

# Invitation to Tender Document for Tender Round 3 (TR3): Westermost Rough

## Tender Document

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### Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant Offshore Transmission Licences following a competitive Tender Exercise.

A Tender Exercise is run over a number of stages, the second of which for this Tender Round is the Invitation to Tender (ITT) Stage, where Qualifying Bidders are invited to set out their final Offshore Transmission Owner proposals, including a Tender Revenue Stream, their financial strategy, risk management approach and their technical expertise in taking over, operating and managing the Transmission Assets for the Qualifying Project. These proposals are evaluated by Ofgem against a set of criteria provided in this ITT Document which sets out the requirements that Qualifying Bidders need to demonstrate in this regard for the Westermost Rough Project. The outcome of Ofgem's evaluation will be the identification of a Preferred Bidder, and possibly a Reserve Bidder, in respect of the Westermost Rough Project.

## Context

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

From the outset the offshore transmission regime has sought to encourage innovation and to attract new sources of technical expertise and finance, whilst ensuring that grid connections are delivered efficiently and effectively. The competitive regime was designed to be delivered in two parts, a transitional and an enduring regime. Once we have granted OFTO Licences for all projects currently being tendered it will bring total investment in Great Britain's offshore transmission network to approximately £2.9 billion.

The enduring regime is for projects qualifying after 31 March 2012. The investment opportunity in the enduring regime is expected to be significantly larger and is likely to deliver billions of pounds of investment in offshore transmission over the next decade. The enduring regime is also operating in the context of the proposed development of increasingly complex, integrated and coordinated offshore grid networks in the UK and the European Union.

Tender Round 3 (TR3) is the first tender round under the enduring regime. The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013, which came into force on 22 February 2013 (the Tender Regulations), together with the Tender Rules for TR3 and this ITT Document set out the rules for participation in the ITT Stage of TR3.

TR3 commenced on 31 March 2014. Following completion of the Enhanced Pre-Qualification (EPQ) Stage for the Westermost Rough and Humber Gateway projects, Qualifying Bidders were invited to participate in the ITT Stage for each project. This ITT Document relates solely to the ITT Stage for the Westermost Rough project.

The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) in respect of the Westermost Rough project. The ITT Stage is designed to enable shortlisted Qualifying Bidders to submit details of their proposed approach for the Westermost Rough project, which Ofgem will evaluate against a number of criteria. The successful Qualifying Bidder will be determined as the Preferred Bidder for the Westermost Rough project.

Under the Generator Commissioning Clause in the Energy Act 2013, offshore generators can transmit electricity for 18 months from the date on which a completion notice is issued so that they can commission the Transmission Assets<sup>1</sup>. The completion notice for Westermost Rough was issued on 18 August 2014.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications-and-updates/decision-implementation-generator-commissioning-clause-energy-act-2013>

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# 1. Overview of the Invitation to Tender (ITT) Stage

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## Chapter Summary

This section provides Qualifying Bidders with an overview of the process Ofgem will follow during the ITT Stage for the Westermost Rough Project.

## ITT Document

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- 1.1. The purpose of the ITT Stage is to identify a Preferred Bidder and possibly a Reserve Bidder in respect of the Westermost Rough project to whom Ofgem would expect to grant an OFTO Licence. This ITT Document sets out the requirements which Qualifying Bidders must demonstrate at the ITT Stage.
  
- 1.2. This ITT Document sets out:
  - the rules particular to the ITT Stage, which should be read in conjunction with the Tender Rules;
  - the timeline for the ITT Stage for the Westermost Rough Project, including an overview of the key activities and steps;
  - the details of information available to Qualifying Bidders to compile their ITT Submissions;
  - a description of the information required by Ofgem for the submission of a tender for the Westermost Rough project;
  - the ITT Questionnaire;
  - the date, time and manner in which a Qualifying Bidder must submit the completed ITT Questionnaire to Ofgem;
  - the evaluation criteria to be applied by Ofgem in evaluating ITT Submissions; and
  - the criteria to be applied by Ofgem in determining whether to hold a Best and Final Offer (BAFO) Stage.

## Key changes to the ITT Stage for TR3

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- 1.3. For TR3, we have made some changes to the ITT stage, both in terms of the information we require and the way submissions will be scored. These changes reflect the evolution of the OFTO market and implement some policy developments previously consulted on.
- 1.4. The key changes to the ITT stage for TR3 since previous tender rounds include:
- Changes to how Section 8 (underlying assumptions) is scored (see paragraph 4.34 and Table 5.)
  - Introduction of a right for Ofgem to request the Preferred Bidder to review its preferred funding solution in certain circumstances (set out in paragraph 2.8).
  - Removal of the requirement for Qualifying Bidders to provide worked-up contingency funding solutions (see question 6A(a)).
  - Qualifying Bidders are required to specify and justify the proportion of the TRS that is to be indexed to the Retail Price Index (RPI) over the length of the revenue term (see 2.60 and question 7A).
  - As a consequence of the above, the TRS bid will no longer be assessed on a first year TRS basis but instead on the basis of Net Present Value (NPV) over the length of the revenue term (see paragraph 2.61).
  - Ofgem has stipulated a ‘minded to’ credit spread Qualifying Bidders should use in respect of publicly listed nominal bonds rated A-/A3 or BBB+/Baa1. Refer to paragraphs 2.55 and to the “Assumptions to be used for a publicly listed nominal bond” paper (the ‘methodology’). **Qualifying Bidders may provide further comments on the methodology and the ‘minded to’ position by 5<sup>th</sup> November 2014. Following this, Ofgem will finalise the methodology and issue credit spreads Qualifying Bidders should use in their ITT Submission, in respect of publicly listed nominal bonds rated A-/A3 or BBB+/Baa1.**
  - Additional HMRC guidance on capital allowances (see paragraph 2.64).
  - Changes to the OFTO licence and licence guidance, including the refinancing gain share mechanism and the capacity weighting mechanism for the availability incentive (see the licence guidance produced for TR3 and “The generic offshore transmission owner (OFTO) licence for Tender Round 3<sup>2</sup>”).

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<sup>2</sup> <https://www.ofgem.gov.uk/publications-and-updates/generic-offshore-transmission-owner-ofto-licence-tender-round-3>

## Legal Framework

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- 1.5. The Tender Regulations set out the legal framework Ofgem must follow to run competitive Tender Exercises for the grant of OFTO Licences. Regulation 12 sets out the stages of a Tender Round and regulation 17 details the contents of the ITT Document – these are covered in greater detail in the following sections.
- 1.6. The Tender Rules<sup>3</sup> inform participants in further detail about how Ofgem will run the Tender Exercises subject to the Tender Regulations. Further information on the Tender Regulations and the Tender Rules is available on Ofgem’s website<sup>4</sup>.
- 1.7. In the event of any conflict between this ITT Document, the Tender Rules and the Tender Regulations, the order of precedence shall be as follows:
  - (a) Tender Regulations;
  - (b) ITT Document;
  - (c) Tender Rules.

