

Macquarie Corporate Holdings Pty Limited (UK Branch)

A Member of the Macquarie Group of Companies

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17 May 2018



James Norman
Ofgem
10 S Colonnade,
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Dear James,

Re: OFTO Tender Process – Consultation for Future Tender Rounds

Macquarie Corporate Holdings Pty Limited (“**Macquarie**”) welcomes Ofgem’s assessment on the OFTO Tender Process for future tender rounds.

Macquarie, its holding companies, subsidiaries and subsidiaries of such holding companies (the “**Macquarie Group**”) has acted as both advisor and/or sponsor on five OFTO assets which have reached financial close and has bid for all of the OFTOs tendered to date. As part of the Mari Energy Transmission consortium we are shortlisted as a qualifying bidder to bid for several of the Tender Round 5 OFTO assets.

Please find below the response of Macquarie to Ofgem’s consultation letter in relation to future tender rounds.

Question 1: Have we identified (in Chapter 1) the right drivers for possible change to the OFTO tender process? Are there other drivers for change we should consider?

In general, we support the drivers for considering possible changes to the OFTO tender process. However we also consider the current OFTO tender process works well and is robust. By maintaining a stable and efficient tender process while the OFTO market matured, Ofgem has managed to increase competition and attract new entrants to the OFTO market, which has created better value for consumers.

Question 2: Are the objectives of our review appropriate? Are there any other objectives that we should consider?

We generally agree with the objectives of the review and have not identified any other objectives which should be considered.

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Question 3: With respect to the existing tender process arrangements:

- a) Are any different or additional arrangements needed to mitigate the risk of OFTOs not being financially or operationally robust?

We have not identified any additional arrangements required to mitigate the risk of OFTOs being financially or operationally robust. However we note that increased certainty at bid stage around the purpose of the financial security under the licence and how the potential revenue stream or residual value will be set at the end of the 20 year period may help to support the financial robustness of OFTOs in the long-term.

In addition, further incentivising developers to negotiate on a commercial basis prior to and during the bid stage in relation to the OFTO assets may create a more appropriate risk allocation between the developer and OFTO. This may include Ofgem involving an independent legal expert and setting clear minimum requirements around warranties, leases and liabilities.

- b) In particular, do you consider that our tender process would be robust to a Carillion-type scenario? Are there additional questions we should ask at EPQ or ITT?

In general, we consider that the tender process is robust. A contractor failure event could have a larger impact on the tender process if the financial strength or credit support provided by the OFTO asset manufacturers for that tender was weak. Providing comprehensive due diligence in the data room and ensuring developers have minimum security packages for the OFTO assets, including appropriate (liquid) security from the developer would mitigate the impact.

Given the diversity of O&M providers in the market, we consider the O&M solutions for OFTOs would be robust to this type of scenario.

Ofgem could also consider providing protection (similar to PPPs) for a material adverse change in the financial markets between ITT submission and financial close to mitigate risks / pricing contingency arising from Carillion or Brexit-type events for funders committing for such a long period.

- c) Do you have any other specific feedback on the existing tender process?

In general, we consider the existing tender process works well and addresses the various objectives of Ofgem:

- *All of the OFTOs have closed and any delays have generally been caused by issues on the project or third parties rather than any action or omission of the OFTO bidders*
- *The £680-1,100m savings demonstrates the value-for-money for consumers*
- *New entrants have been introduced to the market within the current tender process*

Question 4: With respect to the moderate change package:

- (a) Do you believe this option would be an improvement over the current tender process?

Overall, we consider that the current tender process has the potential to deliver a more favourable outcome for consumers than the proposed moderate change package for the following reasons:

- *Shortlisting to 3 bidders would maintain the current high levels of competitive tension without risking some investors considering not bidding due to the less balanced risk / reward balance of an open competition at bid stage*
- *Some form of robustness evaluation criteria may incentivise higher innovation and quality in bids as well as considering Ofgem's objective of deliverability*

- (b) Do you agree with our assessment of this package against the objectives?

We generally agree with the assessment of the moderate change package against the objectives with the exception that having no limit on the number of bidders in the ITT stage would increase competition.

Macquarie's experience from PPP/PFI projects is that competitive tension is maintained with 3 bidders and investors are more willing to allocate necessary resources and costs with a higher probability of winning. This would allow more focused tender submissions and better value-for-money achieved in the tender process.

(c) Do you consider that there are questions that could be removed from the ITT questionnaire (for example, where there is overlap with the EPQ, or where the approach is mandated elsewhere)? For what reason and benefit could they be removed?

