works under the TO-CATO transfer agreement.** We will give an indicative cost for those works at ITT stage for inclusion in bidders' tender revenue streams. We will determine the final value of those works through an ex-post cost assessment towards the end of the tender (most likely during the Preferred Bidder stage), where we will determine the economic and efficient costs of carrying out those activities.

3.33. Since the consultation we have considered in more detail how we would undertake the ex-post cost assessment. We expect to use the same principles we use for other cost assessments we undertake to determine the costs of both specific works undertaken, as well as the time required by staff to complete the tender support activities. We will provide more information on the assessment in due course.

3.34. In the scenario where a CATO is not appointed, for example if the need for the project falls away before CATO appointment, we would fund the TO for the efficient cost of these works as a part of the RIIO-T2 price control.

Preliminary works

3.35. We proposed in our May consultation that the value of the preliminary works that are transferred to the CATO on appointment should be set to £0. This is because the delivery of these works is covered by the relevant TO's baseline RIIO-T1 funding for pre-construction engineering outputs for prospective SWW projects.²⁴ In advance of appointing a CATO for a project, we expect the TO to fulfil its obligations associated with that funding.

²⁴ Special condition 3L of the Electricity Transmission licence.

3.36. We confirm that the preliminary works will transfer to a CATO at £0.

We expect to manage this transfer of works through the handover process when a CATO is appointed. More information on the handover process will be included in the Spring consultation.

Third party works

3.37. Projects that we tender may have associated third party works that need to be completed. These third parties could include other regulated utilities or private companies. In some cases elements of construction work by a third party may need to be progressed ahead of the earliest CATO appointment date. An example of this could be where diversionary works are needed by an impacted party to clear the route for a new transmission line; in this case waiting for a CATO to be appointed could impact on project delivery. These third party works could be either still ongoing or completed by the point of CATO appointment. This issue has been raised in responses to our May consultation, and we have since been considering how to treat these third party works both before and after the appointment of a CATO. For clarity, we do not expect that third party assets would come under the ownership of the CATO. **Our overarching principle is that the impact on third parties of a new CATO interface should be neutral, both in terms of costs and level of risk.**

3.38. For projects with third party work required before CATO appointment we expect the developing TO to fund and manage them. The TO will receive the economic and efficient costs of third party works up until the point of responsibility transfer to the CATO. We will assess the TO's costs as a part of the ex-post cost assessment, and will include the cost in the TO-CATO transfer agreement. We will monitor the progress of any such works during the tender to ensure that the works run to the same timetable as previously proposed by the TO. However, if the TO believes that this timetable is no longer appropriate they should inform us as soon as possible.

3.39. Our preference is that the CATO takes full responsibility for all aspects of the project at the point of licence grant.²⁵ Therefore, the CATO will need to take on the responsibility to manage and fund any ongoing or future third party works. We would expect the CATO to manage and fund these third party works on the same terms as the incumbent TO. We therefore expect all CATO bidders to bid against the same baseline third party agreement as provided by the TO. However this does not preclude the successful CATO and the impacted third party coming to their own working arrangements once the CATO is appointed, where mutually agreed. We will ensure that the data room includes detailed information on any completed and planned third party works, and agreements that can be transferred to the CATO. Bidders can then be confident in having all of the necessary information to consider as part of their bid.

²⁵ Licence grant is the final step in appointing a CATO through the tender process.

3.40. We acknowledge that variations may occasionally be needed to suit the specific nature of third party works. We are happy to engage with the third party and the TO to understand any particular concerns with the above approach.

Incentives

3.41. In the May consultation, we set out our view that a financial incentive for any additional works associated with the tender would not drive the right behaviours from the TO and would not be an efficient allocation of consumer funds.

3.42. Where they raised financial incentives, respondents were happy with this arrangement. Respondents tied the incentive more to ensuring that the works are undertaken well, and that the conduct obligations are effective in driving this. We consider that our range of obligations and mitigations described in 'Ensuring quality of works' will ensure that the TO undertakes its works well.

3.43. We confirm our decision not to apply any specific financial incentives to additional TO works as a result of the tender.