## Right to Vary a Tender Exercise

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- 1.8. Subject to the provisions of the Tender Regulations, Ofgem may vary any element of a Tender Exercise, issue supplementary documentation or make additional arrangements at any time during a Tender Exercise in order to clarify any issue or amend any aspect of the Tender Exercise. Any such variation shall only take effect so as to actually vary the Tender Exercise if subsequently confirmed in writing. This includes where Ofgem determines that it is impracticable to complete any action, or to deliver or publish any document or notice, by the time, date or in the manner specified within the Tender Regulations.
- 1.9. Any such supplementary documentation issued by Ofgem during a Tender Exercise will be deemed to form part of this ITT Document to the extent indicated in the amendment. Ofgem may decide to extend a Tender Exercise and postpone any ITT Submission deadline in the event of any such amendment.

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<sup>3</sup> <https://www.ofgem.gov.uk/publications-and-updates/tender-rules-tender-round-3-tr3>

<sup>4</sup> <https://www.ofgem.gov.uk/electricity/transmission-networks/offshore-transmission/our-role-offshore-transmission>

## Costs and losses

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- 1.10. Each Qualifying Bidder bears its own costs of participating in a Tender Exercise and is responsible for meeting the costs incurred by Ofgem in administering that Tender Exercise in accordance with the Tender Regulations and as prescribed in the Cost Recovery Methodology.<sup>5</sup> All Qualifying Bidders have paid the requisite fee for participation in TR3 and no further payment is required to participate in the ITT Stage for the Westermost Rough Project.
- 1.11. Ofgem is under no obligation and shall not accept any liability for any costs, expenses, damages or losses incurred by any Qualifying Bidder, including without limitation any unsuccessful Qualifying Bidder, in connection with a Tender Exercise.
- 1.12. If a Qualifying Bidder withdraws or is disqualified from a Tender Exercise or Ofgem cancels a Tender Exercise, in each case in accordance with the Tender Regulations, Ofgem shall not incur any liability for any losses whatsoever<sup>6</sup> towards any Qualifying Bidder or any of their Related Parties.

## Indicative timetable for the Westermost Rough Project

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- 1.13. Set out below is the indicative timetable for the remaining stages of the Tender Exercise for the Westermost Rough Project. The ITT Stages for both TR3 projects have been scheduled to commence after the Completion Notice issue date and once all relevant information on the transmission assets has been made available.
- 1.14. Ofgem may vary and/or update this timetable at any time, for example if new information is forthcoming in respect of the Westermost Rough Project. Any such variation will be communicated to Qualifying Bidders via the Portal. Further information on the Portal can be found in the Tender Rules.

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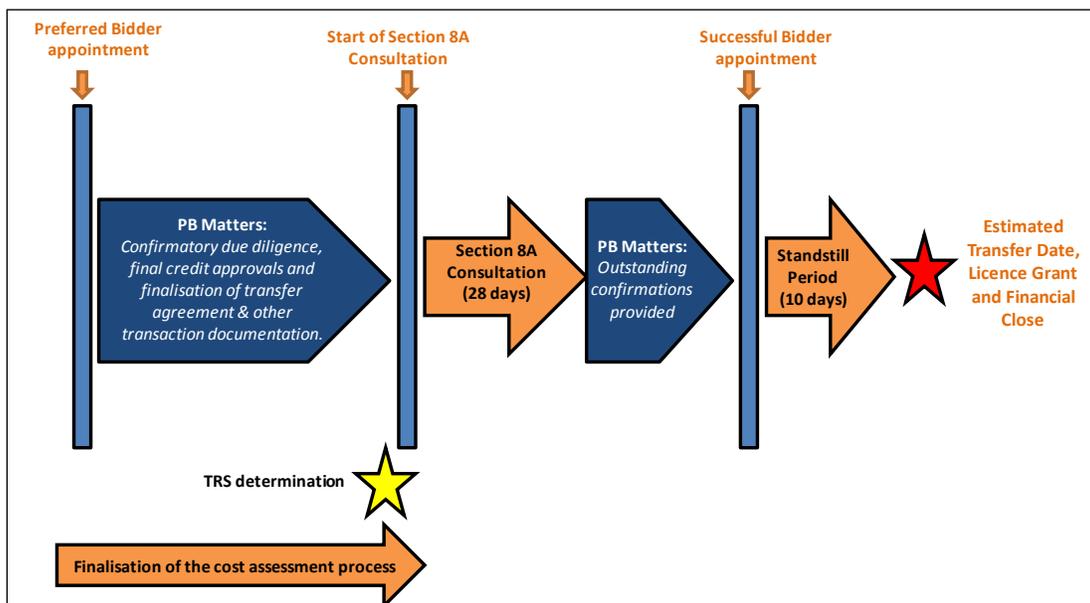
<sup>5</sup> <https://www.ofgem.gov.uk/publications-and-updates/cost-recovery-methodology-tender-round-3-tr3>

<sup>6</sup> Whether in contract, tort or otherwise and including direct, indirect and consequential losses.

**Table 1: Indicative timetable for ITT process**

Milestone	Date
ITT Document made available by Ofgem	<b>23 October 2014</b>
Developer/Qualifying Bidder briefing ( <b>Session 1</b> )	<b>w/c 27 October 2014</b>
Developer/Qualifying Bidder – O&M commercial offer discussions only ( <b>Session 2</b> )	<b>w/c 27 October 2014</b>
Deadline for Qualifying Bidders to provide comments on bond spread methodology and Ofgem’s ‘minded to’ position.	<b>5 November 2014</b>
Qualifying Bidders provide mark-ups of Draft Project Transfer Agreement, Ancillary Documents and O&M commercial offer	<b>10 November 2014</b>
Developer/ Qualifying Bidder meetings on Draft Project Transfer Agreement and O&M commercial offer ( <b>Session 3</b> )	<b>w/c 24 November 2014</b>
Final ‘for negotiation’ Developer commercial offer issued to Qualifying Bidders	<b>1 December 2014</b>
Final Project Transfer Agreement issued to Qualifying Bidders	<b>5 December 2014</b>
Deadline for Qualifying Bidders to confirm whether they wish to have a further meeting with the Developer for the purpose of discussing the commercial offer only	<b>8 December 2014</b>
Individual meetings between Developer and Qualifying Bidders to take place to discuss the commercial offer only ( <b>Session 4</b> )	<b>w/c 8 December 2014</b>
Anticipated date for Bidder Data Room to freeze	<b>22 December 2014 (by noon)</b>
Deadline for Qualifying Bidder clarifications to Ofgem	<b>5 January 2015 (noon)</b>
Ofgem to issue final Developer commercial offer to Qualifying Bidders	<b>By 7 January 2015</b>
Anticipated date for Ofgem response to Qualifying Bidder clarifications	<b>12 January 2015 (5pm)</b>
ITT Submissions due	<b>22 January 2015 (noon)</b>
Preferred Bidder (PB) appointment	<b>April 2015</b>
Estimated Transfer Date	<b>21 September 2015</b>

**Transaction Process**



## Information available to Qualifying Bidders

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### Project Data Room

- 1.15. Ofgem has established an electronic Data Room for the Westermost Rough Project via the Offshore e-Tendering Portal (Portal) at [www.ofgem.bravosolution.co.uk](http://www.ofgem.bravosolution.co.uk). This Data Room has primarily been populated with information from the Developer although information from other third parties is also included, as well as information from Ofgem. Ofgem is not responsible for the contents provided by other parties. The Data Room includes information made available previously during the Tender Exercise, as well as new information specific to this stage of the tender process.