We understand that Ofgem's preferred approach is to have a more streamlined / transparent assessment process. Potential areas to reduce questions or detailed information requirements to ensure more focused bids without risking robustness could include sections 2-5 of the current ITT document.

The detailed justification of each bid assumption in section 6 may no longer be required provided the CDD requirements and financial submission are clearly defined.

(d) Are there any amendments to this package that would improve it?

Potential improvements could include:

- *A shortlist of 3 bidders for ITT stage, as outlined above*
- *A clearly defined and concise non-financial qualification and evaluation criteria to incentivise innovation / quality*
- *A more concise list of robustness questions may balance the objectives for continued deliverability and a simplified process*

(e) What are your views on the most appropriate ways to mitigate the challenges of this package?

If the robustness / bid quality criteria would be retained but based on a more concise, clear-defined set of criteria, this would mitigate the deliverability risk associated with the moderate change package

(f) Are there other considerations we should have taken into account that present practical or other challenges to implementation?

We have not identified any considerations other than those discussed above.

(g) Where we were to allow conditionality only on particular elements of a bid, how should we take into account conditionality in bids which cumulatively raises concern about the overall robustness of the bid?

Where possible, please quantify or describe qualitatively any benefits or burdens from this package of change.

Please see responses above.

Question 5: With respect to the significant change package:

(a) Do you believe this option would be an improvement over the current tender process?

(b) Do you agree with our assessment of this package against the objectives?

(c) Are there any amendments to this package that would improve it?

(d) What are your views on the most appropriate ways to mitigate the challenges of this package?

(e) Are there other considerations we should have taken into account that present practical or other challenges to implementation?

(f) What do you think of potential bid bond arrangements, pain/gain share mechanism and consequential changes to allow efficient unconditional bids?

Where possible, please quantify or describe qualitatively any benefits or burdens from this package of change.

Overall, we consider the current tender process has the potential to deliver a more favourable outcome for consumers than the proposed significant change package for the following reasons:

- *We consider that 3 bidders is sufficient to ensure competitive tension for the OFTO tender process. However any more bidders would skew the risk/reward balance to a point where investors could consider not bidding.*
- *We do not consider a bid bond or pain share mechanism is required given that all OFTOs have been closed by the chosen PB and in the cases where there has been long delays, this was mostly due to issues with the assets and/or information lacking from the developer. Moreover there are a number of issues which are out of the OFTO's control and the configuration of the process is disadvantageous to the OFTO due to the presence of a third party (the developer) who has limited incentive to negotiate on a commercial basis unless under time pressure, while the tendering authority is Ofgem. The requirement for a bid bond or pain share mechanism would increase the tender costs and reduce value-for-money.*

In general, we agree with the assessment of this package against the objectives. However we consider the bid bond and pain share mechanism could increase bid costs and reduce appetite with some investors considering not bidding.

Additional challenges to this proposal include the delivery of a fully unconditional bid while the OFTO is dependent on third parties including the developer for timely and comprehensive information and appropriate mitigation / allocation or risks or processes outside of the OFTO's control.

Question 6: Are there other packages of change that we should consider that would better deliver against the objectives?

- *Macquarie Capital's experience is that new entrants have been attracted and introduced to the OFTO market as it has matured and bids have become more competitive. This is also supported by the stable tender process which has had limited changes and is well-understood by existing and new investors.*
- *We do consider that there are merits to streamlining the tender process by providing more complete information in the dataroom at an early stage. This could also help to reduce conditionality of bids. However this will add further resource and cost requirements for a bidder that need to be weighed against the probability of winning. A key factor is that critical information is delivered in a timely manner early in the process*
- *A more simplified assessment would also enable a shorter period between ITT and Financial Close and could increase deliverability*
- *Some form of robustness assessment is important. Evaluation / selection criteria which focuses on price but includes clearly defined quality / innovation / robustness assessment may help to balance deliverability and value-for-money benefits*

Question 7: With respect to the other tender process changes considered that could apply to either the current tender process or any of the potential packages for change:

(a) Does Vendor Due Diligence (VDD) in practice reduce the total cost of a tender process? Are there any benefits in broad VDD? Are there benefits in a more focussed approach to VDD (for example a Certificate of Title)? Under what conditions and to what extent would bidders base their bid on VDD?

If the VDD, including a certificate of title, is provided in a timely fashion, it typically reduces the bid costs. We consider a focused approach with complete due diligence regarding the legal DD / contract summary, condition of the assets and commissioning enables bidders to price bids with more certainty (eg. for insurance and tax position assumptions) and limit contingencies. Some information and due diligence (which does not impact the price) could be moved to the PB stage

(b) Are there other cost-effective ways in which the bidder data room could be improved to the benefit of all parties? Are there specific ways to further standardise the structure?