4. Mitigating conflicts of interest

Chapter Summary

This chapter sets out our decisions on arrangements to mitigate conflicts of interest for late CATO build in RIIO-T1. These arrangements focus on conduct obligations and business separation requirements for incumbent TOs, who may decide to bid on projects in their area, which they are also responsible for developing.

Overview

4.1. Our May consultation described conflicts of interest that could occur in a competitive regime. We proposed measures to mitigate these conflicts in order to create a level playing field for all potential bidders and ensure the integrity of the competitive process. Conflicts of interest may arise where incumbent TOs and other parties involved in the development and delivery of the network also choose to participate as bidders. We are focusing on arrangements for projects to be tendered during RIIO-T1 at this stage, as the TO will be undertaking the preliminary works and tender support activities for any such projects.

4.2. Respondents to the May consultation agreed with the necessity of the measures and the proposals outlined. There were mixed views on the strictness of our proposals (ie the extent of the business separation involved), with some arguing for a greater level of strictness, and others less strict. We have considered all these views in arriving at our conclusions. We have decided to amend certain aspects of our earlier proposals as a result of feedback received and a detailed consideration of the implementation of the proposals. Any such changes are fully described in this chapter. We have also decided to introduce requirements on the timing of the TO's confirmation of its intention to bid on a project, and its implementation of business separation requirements.

4.3. We expect all bidders to put in place measures to address any potential conflicts of interest. This applies to incumbent TOs and any other potential bidders. We will require bidders to take various measures according to their individual circumstances and the relevant project, as outlined further on in this chapter.

4.4. We consider that any potential conflicts of interest arising from the SO's role in RIIO-T1 will be mitigated by the current conflict mitigation arrangements put in place under the SO's obligations as a result of the conclusions of the ITPR project.

Arrangements for incumbent TOs that may bid

Overview

4.5. We envisage that conflicts of interest could arise for a TO where it is involved in completing the preliminary works and undertaking tender support activities for projects tendered in RIIO-T1, on which it potentially may also decide to bid. For example the TO bidding unit²⁶ could gain an advantage if the TO shares information related to these activities in a preferential way, or if the TO treats the bidding unit preferentially through its role in responding to clarifications from bidders. Bias might also exist in the TO's development of the project, for example in favouring the bidding unit in the choices it makes on design (such as through technology choice or the structuring of commercial agreements, for instance).

4.6. The measures we proposed in May fall into four broad categories of obligations and requirements:

- Obligations on the TO's conduct in undertaking tender support activities.
- The degree of business separation required between the TO and any bidding unit.
- Requirements that the TO protect the information it holds relating to its tender support activities.
- Compliance approval and monitoring obligations.

4.7. We asked respondents whether they agreed with these proposed requirements. The majority of respondents were generally supportive of the proposed measures.

4.8. Our decisions have focused on ensuring that we address conflicts of interest and the potential for any bidding unit to gain an unfair advantage. We have also sought to ensure that any conflict mitigation arrangements are proportionate and do not impinge on any legitimate commercial advantages that the TO business could have as a prospective bidder.

4.9. We have also made decisions on when we will require the obligations to be implemented. We will require the TO to develop a conflicts methodology, which will

²⁶ 'Bidding unit' means that part of the licensee group or business (including an associate of the licensee) which is participating in a competitive tender as a bidder, or which the licensee intends will participate in a competitive tender as a bidder.

cover how the TO will implement all the arrangements detailed in this chapter, for our approval.

4.10. The obligations will form part of a new special condition in each TO licence. Our informal licence consultation document contains further detail about specific requirements and how we propose to implement these.

4.11. The arrangements below only apply to a TO where it is completing the preliminary works and undertaking tender support activities for a project. **They do not apply where a TO expects to bid on a project developed by another TO.**

Conduct

4.12. In our May consultation we proposed general overarching obligations on the conduct of TOs in completing preliminary works and populating a project data room, as well as providing information to bidders on an ongoing basis through the tender process. **We have decided that the TO will be required to act transparently, in a way that does not give the TO bidding unit, or any other party, an unfair commercial advantage over any other participants in the tender process.**

4.13. Respondents to the consultation were generally happy with these principles, against which we have developed more detailed measures. There were no specific comments in the formal responses, however further feedback from stakeholders has highlighted the need for us to clarify what is meant by 'unfair commercial advantage'.