### Information provided by Ofgem

- 1.16. In addition to the above, Ofgem has made available the following relevant information, some of which are available on the Ofgem website, the remainder available in the Data Room:
- a) TR3 Tender Rules and Regulations**
    - The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 <http://www.legislation.gov.uk/uksi/2013/175/made>;
    - Offshore Electricity Transmission: Tender Rules for Tender Round 3 <https://www.ofgem.gov.uk/ofgem-publications/86332/20140225tr3tenderrules.pdf>;
  - b) Information Memoranda**
    - Preliminary Information Memoranda (PIMs): The project-specific and generic PIMs for TR3;
    - Information Memoranda (IMs): the IMs for both Qualifying Projects within TR3;
  - c) Licence**
    - Generic Offshore Transmission Owner (OFTO) Licence (Oct 2014) <https://www.ofgem.gov.uk/ofgem-publications/86476/app3tr3v2licence.pdf>;
    - Decision Letter on the offshore transmission owner (OFTO) licence for Tender Round 3 <https://www.ofgem.gov.uk/publications-and-updates/generic-offshore-transmission-owner-ofto-licence-tender-round-3>;
    - Draft Westermost Rough specific Offshore Transmission Owner (OFTO) Licence (Oct 2014);
    - Guidance on the Offshore Transmission Owner Licences for the Third Tender Round;
    - Transmission Licence Standard Conditions <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>;

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- Example of Approval of Statement of the Basis of Transmission Owner Charge letter and associated example charging statement <https://www.ofgem.gov.uk/publications-and-updates/tc-ormonde-ofto-limited-%E2%80%93-approval-statement-basis-transmission-owner-charges?docid=9&refer=Networks/offtrans/rott/Ormonde>;
- Open letter on the Authority's approach towards exceptional events for offshore transmission owners <https://www.ofgem.gov.uk/publications-and-updates/open-letter-authority%E2%80%99s-approach-towards-exceptional-events-offshore-transmission-owners>;

### **d) Financial**

- Indicative Transfer Value for the Westermost Rough Project letter;
- Cost Reconciliation Report for the Westermost Rough Project;
- Ofgem Financial Input Sheets;
- Instruction Notes for Ofgem Financial Input Sheets;
- Arrangements for responding in the event that a network company experiences deteriorating financial health  
<http://www.ofgem.gov.uk/Networks/Policy/Documents1/Position%20Paper%20-%20Responding%20to%20deteriorating%20financial%20health%20FINAL.pdf>;
- Alternative credit rating arrangements open letter;
- Assumptions to be used for a publicly listed nominal bond;

### **e) Guidance/Information**

- Instructions to Qualifying Bidders participating in TR3 (ITT Stage);
- Statement on future Generator Build Tenders <https://www.ofgem.gov.uk/publications-and-updates/offshore-electricity-transmission-statement-future-generator-build-tenders>;
- Offshore Electricity Transmission: Process to Close for Tender Round 3  
<https://www.ofgem.gov.uk/publications-and-updates/process-close-tender-round-3-tr3>;
- Offshore Electricity Transmission: Guidance on the Transfer Agreement for TR3  
<https://www.ofgem.gov.uk/ofgem-publications/86334/20140225tr3transferagreement.pdf>;
- Guidance on the Offshore Transmission Owner (OFTO) of Last Resort Mechanism (25/02/14) <https://www.ofgem.gov.uk/ofgem-publications/50983/v04oftooflastresortq12014.pdf>;
- Offshore Electricity Transmission: Cost Recovery Methodology for Tender Round 3  
<https://www.ofgem.gov.uk/publications-and-updates/cost-recovery-methodology-tender-round-3-tr3>;
- Certification of transmission system operators (TSOs) under the ownership unbundling requirements of the Third Package  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=95&refer=Europe>.

## Information from third parties

- 1.17. Information from other third parties has also been uploaded to the Data Room. This includes the following information from the organisations listed:
- a) **The National Electricity Transmission System Operator (NETSO)**
    - The NETSO has provided a number of documents, including the Offshore Transmission System Development User Works (OTSDUW) Completion Report template, upstream network data and standard documentation from the industry codes, including the System operator-Transmission owner Code (STC) (including Schedule 10 regarding payments) and a note regarding STC Transmission Services;
  - b) **DECC**
    - Decommissioning Guidance January 2011  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80786/orei\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80786/orei_guide.pdf);
    - Consents under section 36 of the Electricity Act: Information for Generators and Bidders;
    - Guidance in relation to the oil and gas clause in The Crown Estate Leases, dated June 2014;
  - c) **The Crown Estate**
    - Draft Crown Estate Seabed Lease;
    - Draft Crown Estate Licence to Assign;
    - Guidance note for insurance purposes, dated 24 January 2011;
    - The Crown Estate's Procedures for granting leases to OFTOs for Round 2 Offshore Windfarm Sites;
  - d) **Marine Management Organisation (MMO)**
    - Letter on Marine and Coastal Access Act compliance dated 18 September 2014;
  - e) **Her Majesty's Revenue and Customs (HMRC)**
    - Letter dated 14 December 2009 - Transfer of Offshore Transmission Assets – VAT Treatment;
    - Letter dated 11 March 2010 – Round 2 Offshore Windfarms – Offshore Transmission Owner (“OFTO”) Assets Capital Allowances;
    - Letter dated 22 March 2011 – Round 2 Offshore Windfarms – Offshore Transmission Owner (“OFTO”) Assets Capital Allowances;
    - Letter dated 17 June 2013 – Decommissioning Costs and Stamp Duty Land Tax;
    - Letter dated 29 September 2014 – Offshore Windfarm Transmission Assets (with regards to Capital Allowances).
- 1.18. Ofgem shall make additional information available in the Data Room during the ITT Stage as appropriate.
- 1.19. It is the responsibility of each Qualifying Bidder to ensure that it has read each document in the Portal and has all of the information it needs to prepare its ITT Submission.