The provision of a complete due diligence package in a standardised format and at an early stage in the ITT process may result in a reduction in follow-up information requests and clarifications from all bidders during the tender process.

(c) What changes, if any, should we consider to our current bond spread methodology? Would an appropriate pain/gain share mechanism for bond-financed bids allow us to fairly assess bond and bank-financed bids on the same committed finance basis?

We do not consider any changes are required to the bond spread methodology. Given the information / issues which are outside of bidders control at PB stage (availability and quality of information, technical issues with the assets), we do not consider a pain share mechanism would be appropriate and may increase the contingency priced into bids.

(d) Do you consider that we could adequately rely on a more confirmatory approach to questions? Are there particular documents or questions we could consider not requiring the bidder to produce, but instead confirm? Are there particular documents/requirements that are better left to the PB stage?

A confirmatory approach may be acceptable for certain topics in particular for items which do not impact the financial robustness of the bid and if minimum operation / asset management thresholds are met, for example, shareholder documents, Board structure and CVs of Board members. If limited conditionality was permitted in the tender process (which requires sufficient information being provided in the dataroom), this could support a confirmatory approach.

Where possible, please quantify or describe qualitatively any benefits or burdens from this package of change.

Please see responses above.

Question 8: Do you think the approach of Ofgem, developers, and bidders to the tender process will need to change as projects become larger, further from shore and more expensive? What do you see as challenges from this change?

We consider that maximum flexibility in financing arrangements is required to attract liquidity and investors as projects become larger. The current bond pricing methodology supports this. Given the long period between ITT submission and financial close, it may be appropriate for Ofgem to consider accepting the risk of a material adverse change in the financial markets similar to PPPs to maintain liquidity and ensure contingency is not priced into bids for potential events during this period.

For larger projects, there is a higher importance for investors in understanding with certainty the purpose of financial security and other end-of-life obligations, including decommissioning and how the residual value will be set, as well as treatment of income-adjusting events. Appropriate risk allocation between developers, manufacturers and OFTOs will also help to achieve better value for money on larger projects. The developer's lack of incentive to make adjustments to the SPA, for example when in the bidding process, currently results in the OFTO being pushed to continuously accept more aggressive positions. The developers should ensure adequate warranties, indemnities and credit support to avoid risks with potential high impact being passed to the OFTO which are outside their control. Bidders would also benefit from more complete due diligence in a timely fashion during the tender process.

Question 9: With respect to end of revenue term arrangements, where there continues to be a need for the OFTO, what factors should be taken into account when making decisions on OFTO revenue at the end of the normal 20 year term? When should we begin to make these decisions?

Appropriate factors may include the initial revenues, incentive for continued availability, security requirements and the market need and developer requirement for the assets.

It is important for bidders to understand with certainty how the residual value will be set and how the assets will be treated as part of the tender process. Early visibility over the end of revenue term process is likely to ensure continued delivery / funding certainty of the OFTO assets with minimum disruption to the transmission system. However, consideration should

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also be given to the requirements / expectations of the wind farm generator. Guidance would also need to be provided on the fair price / valuation mechanism which would be paid to the incumbent OFTO for a new bidder to acquire the OFTO assets.

Another alternative would be to set the initial revenue term at more than 20 years to ensure certainty and reduce transaction costs and resource associated with re-tendering at the end of year 20.

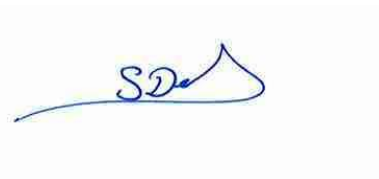
Question 10: Is there demonstrable evidence that we should consider changing the default revenue period away from 20 years for future projects? If so, what would be the most appropriate revenue period?

As noted in the consultation response publication, wind farm generators are generally disclosing an assumed operational service life beyond 20 years and for 25 years. In addition, the OFTO assets generally have a technical life of more than 25 years with limited additional capex requirements. Therefore a 25 year revenue term could be considered appropriate for the OFTO assets. The funding markets are well-established for 25 year operational periods, based on availability-based PPPs in the UK and Europe.

We would like to thank you for providing us with the opportunity to respond to your consultation. Should you have any questions regarding our response we would be pleased to discuss these further in an open and constructive manner with Ofgem.

Yours faithfully,

On behalf of Macquarie Corporate Holdings Pty Limited (UK Branch)



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