4.14. We consider that an unfair commercial advantage would arise from a TO acting in a way that distorts what should be a level playing field across bidders, affording one or more tender participants an unfair advantage in the competition, or favouring their interests for reasons connected with the licensee's transmission business. We consider there would be a reasonably high impact on the tender if these scenarios materialised and hence will need to manage these.

4.15. The requirement (outlined in our May consultation) to act efficiently during the tender process and to facilitate the process, is covered by the TO's obligations to ensure the quality of the preliminary works and tender support activities, as outlined in Chapter 3.

Business separation

4.16. Our May consultation proposed a range of requirements for TOs to mitigate conflicts of interest based on business separation arrangements. Respondents largely agreed with the need to put in place such requirements, and with the specific proposals. However, a number of potential bidders thought that the measures did not go far enough in ensuring a level playing field, while a few thought they went further than necessary to mitigate potential conflicts of interest. We have considered these responses and suggestions in making our decisions.

4.17. We intend that the requirements on TOs are flexible in their approach to timing and strictness, in order to maintain proportionality in the treatment of conflicts in relation to areas of legitimate commercial advantage. We are aware that the circumstances of each TO and each project will be different and may require specific solutions.

4.18. We have outlined below the minimum requirements in relation to separation of the bidding unit from the rest of the TO's licensed activities. The definition of 'bidding unit' provides for it to be either a separate company within the TO group (including an 'associate', as defined in Standard Condition A1), or a unit within the TO's transmission business (or that of an associate).

4.19. We proposed in May that full legal separation of any bidding unit from the TO project development team²⁷ would not be a requirement where all other obligations are satisfactorily met. Most respondents were happy with this policy with only a couple believing the bidding unit should be a separate legal entity. **We confirm that full legal separation of the bidding unit from the TO group is not required by default, provided sufficient separation can be maintained within the TO business.**

Managerial separation

4.20. We proposed in our May consultation that there should be clear separation between the management of the TO project development team and the bidding unit, at least as far as parent company board level. Respondents generally agreed, with a couple saying the separation should explicitly extend to parent board level.

4.21. **Our decision is to require separation of management structures between the TO and any bidding unit up to, but not necessarily including, the TO parent board.** Specifically, we will require the management of the bidding unit to be organised in such a way as separates it from the rest of the TO. Practically this will mean the creation of discrete management structures for the bidding unit. We do not consider that the additional protection that would be achieved by requiring separation at parent board level would be proportionate to the disruption involved for the TO.

Information systems

4.22. This requirement focuses on the protection and restriction of access to information that the TO holds in relation to preliminary works and its tender support

²⁷ 'Project development team' means the team within the TO that is responsible for completing preliminary works and undertaking tender support activities. In our May consultation we referred to this team as the 'preliminary works team'.

activities (including in relation to the TO's role in answering clarifications from bidders).

4.23. In May we proposed that restrictions be put in place to prevent the TO bidding unit having preferential access to this information, given that all bidders should have access to project information on the same terms, and exclusively through the project's data room. We proposed that shared IT systems would be governed by strict rules to prevent this happening. We said that while fully separate IT systems would fulfil the requirements, suitable access restrictions within the same system would also be sufficient.

4.24. Respondents had no specific concerns regarding these proposals. Our decision is therefore in line with our May proposals. **We will not necessarily require the TO and any bidding unit to have separate IT systems, however we expect that strict rules will be put in place to prevent access by any TO bidding unit to the systems that record, process and store information related to preliminary works and tender support activities.** Practically, we believe this is the best way to ensure that the TO development team is able to function efficiently and effectively within the wider organisation and that the project data room is the bidding unit's only source of information on the TO's preliminary works and tender support activities.