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- 1.20. While information provided by Ofgem and/or its Advisers in the Data Room has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified.
- 1.21. The information provided by the Developer has been collated into a number of different folders within the Data Room. A detailed index is provided in the “Read Me First” folder of the Data Room and is accessible at the top level of the folder structure.
- 1.22. Any changes to the Data Room will be communicated to Qualifying Bidders by updated indexes.
- 1.23. In order to provide sufficient time for information in the Data Room to be considered in developing ITT Submissions, we anticipate allowing no further changes to the contents of the Data Room from the date set out in Table 1 (Data Room freeze).

### Updated Draft Project Transfer Agreement and Ancillary Documentation

- 1.24. The Developer has provided a Draft Project Transfer Agreement for the Westermost Rough Project which has been uploaded to the Data Room. It has been amended by the Developer following the EPQ Stage and as a result of further internal development by the Developer. The Developer has also provided Ancillary Documentation (where available).
- 1.25. We will liaise with the Developer during the ITT Stage to review the development of the Project Transfer Agreement. This will include reviewing the extent to which the Project Transfer Agreement is consistent with the Guidance on the Transfer Agreement for TR3<sup>7</sup> and may include discussing with the Developer the manner and extent to which the Developer proposes to address issues raised by the Qualifying Bidders.
- 1.26. Before the end of the ITT Stage, we will issue the Final Project Transfer Agreement prepared by the Developer to Qualifying Bidders via the Portal, as per the indicative timetable for the ITT Stage detailed in Table 1.

### Developer commercial offers

- 1.27. The Developer has also provided documentation in relation to any additional commercial proposals, which has been made available to Qualifying Bidders in the Data Room.
- 1.28. It is the choice of each Qualifying Bidder as to whether or not it wishes to take up any of the Developer’s commercial offers.

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<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/guidance-transfer-agreement-tender-round-3-tr3>

## Certification of Transmission System Operators

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- 1.29. The government has implemented a package of European legislation on the liberalisation of EU gas and electricity markets, namely the Third Package, into domestic legislation through the Third Package Regulations. The measures of the Third Package aim to ensure that the benefits of a competitive energy market can be realised. A key requirement of the Third Package is ownership unbundling, meaning the separation of transmission interests (ownership and operation of interconnectors and offshore and onshore transmission systems) from power generation, gas production and supply activities. The Third Package Regulations amended the provisions of the Electricity Act 1989 (and corresponding provision in the Gas Act 1986) to include the requirement for those with ownership or control over the function of transmission and/or a transmission system in a given area, a Transmission System Operator (TSO) to be certified as complying with one of the unbundling models set out in the Third Package.
- 1.30. The Third Package Regulations designate the Authority as the body with the responsibility for administering the certification process. A person who holds a Transmission Licence and participates in the transmission of electricity, for the purpose of giving a supply to any premises or enabling a supply to be given, must ensure that they are certified by the Authority throughout that period. OFTO Licensees need to be certified by the Authority as complying with the full ownership unbundling requirements.
- 1.31. All Qualifying Bidders are advised to familiarise themselves with the requirement for certification and to review the Third Package Regulations. Further information on the procedure for processing applications for certification under the ownership unbundling requirements can be found in the open letter dated 10 November 2011<sup>8</sup>, issued by Ofgem.
- 1.32. It is important to note the competitive offshore tender process and process of certification are separate. Any decisions the Authority takes in relation to this Tender Round are taken in its role as manager of the competitive tendering process pursuant to Section 6C of the Electricity Act 1989 and the Tender Regulations. Unless otherwise notified by Ofgem, any decision the Authority takes in relation to this Tender Round should not be taken as a decision, or any indication of what decision may be taken, on certification.
- 1.33. DECC issued a Call for Comments on 16 September 2014 regarding proposed amendments to the current GB ownership unbundling provisions<sup>9</sup>. A letter to stakeholders outlined DECC's concerns that "the transposition of the ownership unbundling requirements of the Third Package might be unduly constraining investment because Ofgem may not be able to certify certain cases that, in the Authority's opinion,

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<sup>8</sup> <https://www.ofgem.gov.uk/ofgem-publications/59314/111110-open-letter-certification-post-legislation.pdf>

<sup>9</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/354981/unbundling\\_call\\_4\\_comments.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354981/unbundling_call_4_comments.pdf)



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do not present a risk of discriminatory treatment”. DECC’s Call for Comments closed on 14 October 2014.

- 1.34. It is important to note that, until a decision is taken by DECC regarding the introduction of new legislation and it coming into effect, the prevailing GB law will continue to apply. If the UK government were to proceed with amending the ownership unbundling provisions of UK legislation, then the new regulations would only apply to applications received on or after the date they come into force.
- 1.35. Ofgem is not able to advise Qualifying Bidders as to the provisions of the Third Package Regulations and strongly recommends that Qualifying Bidders seek appropriate independent legal advice in this respect.

## 2. Instructions to Qualifying Bidders

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### Chapter Summary

This chapter sets out the instructions to Qualifying Bidders in respect of the ITT Stage, including the ITT Questionnaire, ITT Submissions and the clarification process.

## ITT Submissions

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### ITT Submission Deadline

- 2.1. All ITT Submissions must be made via the Portal no later than 12 noon GMT on 22 January 2015. The Portal will be closed at this time and no late ITT Submissions will be accepted. All ITT Submissions must be made in the templates provided and uploaded on the Portal. Ofgem will not accept ITT Submissions in any other form.

### Content of ITT Submissions

- 2.2. The ITT Submission must be completed in English, including any supplementary supporting documentation.
- 2.3. A compliant ITT Submission must contain the following:
  - a) responses to all requirements set out in the ITT Questionnaire and ITT Certificate, together with relevant supporting documentation. Responses must be provided in the templates provided on the Portal and must be submitted in MS Word (version 2007 or later) format using font style “Verdana” and font size no smaller than ten (10). The templates must not be altered by Qualifying Bidders;
  - b) if applicable, a re-submitted EPQ Questionnaire, together with required supporting documentation – see ‘Changes arising since EPQ Submission’ below;
  - c) the Qualifying Bidder’s fully populated financial model provided in Microsoft Excel (version 2003 or 2007). The model should not incorporate any password protection or protected macros;
  - d) fully populated Ofgem Financial Input Sheets, in accordance with the Instruction Notes for Ofgem Financial Input Sheets; and
  - e) a summary of the key outputs for each of the main sensitivities that are required in the financial model which is referred to in the Qualifying Bidder’s responses to Sections 6, 7 and 8 of the ITT Questionnaire.
- 2.4. Ofgem is not bound to accept any ITT Submission made by a Qualifying Bidder.

