



James Norman
Commercial, Networks
Ofgem
9 Milbank
London
SW1P 3GE

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

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Dear James

OFTO Tender Process – Consultation For Future Tender Rounds

We recognise the drivers behind Ofgem's review of the tender process policy and welcome the opportunity to provide our views to the above consultation.

Overall, we support the objectives of the review where a streamlined and efficient tender process results in offshore transmission infrastructure being delivered on a timely basis at best value for consumers. We also agree that the tender process should ensure that OFTOs are robust and can deliver transmission services successfully over the licence period. While we recognise the importance of competition in achieving these objectives, we do not consider that attracting new entrants to the offshore transmission sector should be an objective in its own right. It is our view that a fair, transparent and efficient tender process would result in the right entrants being attracted to the sector.

Importantly, we note that both the moderate and significant change packages put forward by Ofgem aim to relax the assessment of OFTOs' technical and operational robustness. Both packages would result in a failure to meet the objective of ensuring that OFTOs are robust, as Ofgem confirms in the consultation document. In our view, as the projects are becoming larger and more complex the importance of ensuring that the OFTO entities are operationally, technically and financially robust is greater than ever. Hence, we are reluctant to support Ofgem's proposals to relax robustness assessments at the EPQ and ITT stages. We support streamlining of the process where questions that overlap or are no longer relevant would be removed from relevant questionnaires. We would also support Ofgem producing an additional guidance document to accompany questionnaires so that prospective bidders fully understand the requirements of the process and expectations on them as bidders. This would provide additional support to applicants with limited experience of the tender process.



In terms of other aspects of the OFTO policy, such as duration of the initial revenue term, we consider that it would be most appropriate to commence a review two or three years before the end of the 20-year revenue term, in conjunction with a generator.

Kind regards

Polina Kharchenko

Regulation Manager

Consultation Questions

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?

We agree that it is appropriate to commence a review of the OFTO tender process given that the regime has been in place for an extended period and some improvements to the process might be warranted. The four drivers identified by Ofgem seem appropriate.

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

We support the objectives of (i) delivering offshore transmission infrastructure to connect offshore transmission on a timely basis and (ii) doing so through a competitive process to provide best value to consumers. While in general we support the changes to the process that would enable more companies to bid in, bringing new competent and competitive entrants into the market should be a result of an efficient and fair tender process rather than a stand-alone objective of the regime.

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?

Our understanding is that financial and operational robustness of the OFTOs is currently being assessed and compared based on their responses to a set of questionnaire questions at the EPQ and ITT stages. It would be appropriate to introduce relevant checks to ensure that OFTOs are able to enact their qualitative responses in practice.

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?

It might be appropriate to introduce questions related to the ultimate ownership of the OFTO entities so that any interrelations existing in the OFTO market are more transparent.

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

We do not have any other specific feedback.

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 welcome changes to the process that would enable more interested parties to bid in. However, in our view, simplifying the robustness assessment at the EPQ stage with an unlimited number of bidders progressing to the ITT stage would ultimately introduce additional costs to the tender process. In principle, if the EPQ stage were to be assessed entirely on a minimum threshold basis, this threshold would need to be carefully defined and high enough to ensure that bidders progressing to the next stage are sufficiently robust.

In terms of proposed changes to the ITT stage, we agree in principle that if bidders can show that the underlying assumptions in their bids are robust and pass a pre-defined threshold, there is no requirement to allocate a specific weighting to this assessment. In this scenario, we would support a higher threshold at the ITT stage to ensure that prospective bidders submit financially viable bid assessments. We would also support specific incentives being introduced in the OFTO's licence to ensure that OFTOs deliver on their questionnaire responses.

Separately, we do not support a proposal where the TRS assessment only focuses on the two lowest bids as this approach would be very simplistic.

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

While we broadly agree with Ofgem's assessment, we do not consider that attracting new entrants to the sector should be a stand-alone objective.

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 have no visibility of specific questions in the EPQ and ITT questionnaires. It is our view, however, that a set of questions should be reflective of the ultimate objectives that the questionnaires are aiming to achieve. It would be practical to remove any questions that overlap or are no longer necessary. However, it would be important to ensure that responses to the remaining questions still provide sufficient information for Ofgem to perform a well-rounded and in-depth assessment.

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

The thresholds introduced at the EPQ and ITT stage would need to be high enough to ensure that the OFTO robustness objective is not compromised.

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

The thresholds introduced at the EPQ and ITT stage would need to be high enough to ensure that the OFTO robustness objective is not compromised.

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

We are not aware of any other considerations.

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.

We share Ofgem's concerns that allowing conditionality in bids could cumulatively result in overall robustness of the bid being compromised. It is important that the tender process provides confidence to all parties in a successful competition of the transaction and that bidders are incentivised to reach Financial Close quickly.

Question 5: With respect to the significant change package:

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

In line with our views outlined earlier, significant changes to the EPQ stage would dilute the assessment of technical robustness of the prospective bidders and would introduce additional costs to the process. In addition, in our view, having a sole focus on a TRS at the ITT stage is overly simplistic and would only work if an in-depth assessment of financial and operation robustness of the prospective bidders is done at the EPQ stage. While we note the safeguards proposed by Ofgem, such as a bid bond and pain / gain share mechanism, given the highly legal nature of these structures, it is currently unclear how these arrangements would work in practice in the OFTO area.

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

While the proposed significant change package might meet the objective of attracting new entrants and hence facilitates increased competition, it is questionable whether the proposed arrangements will bring forward sufficiently robust bidders able to deliver transmission services successfully over the licence period.

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

In our view, a significant drawback of the package is a lack of focus on the robustness assessment of the prospective OFTOs, both at the EPQ and the ITT stages. While Ofgem proposes to introduce a set of additional questions at the ITT stage to assess whether a bidder passes a threshold, we are concerned that the commitments, made by a bidder at that stage and on the basis of which the OFTO is progressed to the next stage of the process, do not ultimately translate into obligations on the OFTO.

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?

The proposed safeguards which the significant change package is relying on would need to be thoroughly developed from a legal perspective to ensure that these safeguards actually work in practice.

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

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)?**

If the proposal to introduce the VDD report is taken forward, the scope and the focus of the report would need to be clearly defined and standardised across projects.

- b) Under what conditions and to what extent would bidders base their bid on VDD?**

We would expect that bidders would rely on the outcome of their own due diligence and technical and operational expertise in constructing their bids. We expect that VDD would be a complementing set of information supporting bidders' own assessments.

- c) 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?**

We support standardisation and any improvements to the data room that would benefit the users of the room by simplifying the process of uploading, search and retrieval of the information.

- d) 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?**

It is currently unclear how a pain/gain share mechanism could work in the OFTO area. We would suggest maintaining a more tried and tested approach applying a spread codified by market experts.

- e) 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? Where possible, please quantify or describe qualitatively any benefits or burdens from this package of change.**

We have no visibility on specific questionnaire questions, therefore, we do not have a view on this question.

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?

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?

We consider that the following factors would need to be considered: a projected operational life of a wind farm; decommissioning liabilities; maintenance needs; and a cost-plus approach.

In our view, it would be most appropriate to commence a review 2-3 years before the end of the 20-year term, in conjunction with a generator.

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?

We suggest that Ofgem and/or BEIS perform a holistic assessment of the developments in the offshore wind and OFTO industry to establish the most appropriate revenue period for OFTOs going forward.