Employee transfer restrictions

4.25. The separation of employees is an important element of our proposals. In May we proposed that there should be no transfer of employees between the TO project development team and the bidding unit, during a specified period of time from before the data room is populated until after the tender has been completed. We also proposed that there be clear rules governing the involvement of other employees of the TO in the bidding process. Respondents generally agreed with these proposals, although a couple argued for stricter obligations, ie no transfers from any part of the TO to the bidding unit.

4.26. **We have decided that the bidding unit must not comprise any employees of the TO who are involved in a project's preliminary works and/or tender support activities (full time or part time), from the earliest date of implementation of separation arrangements viable (but not later than six months before the FTC). This date will be agreed as part of the TO's conflicts methodology.** There is also to be no transfer of employees from the bidding unit to the TO until the completion of a tender, in order to mitigate the risk of the bidding unit influencing the TO's approach to the tender. We made this decision considering what the earliest point of implementation of separation arrangements could be, but also considering the total effect of the obligations on the TO. We have sought to ensure that the TO is not unreasonably disadvantaged by this policy in relation to other bidders, and is still able to employ the expertise needed to form a bidding unit, in the form of people who have been involved in the development of a project up to (but not beyond) the date agreed in the conflicts methodology. We consider this to be an appropriate cut-off point, minimising potential conflicts of interest as far as possible while noting that it would not be

viable to require the TO to make retroactive decisions about employee transfers before a decision is taken on whether the project will be tendered, or the cut-off date for the TO to confirm its intention to bid has passed.

4.27. We expect the timing and specific details of employee separation to be set out in a final approved conflicts methodology statement. We will also require details of any involvement of other employees of the TO in the bidding unit to be specified in the methodology, including rules governing this involvement, in line with the obligations on conduct. In particular, this includes shared services employees and employees of central legal teams.

Physical separation

4.28. In May we proposed physical separation between the TO project development team and the bidding unit, involving either separate premises or parts of premises, with restricted access between the two parts. Respondents to our consultation were generally content with these proposals although a couple again believed the requirements should be stricter, and that the TO bidding unit should operate from a completely separate location.

4.29. **We will not require the bidding unit to be in a completely separate physical location from the project development team.** We consider that restricted access between separate parts of the same premises is a sufficient and reasonable measure to mitigate conflicts of interest. **We will however require these restrictions to apply to access to the rest of the TO in its entirety, including to shared TO facilities, for example gyms and canteens.** This is a stricter development of our May proposal, which mentioned only separation from the project development team. In working out the detail, however, it became apparent that complete restricted access between the bidding unit and the rest of the TO is necessary to achieve robust conflict mitigation.

Financial separation

4.30. **We will require that the TO and its bidding unit are financially separated, meaning that the costs incurred by the bidding party are not recovered from regulated revenue related to any other of the TO's activities or assets.** This decision is in line with our proposals in the May consultation, which were met with general agreement from respondents.

4.31. The proposed new licence condition, as set out in the licence change consultation, does not include a specific provision on financial separation as we consider that this is already covered by the obligations contained in the current TO standard licence conditions B5 (Prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing).

Information use restrictions

4.32. We consider it important that the TO takes the necessary steps to protect the confidentiality of all information that it holds in relation to its preliminary works and tender support activities. This has a wider policy intent than the information systems separation requirement described in paragraphs 4.22 to 4.24, and will apply to a greater range of information sources.

4.33. **We will require the TO to treat information related to tender support activities, and any other information it comes into possession of during a tender (for example information about the content of bids or bidder strategies), confidentially.** We will require that the TO does not disclose such information to any bidding unit or other participant in a tender, outside of what is required as part of the tender process or under its licence.

Compliance approval and monitoring obligations

4.34. We have proposed a variety of measures, outlined below, to enable scrutiny and approval of a TO's conflict mitigation arrangements. This is so we and other parties involved in the competitive process can be assured that the TO's arrangements are in place and effective. These proposals involve internal scrutiny by an independent appointed person within the TO and scrutiny and approval by Ofgem.

4.35. The licence change consultation provides further detail on the implementation of these requirements.

Compliance methodology statement

4.36. In May we proposed that the TO should submit a conflicts methodology statement detailing the specific arrangements for how it would mitigate potential conflicts of interest where it is currently developing an SWW project. We proposed that for each tendered project this should be submitted to us for approval as soon as possible before the tender commences, and that it should describe the steps the TO has taken, and/or intends to take, to fulfil all its obligations to mitigate potential conflicts of interest. We proposed that we would assess the methodology and request changes where needed.