## Supplementary Documentation

- 2.5. Where a Qualifying Bidder is submitting supplementary documentation in support of any response to the ITT Questionnaire, this should be clearly cross referenced in the main text of the ITT Submission and its relevance must be clearly explained. Where supplementary documentation is not clearly referenced or where its relevance is not clearly explained, such documentation will not be taken into account in Ofgem's evaluation.

## Changes arising after ITT Submission Deadline

- 2.6. Each Qualifying Bidder should note that if, after its ITT Submission has been submitted and prior to the notification of Preferred Bidder:
- there is a material change or proposed material change to the information provided in its ITT Submission; or
  - a Qualifying Bidder becomes aware that information previously submitted is no longer true or accurate,
- the Qualifying Bidder is obliged to notify Ofgem as soon as reasonably practicable. Where a Qualifying Bidder notifies Ofgem of such a change, Ofgem may re-evaluate the ITT Submission in light of that change.

## Variant ITT Submissions

- 2.7. Ofgem will not accept any variant ITT Submissions.

## Review of Preferred Funding Solution

- 2.8. Ofgem expects the Preferred Bidder to proceed as efficiently and quickly as possible to Financial Close in order to deliver their preferred funding solution. Qualifying Bidders should note, however, that Ofgem may request the Preferred Bidder to review its preferred funding solution before Financial Close if:
- the transfer date is expected to be delayed by more than 3 months from the Estimated Transfer Date; or
  - the Preferred Bidder is unable to deliver its preferred funding solution to the same terms as those bid in its preferred funding solution provided in response to Section [7A].
- 2.9. When deciding whether or not to request the Preferred Bidder to review its funding solution, Ofgem will take into consideration any actions taken by the Preferred Bidder, including actions taken to ensure its funding solution remains competitive and delivers best value for money. This may include a value for money assessment and supporting analysis of the options considered and the items listed in question 6Ab)viii) in the ITT Questionnaire. If Ofgem does request the Preferred Bidder to review its preferred

funding solution, Ofgem will take account of the Preferred Bidder's views on the appropriate timing of such a review.

- 2.10. In the event that a review is undertaken following Ofgem's request, the acceptance of any proposed changes to the funding solution will be subject to the approval of Ofgem, based on value for consumers and taking into account all of the relevant circumstances at the time.

### Changes arising since EPQ Submission

- 2.11. Where any information relating to its EPQ Submission has changed, a Qualifying Bidder must provide updated responses to the relevant question(s) in the EPQ Questionnaire as part of its ITT Submission. This includes where there have been changes to:
- a) a Bidder Group configuration and/or membership (please see paragraphs 2.19 to 2.21);
  - b) the Qualifying Bidder's advisers; or
  - c) any other changes to the Qualifying Bidder's circumstances.
- 2.12. Updated responses should be provided as a mark-up to the Qualifying Bidder's original EPQ Submission. Access to the EPQ Questionnaire will be provided via the Portal.

## ITT Questionnaire

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- 2.13. The ITT Questionnaire, which is included in Chapter 3 of this document, has been produced to enable Ofgem to evaluate each Qualifying Bidder's proposals for financing, operating and managing the Westermost Rough Project.
- 2.14. Qualifying Bidders should provide responses to all relevant questions in the ITT Questionnaire by completing the ITT Questionnaire template provided in the Portal.
- 2.15. In completing the ITT Questionnaire template Qualifying Bidders must not alter the template structure and must adhere to the page limits stipulated in each section of the ITT Questionnaire. Page limits are indicated in the requirements for a response and refer to A4 size pages. Ofgem may ignore any additional information submitted in excess of these limits.

### Bidder Groups

- 2.16. Questions in the ITT Questionnaire which are required to be completed by the Qualifying Bidder should be answered by, in the case of a Qualifying Bidder which is a single entity, that entity, and in the case of a Qualifying Bidder which is part of a Bidder Group, the lead member of that Bidder Group.

- 2.17. Certain questions in the ITT Document require that information be provided in relation to individual members of a Bidder Group, in which case the lead member of a Bidder Group must provide that information in relation to each Bidder Group member ensuring that such information is clearly identified as relating to that Bidder Group member.
- 2.18. Ofgem recognises that in the case of a Bidder Group not every Bidder Group member will, for example, be able to provide examples of experience requested. Ofgem's evaluation will look at the capabilities of the Bidder Group taken as a whole.

### Changes to a Bidder Group

- 2.19. Ofgem expects that the membership of, and the respective interests in, a Bidder Group will have been finalised when that Bidder Group made its EPQ Submission. However, should unexpected or unforeseen circumstances arise leading to the need for a Qualifying Bidder to change its Bidder Group from that stated in its EPQ Submission, Ofgem will determine on a case-by-case basis whether permitting the change to the Bidder Group would be fair and equitable to all other Qualifying Bidders participating in the Tender Exercise in respect of the Westermost Rough Project. Ofgem will notify the Qualifying Bidder of the requirements that need to be met in relation to a proposed change in a Bidder Group.
- 2.20. Ofgem may refuse permission to a change in a Bidder Group where the Qualifying Bidder fails to demonstrate that it is able to fulfil the evaluation criteria set out in the EPQ Document or this ITT Document.
- 2.21. Where Ofgem has permitted any change in the membership of a Bidder Group in accordance with Regulation 32 of the Tender Regulations, it may give notice to the Qualifying Bidder of any amount payable to Ofgem in connection with this determination as calculated in accordance with the Cost Recovery Methodology.

## Clarifications

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- 2.22. Ofgem's general approach to dealing with clarifications is set out in the Tender Rules. The following sections set out Ofgem's approach to clarifications at the ITT Stage.

### Qualifying Bidder Clarifications

- 2.23. Qualifying Bidders may seek clarification from Ofgem in relation to any aspect of this ITT Document, the tender process at the ITT Stage or the information provided in the Data Room. All such clarifications must be made by the date specified in Table 1 and in accordance with the Instructions to Qualifying Bidders participating in TR3 (ITT Stage) published in the Data Room. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the ITT Submission deadline.

- 2.24. Ofgem will endeavour to provide responses as soon as reasonably possible, although the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested.
- 2.25. Ofgem may, where appropriate, forward a Qualifying Bidder's clarification request to the Developer or to another relevant third party (for example the NETSO). Where it does so, the identity of the Qualifying Bidder that raised the clarification will remain confidential. In such an instance Ofgem will act as the intermediary in any clarification request, i.e. the details of the clarification and the response to it will be managed and provided by Ofgem. With this in mind, Qualifying Bidders should write their clarification in such a way as to ensure that it is sufficiently anonymous so as not to identify them.
- 2.26. Ofgem's default position is, for reasons of transparency and fairness, to make responses to individual Qualifying Bidder clarifications available on the Portal to all Qualifying Bidders. Where Ofgem considers that a Qualifying Bidder's clarification is sufficiently specific and confidential, and/or a Qualifying Bidder has requested that it is confidential, Ofgem may at its discretion opt to provide its response solely to that Qualifying Bidder. Should a request for confidentiality for a specific clarification be rejected by Ofgem, the Qualifying Bidder who raised the clarification request will have the option of either withdrawing their clarification or having the answer to the clarification being made available to all Qualifying Bidders.