4.37. Respondents agreed with the requirement for a conflicts methodology, acknowledging that it is an important part of the overall scrutiny requirements.

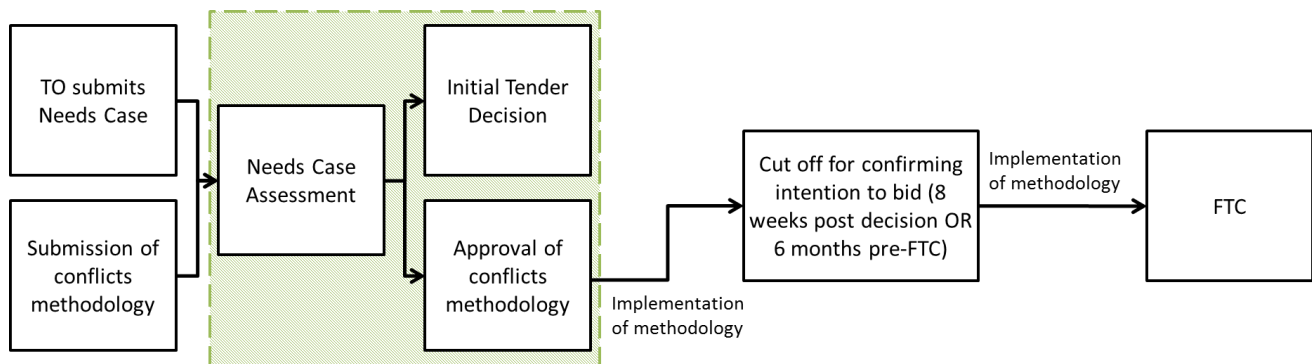
4.38. **We have decided that we will require submission of the compliance methodology statement at submission of the initial needs case (or final needs case where the project is sufficiently advanced), for our approval before our initial tender decision.** The methodology statement should set out the proposed business separation arrangements that the TO would put in place should it choose to bid, and the timetable by which it would implement those arrangements.

We intend to work with the TO following submission of the methodology to develop appropriate arrangements, which we will then be able to approve.

4.39. We have further developed our policy since our May consultation by also introducing a point in time by which the TO must confirm its intention to bid. We consider that setting a latest date for confirming an intention to bid is essential to ensure that potential conflicts are mitigated in time to ensure a fair and transparent tender. **We have therefore decided that the TO must confirm its intention to bid and begin to implement conflict mitigation arrangements within eight weeks of us making an initial tender decision (or within a different time period that we specify) but no later than six months before the date we specify for the FTC. Failure to implement these requirements within the agreed timeframe will preclude the TO from bidding.** These requirements will be provided for in the proposed new licence condition.

4.40. Figure 4 outlines the process for submission and approval of the conflict mitigation methodology, implementation of the agreed conflict mitigation arrangements, and the latest point by which a TO will need to confirm its intention to bid.

Figure 4 – Approval and implementation of conflict mitigation arrangements



4.41. **We will aim to approve the conflicts methodology by the time we make an initial tender decision.** Following approval, we expect the arrangements to be implemented as soon as possible and in line with the timetable set out in the conflicts methodology. **We expect to agree the appropriate timetable and deadline for implementation with the TO when we approve the methodology statement.** As such, we expect that at the point that the TO submits a pre-tender compliance report (as described in paragraph 4.46) it will have implemented all the agreed arrangements, and that we will be able to scrutinise the arrangements at this point.

4.42. We will need to approve the conflicts methodology regardless of whether or not the TO at that time plans to participate in the tender as a bidder, unless the TO has notified us that it will definitely not participate. **However, the TO will not be**

required to implement the conflict methodology arrangements unless they decide to bid. If the TO has not confirmed its intention to bid nor begun to implement the conflicts methodology before the cut-off date specified above, it will be excluded from the bidding process. The TO will also be excluded in the case of material non-compliance with the conflicts methodology statement.

4.43. The conflicts methodology should be kept up to date and the TO should advise us of any changes to their arrangements as soon as possible, and revise the methodology accordingly. We will need to review any revisions that are made as a result of our direction or where the TO's circumstances change such as there is a risk of material non-compliance or inaccuracy.

Compliance reporting

4.44. In our May consultation we proposed that the TO provide us with a pre-tender and post-tender compliance report. This would be to report on implementation of the measures agreed in the methodology, before the tender starts and near its conclusion. This would also include reports at various stages during the process. Most respondents were comfortable with these proposals.

4.45. **We will require an independent compliance officer to be appointed to scrutinise the TO's compliance.** The compliance officer will be responsible for reporting to a single appointed director (a member of the TO board who is to be appointed to oversee the duties and tasks of the compliance officer, and the TO's compliance with its obligations) on its activities and any investigations undertaken.

4.46. **We will require the TO to submit the pre-tender compliance report to us before or as soon as possible during the FTC. The final compliance report will likely need to be submitted during the preferred bidder stage of the tender process.** This will need to be agreed in more detail, again as part of the approved conflicts methodology.

Independent scrutiny

4.47. We asked stakeholders in our May consultation whether scrutiny should be provided in addition to the requirements above, in the form of an independent audit by an external party. Respondents had mixed opinions. Some suggested that the compliance officer role (such as required from NGET in scrutinising its obligations to separate the functions of the SO and Relevant Other Competitive Businesses)²⁸ could fulfil this requirement, others proposed that Ofgem's role in scrutinising compliance would suffice, whereas some respondents proposed additional independent scrutiny.

²⁸ NGET Special Condition 20, paragraph 20.20

4.48. **We have decided not to require independent scrutiny by an external party by default, beyond that which Ofgem undertakes.** We require that the compliance officer is independent and is not involved in the management or operation of the TO or any associate, including any bidding unit, and we consider this provides a sufficient level of independence for the most part. We will however retain discretion to direct that an external audit occurs in exceptional circumstances, where we have particular concerns. We have therefore provided for this in the proposed licence modifications.

Other bidders

4.49. In our May consultation we outlined our intention to require 'other bidders', ie bidders other than incumbent TOs who are developing the project being bid on, to put in place conflict mitigation arrangements where they have prior knowledge or experience of the tendered project. We proposed all bidders comply with the same level of requirements as Offshore Transmission Owners (OFTO) bidders. OFTO bidders are required to sign confidentiality agreements to gain access to confidential information on a project, and a 'conflicts of interest' declaration. We proposed that these be submitted for our approval no later than the pre-qualification stage of the tender.

4.50. Respondents agreed that these measures are the current accepted best practice, and should be required of all bidders. A number of responses highlighted the need for bidders who have been involved in preliminary works or the project in any way to be treated in the same way as the incumbent TO.

4.51. **We will require mitigation measures for all 'other bidders' with potential conflicts of interest, proportionate to the role that the bidder has played and information it has had access to in relation to the project to be tendered.**

4.52. We encourage bidders to engage with us as soon as practicable after we have made an initial tender decision in order to inform us of potential conflicts of interest and to engage with us to ensure any conflicts are mitigated. Any bidder with potential conflicts of interest that has failed to implement appropriate conflict mitigation arrangements may be excluded from bidding.

4.53. **Finally, all bidders will be required to submit a signed confidentiality agreement and a conflicts of interest declaration for our approval no later than the pre-qualification stage of the tender.**

Appendices

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Appendix 1 – Summary of decisions

In the table below we have summarised the decisions we have made as set out in this document.