### Ofgem Clarifications

- 2.27. Ofgem may issue clarification requests to Qualifying Bidders during the evaluation of ITT Submissions. Qualifying Bidders must respond to clarification requests issued by Ofgem within the period specified. Failure by a Qualifying Bidder to respond to a clarification request within the period specified risks the late clarification response not being considered as part of Ofgem's evaluation of the Qualifying Bidder's ITT Submission. It is the Qualifying Bidder's responsibility to ensure that it has the correct notifications and access rights set up for the Portal.

## Qualifying Bidder/ Developer interaction during the ITT Stage

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- 2.28. Unauthorised contact between the Developer and Qualifying Bidders, or between Qualifying Bidders, is not permitted in relation to any aspect of the Tender Exercise save to the extent set out below and as further notified to Developers and Qualifying Bidders.

### Qualifying Bidder/Developer interaction following release of ITT documentation

- 2.29. The approach set out below and as further notified to Developers and Qualifying Bidders will be used during the ITT Stage to facilitate dialogue between the Developer and



## Invitation to Tender Document for Tender Round 3 (TR3): Westermost Rough

Qualifying Bidders about the Westermost Rough Project and key documentation for the purpose of preparing ITT Submissions.

### Developer briefings

- 2.30. These will take place in accordance with the date specified in Table 1. Information regarding the purpose and content of the day will be notified to Qualifying Bidders separately.

### Submission of required mark-ups and commentary

- 2.31. Qualifying Bidders are required to provide a mark-up and/or commentary of the following documents and to indicate whether the issues underlying their proposed changes have high, medium or low impact. Qualifying Bidders must propose any changes to the following documents for the Westermost Rough Project via the Portal by the date specified in Table 1.
- a) **Draft Project Transfer Agreement and Disclosure Letter** – by way of a mark-up of the Draft Project Transfer Agreement and disclosure letter and a commentary table to a maximum of ten pages;
  - b) **Draft Interface Agreement** – by way of commentary table only, to a maximum of two pages;
  - c) **Developer Commercial Offer (Operations and Maintenance Agreement)** – by way of a mark-up and commentary table to a maximum of ten pages, only if a Qualifying Bidder intends on taking up the Developer Commercial Offer.
- 2.32. In providing mark-ups and commentary tables, Qualifying Bidders should be mindful of the instructions set out in paragraphs 2.33 to 2.37 of this ITT Document.

### Form of Mark Up

- 2.33. Where a mark-up of a document is required, Qualifying Bidders must provide the mark-up as:
- a) a clean document; and
  - b) a comparison between the mark-up and the original document provided by the Developer.

- 2.34. Both documents must be supplied in MS Word and PDF formats.

### Form of Commentary Table

- 2.35. Where a commentary table is required, Qualifying Bidders must:
- a) prepare the commentary table using the form provided in the Data Room; and
  - b) provide the commentary table in MS Word format.

- 2.36. Qualifying Bidders are required to indicate in the commentary table whether the issues underlying their proposed changes to the relevant document are:
- i. **High:** Significant commercial/legal impact which will materially affect the Tender Revenue Stream (TRS) being bid or could materially affect the fundability of the transfer;
  - ii. **Medium:** Commercial/legal impact which could affect the TRS being bid, but not in a material way; or
  - iii. **Low:** Amendments which neither affect the TRS bid nor have a significant commercial impact, but which would make the transaction more desirable and efficient from the Qualifying Bidder's perspective.
- 2.37. As part of the commentary table, where an issue is identified of high or medium significance, the Qualifying Bidder is required to explain the nature of these issues and the impact that they have on the TRS bid.

#### Form of comments on tender documentation

- 2.38. We do not expect the marked up documents and commentary tables to be anonymised for the Westermost Rough Project. Please refer to the Guidance on the Transfer Agreement for TR3<sup>10</sup>.
- 2.39. Any comments on the documents, whether by way of mark-ups or commentary tables, should relate to the subject matter of the relevant document (for example, comments on the Draft Project Transfer Agreement should relate solely to the Project Transfer Agreement as a mechanism to transfer the Transmission Assets). Any comments which are issues for Ofgem to address, including issues in relation to the Tender Exercise, OFTO Licence or regulatory regime, should be raised as clarifications in accordance with the procedure set out in paragraphs 2.23 to 2.26 of this document.
- 2.40. We intend to issue these mark-ups and commentary tables to the Developer and we will liaise with the Developer as outlined in paragraph 1.25. For the avoidance of doubt, Ofgem will not be evaluating these mark-ups or commentary tables.
- 2.41. Qualifying Bidders should be aware that failure to comply with the instructions regarding the production of mark-ups and commentary tables may result in their comments not being passed to the Developer

#### Qualifying Bidder/Developer interaction following submission of mark-ups

- 2.42. Following submission of mark-ups and commentary tables, Ofgem will co-ordinate individual sessions between the Developer and each Qualifying Bidder to discuss any material issues in relation to the commercial offer, Draft Project Transfer Agreement and the Ancillary Documentation.

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<sup>10</sup> <https://www.ofgem.gov.uk/ofgem-publications/86334/20140225tr3transferagreement.pdf>

- 2.43. Attendance at the individual sessions is optional for Qualifying Bidders.
- 2.44. A draft schedule for the Developer briefings and the face to face meetings is included in Table 1 of this document. Further details are notified in letters to the Developer and each Qualifying Bidder.
- 2.45. All sessions between the Developer and Qualifying Bidders during the ITT Stage will be co-ordinated by Ofgem and are anticipated to take place at Ofgem's offices. To ensure fair competition and equal treatment between all Qualifying Bidders and show no preferential treatment to any parties involved in the process, all discussions will be monitored and supervised by Ofgem. Ofgem does not propose to participate in the sessions or to act as an arbiter of disputes between the parties, nor does it propose to endorse any of the positions taken by either the Developer or Qualifying Bidders at the sessions. Ofgem does not propose to answer any questions which arise during the sessions.
- 2.46. In addition to the discussions outlined above, provisions set out in relation to the process for communication between Qualifying Bidders and Ofgem (i.e. clarifications through the Portal as set out in paragraphs 2.23 to 2.27 of this document) continue to apply.