Chapter 2 – Project identification process	
Decision	Paragraph
The expected total capital expenditure of a project should include identifiable and appropriately allocated risk and contingency allowances.	2.6
We do not consider it appropriate that the criteria should exclude enabling works where the new, separable and high value criteria have been met as these projects represent significant transmission investments and their exclusion could limit the scope of potential benefits for consumers arising from competition.	2.8
We do not consider it appropriate to set a fixed timetable for the review of the criteria as this review should be driven by changes which will deliver the greatest benefit to consumers and improve the effectiveness of the competitive regime in a timely manner.	2.9
We confirm our view of the definitions of the draft criteria (new, separable, high value).	2.10
In our May consultation we confirmed that non-physical assets necessary for the development of competed transmission assets such as preliminary works, property rights, or access agreements should be transferred to the CATO.	2.11
We confirm our view that standard industry arrangements will be sufficient to manage the necessary access to existing transmission assets, but that in limited cases some marginal transfer may be required.	2.14
We do not expect that any physical transfer of third party assets would be needed; however we will consider on a project-by-project basis whether any transfer would be beneficial for consumers. We will do this through discussion with the third party in the first instance.	2.16
We will introduce a new requirement on the SO, to identify transmission works included within a generator connection offer which meet the criteria for competitive tender and publish these in a report. We also intend to implement this process for demand connections.	2.20
We consider it would be appropriate to review the potential identification of non-load driven projects as part of our wider assessment of business plans for RIIO-T2.	2.21

The SO should be responsible for undertaking early development works for SO-led options, or where an option may require contributions from more than one TO, the SO should be responsible for coordinating the early development works for that option.	2.26
Our approach to packaging projects will be to apply key principles (bundling, splitting, re-packaging). When making a decision about the packaging of a particular project we will consider the recommendation made by the SO in the NOA report and also have regard to the impact on project deliverability, and market interest.	2.31
We set out our process for decision making during RIIO-T1.	2.36
Where we make an initial decision to tender a project, the TO will proceed with undertaking the preliminary works for the project and will also prepare the tender specification outputs for the start of the Final Tender Checkpoint.	2.37
We will assess a project's suitability for tendering at the Initial Needs Case (or Final Needs Case for more mature projects), alongside the assessment of need undertaken for the purposes of the SWW process. At the point we publish our decision, we will notify the TO of the date of the Final Tender Checkpoint.	2.40
We set out our process for the Final Tender Checkpoint.	2.44
The preliminary works and tender specification should be substantially complete by the start of the FTC.	2.45
During the FTC, the TO should respond to any clarification questions we have on the tender specification or preliminary works.	2.46
Where we confirm our view on suitability of the project for tendering, and agree that the tender specification is substantially complete, we will proceed to commence a tender. If the assessment at the Final Tender Checkpoint concludes that there is no longer a need for the project, we would not proceed with the tender.	2.46
Chapter 3 – Pre-tender obligations and framework	
Decision	Paragraph
From the point that we make an initial tender decision, the TO will be responsible for the following pre-tender activities (undertaking the preliminary works; producing the tender specification outputs; providing updates to us on the progress of the preliminary works and the tender specification outputs.)	3.3
We will scrutinise the contents and suitability of the tender specification outputs during the FTC to assess their suitability for the purpose of commencing and running an efficient tender process.	3.9
The tender specification outputs, as presented in the TO licence, should be as broad as possible to cover all types of possible CATO project.	3.15

The TO undertaking the preliminary works should exercise its discretion on which are the relevant 'tender specification data' for that project, drawn from the longlist of the tender specification data items.	3.16
We will proceed with the use of a project data room to share information with bidders during the tender.	3.26
We will use a bidder clarifications process in a tender, with the TO's role being to respond to anonymised questions put to them by Ofgem.	3.30
We will fund the TO for any additional works required to deliver the tender specification outputs that would not already have been funded via the pre-construction works component of the SWW framework, as part of the RIIO-T1 settlement. The CATO will pay the TO for these works under the TO-CATO transfer agreement.	3.34
The preliminary works will transfer to a CATO at £0.	3.36
Our overarching principle is that the impact on third parties of a new CATO interface should be neutral, both in terms of costs and level of risk.	3.37
For projects with third party work required before CATO appointment we expect the developing TO to fund and manage them. The TO will receive the economic and efficient costs of third party works up until the point of responsibility transfer to the CATO.	3.38
Our preference is that the CATO takes full responsibility for all aspects of the project at the point of licence grant. Therefore, the CATO will need to take on the responsibility to manage and fund any ongoing or future third party works.	3.39
We confirm our decision not to apply any specific financial incentives to additional TO works as a result of the tender.	3.43
Chapter 4 – Mitigating conflicts of interest	
Decision	Paragraph
Conflict mitigation measures relating to bidding unit conduct, separation, information restrictions, and compliance, only apply to the TO developing the project.	4.11
The TO will be required to act transparently, in a way that does not give the TO bidding unit, or any other party, an unfair commercial advantage over any other participants in the tender process.	4.12
Full legal separation of the bidding unit from the TO group is not required by default, provided sufficient separation can be maintained within the TO business.	4.19
We require separation of management structures between the TO and any bidding unit up to, but not necessarily including, the TO parent board.	4.21
We will not necessarily require the TO and any bidding unit to have	4.24

Extending competition in electricity transmission: Decision on criteria, pre-tender and conflict mitigation arrangements

separate IT systems, however we expect that strict rules will be put in place to prevent access by any TO bidding unit to the systems that record, process and store information related to preliminary works and tender support activities.	
We have decided that the bidding unit must not comprise any employees of the TO who are involved in a project's preliminary works and/or tender support activities (full time or part time), from the earliest date of implementation of separation arrangements viable (but not later than six months before the FTC). This date will be agreed as part of the TO's conflicts methodology.	4.26
We will not require the bidding unit to be in a completely separate physical location from the project development team. We will however require these restrictions to apply to access to the rest of the TO in its entirety, including to shared TO facilities, for example gyms and canteens	4.29
We will require that the TO and its bidding unit are financially separated, meaning that the costs incurred by the bidding party are not recovered from regulated revenue related to any other of the TO's activities or assets.	4.30
We will require the TO to treat information related to tender support activities, and any other information it comes into possession of during a tender (for example information about the content of bids or bidder strategies), confidentially.	4.33
We have decided that we will require submission of the compliance methodology statement at submission of the initial needs case (or final needs case where the project is sufficiently advanced), for our approval before our initial tender decision.	4.38
The TO must confirm its intention to bid and begin to implement conflict mitigation arrangements within eight weeks of us making an initial tender decision (or within a different time period that we specify) but no later than six months before the date we specify for the FTC. Failure to implement these requirements within the agreed timeframe will preclude the TO from bidding.	4.39
We will aim to approve the conflicts methodology by the time we make an initial tender decision. We expect to agree the appropriate timetable and deadline for implementation with the TO when we approve the methodology statement.	4.41
The TO will not be required to implement the conflict methodology arrangements unless they decide to bid. If the TO has not confirmed its intention to bid nor begun to implement the conflicts methodology before the cut-off date, it will be excluded from the bidding process.	4.42
We will require an independent compliance officer to be appointed to scrutinise the TO's compliance.	4.45
We will require the TO to submit the pre-tender compliance report to us before or as soon as possible during the FTC. The final compliance report will likely need to be submitted during the preferred bidder stage	4.46



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of the tender process.	
We will not require independent scrutiny by an external party by default, beyond that which Ofgem undertakes.	4.48
We will require mitigation measures for all 'other bidders' with potential conflicts of interest, proportionate to the role that the bidder has played and information it has had access to in relation to the project to be tendered.	4.51
All bidders will be required to submit a signed confidentiality agreement and a conflicts of interest declaration for our approval no later than the pre-qualification stage of the tender.	4.53

Appendix 2 – Proposed CATO regime framework

The following diagram shows the framework for how we currently consider we would implement the CATO regime across the legislation, TO and SO licences, and the industry codes and standards. The boxes that are coloured purple in this diagram are the framework areas that will be used to implement the policies decided in this document.

	Legislation	Licences		Ofgem guidance	Industry Codes and Standards	
Project Identification	Criteria and Tender Regulations	SO	TO	NOA methodology, SWW guidance	Codes and standards	
Pre-Tender	Tender Regulations	SO	TO	TO pre-tender guidance	Codes and standards	
Tender	Tender Regulations	SO	TO	Tender rules and other documents		
Post Tender		SO	TO	CATO	CATO licence guidance	Codes and standards

Appendix 3 – Feedback Questionnaire

We consider that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

Please send your comments to:

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