### Finalisation of documents

- 2.47. The Developer will consider the changes proposed to the Draft Project Transfer Agreement and will prepare the Final Project Transfer Agreement, commercial offer(s) and updated Ancillary Documentation where relevant, which we intend to provide to Qualifying Bidders on the date set out in Table 1.
- 2.48. Qualifying Bidders will be required to make their ITT Submissions based on, and assuming that, there will be no further changes to the Final Project Transfer Agreement. Qualifying Bidders' TRS bids must be priced on the above basis. Qualifying Bidders will not be permitted to provide a mark-up of the Final Project Transfer Agreement with their ITT Submissions.

## Financial Model Requirements

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- 2.49. In response to Section 7: TRS, Qualifying Bidders are required to submit their financial model in accordance with the following specific requirements.

### a) Financial statements

Ofgem requires Qualifying Bidders to provide the following accounting and financial statements:

- i. Profit and loss statement or income statement;
- ii. Cash flow statement;
- iii. Balance sheet;
- iv. Key financial ratios (e.g. ADSCR, LLCR, blended equity nominal IRR);
- v. All working schedules used in the calculation of i) to iv) above; and
- vi. A worksheet detailing the components of their TRS.

**b) Ofgem Financial Input Sheets**

Fully populated Ofgem Financial Input Sheets, contained and linked to the formulae within your financial model.

**c) Risk of error**

Any errors (including incorrect assumptions) or omissions discovered in the financial model that result in increased costs will be at the risk of Qualifying Bidders. The TRS will not be increased to accommodate any errors or omissions post ITT Submission. Qualifying Bidders accept that no changes to the TRS will be accepted arising from any amendments to the model with the exception of those specifically agreed with Ofgem post ITT Submission.

**d) Model integrity**

The logical integrity (including, without limitation, all inputs, calculations and outputs) and assumptions used within the financial model remain the responsibility of Qualifying Bidders.

2.50. Qualifying Bidders are required to provide a detailed manual and supporting data book explaining the operations of the model and the assumptions adopted in the model, to include those items set out below:

- Overview of model and model structure;
- Procedure to load the model, including any unusual routines necessary to enable the model to work correctly and be optimised appropriately (including stating any 'add-ins' and options that must be activated prior to use of the model);
- Explanation of key assumptions in model;
- Details of macros and visual basic code (subject to comments below);
- Procedure to optimise the model; and
- Description of the optimisation steps, including any relevant macros.

In addition to the above, Qualifying Bidders must also adopt the financing, economic and project assumptions as set out in the 'Assumptions for ITT Submissions' section of this document.

## Assumptions for ITT Submissions

### Introduction

- 2.51. This section sets out certain standard assumptions that Qualifying Bidders must use, where relevant, in compiling their ITT Submissions (including for the purposes of financial modelling). This includes financing assumptions, economic assumptions and certain assumptions specific to the Westermost Rough Project.
- 2.52. Qualifying Bidders should be aware that Ofgem may update the assumptions in Tables 2-4 (where we consider it appropriate to do so) during the ITT Stage, as appropriate. As per paragraph 2.55, following Qualifying Bidder feedback on the methodology and 'minded to' bond credit spreads, in the event that Ofgem revises and reissues Tables 2 to 4, Qualifying Bidders should use the revised figures (where relevant) in their ITT Submissions and should also update the Ofgem Financial Input Sheets spreadsheet (fis General tab, cell B34) with any revised inflation assumption.

### Financing Assumptions

- 2.53. For the purposes of the ITT Submission the assumptions Qualifying Bidders' should use in their ITT Submissions can be separated as follows:
- reference rates to be used in the Qualifying Bidder's financial model (where a Qualifying Bidder's funding structure is dependent on underlying market rates). See Table 2.
  - Ofgem's 'minded to' bond credit spreads for two types of publicly listed nominal bonds to be used in the Qualifying Bidder's financial model. See Table 3 and paragraph 2.55.
  - Ofgem evaluation assumptions which are already reflected in Ofgem's Financial Input Sheets. See Table 4.

Table 2 Reference Rates to be used in the Qualifying Bidder's financial model

Rate	Source	Time & Date Obtained	Rate (%)	Description
RPI Swap Rate	Bloomberg	17:30, 17 October 2014	3.181	<i>The 20 year RPI swap mid rate. These are mid-rates and Qualifying Bidders are required to apply execution spreads as set out in the term sheets requested in Section 6.</i>
Interest Rate Swap Rate	Bloomberg	17:30, 17 October 2014	2.406	<i>Mid rate for twelve year interest rate swap This is equivalent to the approximate average life of a 19 year fully amortising debt. These are mid-rates and Qualifying Bidders are required to apply execution spreads as set out in the term sheets requested in Section 6</i>
Gilt Rate	Bloomberg	17:30, 17 October 2014	2.180	<i>UK Treasury 5% 03/07/25 bond</i>
Index Linked Gilt Rate	Bloomberg	17:30, 17 October 2014	-0.647	<i>UKTI 2.5% 2024</i>

- 2.54. Qualifying Bidders should note that all reference rates above are quoted before application of any applicable credit or execution spreads and these should be specified in ITT Submissions and applied subsequently in the financial model by the Qualifying Bidder.

Table 3 Credit Spread for two types of publicly listed nominal bonds to be used in the Qualifying Bidders' financial model

Publicly Listed Nominal Bond	Source	Time & Date Obtained	'Mided to' Bond Spread (incl new issue premium and sub-benchmark size premium)	Description
A- <sup>11</sup> /A3 <sup>12</sup>	Bloomberg "Assumptions to be used for a publicly listed nominal bond" document	17:30, 17 October 2014	130 bps	Publicly listed nominal bond with EIB PBCE credit enhancement (or a product with equivalent effect) from BBB+ to A- credit rating
BBB+ <sup>13</sup> /Baa1 <sup>14</sup>	Bloomberg "Assumptions to be used for a publicly listed nominal bond" document	17:30, 17 October 2014	150 bps	Publicly listed nominal bond of BBB+/Baa1 credit rating without credit enhancement

- 2.55. Ofgem has set out in Table 3 the 'minded to' credit spread in respect of two types of publicly listed nominal bonds. **Qualifying Bidders may provide further comments on the methodology and the 'minded to' position by 5<sup>th</sup> November 2014. Following this, Ofgem will finalise the methodology and issue credit spreads Qualifying Bidders should use in their ITT Submission, in respect of publicly listed nominal bonds rated A-/A3 or BBB+/Baa1.** Qualifying Bidders that choose to use one of these two types of publicly listed nominal bonds as part of their funding solution will be asked to use the relevant assumed credit spread for the purpose of their ITT Submissions. These bond spreads only apply where the debt funding is entirely raised through a publicly listed bond issue. In the situation where a Qualifying Bidder intends to fund a lower amount, they should substantiate whether the lower amount will warrant a further premium in the pricing in their ITT Submission due to the smaller size of the issue and include the premium and justification of any such pricing premium in their ITT Submission.
- 2.56. Ofgem understands from the published credit rating methodology for the OFTO sector as a whole and from previous experience to date for other OFTO projects that an appropriately and efficiently structured OFTO could achieve an underlying credit rating

<sup>11</sup> S&P/Fitch Scale

<sup>12</sup> Moody's Scale

<sup>13</sup> S&P/Fitch Scale

<sup>14</sup> Moody's Scale

of BBB+/Baa1 and that there has been a credit enhanced OFTO bond issue in the market already, hence the two spreads stipulated in Table 3.

- 2.57. Where a Qualifying Bidder uses a financial instrument/loan involving an external credit rating (that is from a recognised credit rating agency for long term debt) in their preferred funding solution, we require the Qualifying Bidder to provide information and the analysis to substantiate and support their proposed credit rating. As part of this information and the analysis the bidder may choose to procure an Indicative Credit Rating from one of the agencies (or relevant approving body). However, for the avoidance of doubt, Ofgem does not require Qualifying Bidders to secure an Indicative Credit Rating in order to secure a grade in the 'A' category in the evaluation of their preferred funding solution. Qualifying Bidders should note that save for material events outside the Qualifying Bidder's control, Ofgem would expect that the credit rating submitted in the ITT bid is achieved and so Equity (or Corporate Finance where relevant) providers are committing to that as part of the ITT Submission.
- 2.58. Qualifying Bidders that intend to use index-linked bonds, a private placement, or any other type of capital market solution other than those mentioned in Table 3 are invited to formulate their own assumptions regarding the bond spread as part of their ITT Submission. Where other assumptions are adopted, Qualifying Bidders will be required to provide evidence to support their assumptions which should be constructed using data based on the date of the rates taken for the two types of publicly listed nominal bonds in Table 3.
- 2.59. Qualifying Bidders should note that the market rate revenue adjustment (MRA) mechanism in the OFTO Licence adjusts the TRS to reflect the difference between the market rates and publicly listed bond spreads which support the TRS published as part of the section 8A consultation and the actual market rates and publicly listed bond spreads which apply at financial close.

#### **Indexation of revenue**

- 2.60. As detailed in the Ofgem decision letter on the generic OFTO licence for TR3 (7 March 2014) Qualifying Bidders are required to specify the proportion of the TRS that is to be indexed to RPI over the length of the revenue term. For the avoidance of doubt, Qualifying Bidders may specify any proportion from 0 to 100 per cent (inclusive) of the TRS to be indexed to RPI.
- 2.61. As a result of the above, we will no longer evaluate the TRS bids in Section 7A on a first year TRS basis. We will now evaluate on the basis of Net Present Value (NPV) of the 20-year nominal TRS to ensure comparability between bids. Qualifying Bidders may adopt their own assumptions for inflation in their financial models, however for the purpose of the NPV calculation Ofgem will forecast the 20-year nominal TRS using the Ofgem inflation assumption set out in Table 4. We will calculate the NPV using a nominal discount rate based on the information in Table 4. Ofgem's evaluation of the TRS will be based on the Qualifying Bidders' completed Ofgem Financial Input Sheets which should be linked into their financial model.

Table 4 Ofgem evaluation assumptions

Rate	Source	Time & Date Obtained	Rate (%)	Description
Inflation – for Ofgem evaluation purposes only	Ofgem Decision letter on generic OFTO licence for TR3 March 2014	17:30, 17 October 2014	2.82	<i>Breakeven inflation implied by zero coupon 10-year index linked gilts (ILGs)</i>
Real discount – for Ofgem evaluation purposes only	Ofgem Decision letter on generic OFTO licence for TR3 March 2014	March 2014	3.5	<i>Social Time Preference Rate (STPR)</i>

### Other Assumptions

2.62. All Qualifying Bidders are required to adopt the following economic assumptions in compiling their ITT Submissions:

- a) Indexation of the TRS should be applied in accordance with the OFTO Licence, i.e. annually each April;
- b) Estimated Transfer Date is anticipated to be on the date specified in Table 1;
- c) RPI (base date) assumed for the revenue indexation adjustment term in the OFTO Licence should be September 2014;
- d) The TRS commencement date is the Estimated Transfer Date for the Westermost Rough Project;
- e) The length of the TRS is 20 years;
- f) The financial year end is assumed to be 31 March each year; and
- g) The Indicative Transfer Value for Westermost Rough is £172.3 million.

### Taxation

2.63. Ofgem expects that the asset transfer will be treated as a transfer of going concern under The Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268 Art 5) and therefore is outside the scope of VAT. Accordingly no VAT should be assumed to be payable on the transfer of the assets.

2.64. For the purposes of the ITT Submission, Qualifying Bidders should assume that:

- the Developer will treat the assets as capital assets and will have pooled them for capital allowance purposes as appropriate; the OFTO assets transferred from the Developer will not have been the subject of a previous capital allowance claim, including in respect of fixtures;
- the Qualifying Bidder's capital allowances claim for fixtures, after the Developer enters into a Section 198 CAA 2011 election with the Preferred Bidder, will be restricted to the Developer's capital expenditure incurred and pooled in respect of the fixtures, with any element in excess of the development cost of fixtures (e.g. interest during construction) falling outside the scope of capital allowances.

- 2.65. All assumptions and calculations in respect of taxation should be clearly set out within the financial model and in the responses in question [8A].
- 2.66. All accounting and tax assumptions made by Qualifying Bidders are at their own risk and each Qualifying Bidder must accept that following ITT Submission it will not pass on any costs of changing its accounting and/or tax assumptions within its financial model.
- 2.67. The above assumptions are as per the new legislation on capital allowances in sections 187A and 187B of the Capital Allowances Act 2001 and Schedule 10 of the Finance Act 2012 effective from 1 April 2014, as well as the most recent direction from HMRC as of September 2014.

### European Investment Bank (EIB) Funding

- 2.68. Qualifying Bidders are invited to consider EIB as a source for funding of the Transmission Assets relating to the Westermost Rough Project where this will enable a lower TRS to be bid. The EIB has provisional<sup>15</sup> approval for both a) senior debt and b) project bond credit enhancement (PBCE) to be available for this project.
- 2.69. Where a Qualifying Bidder wishes to include EIB within its proposed financing structure it is required to indicate this in its ITT Submission. Qualifying Bidders should include the EIB senior debt funding, or PBCE, as options supported by any relevant terms. Qualifying Bidders should also provide any other supporting documentation issued to it by EIB, including EIB sensitivities where relevant; this should be included in its base case TRS provided in response to Section [7A].
- 2.70. For both EIB senior debt and PBCE, Qualifying Bidders should engage directly with EIB during the ITT Stage. Qualifying Bidders should note that for provision of senior debt, EIB will not provide credit approved terms at this stage in the transaction. Ofgem acknowledges that Qualifying Bidders' commercial funding terms may be subject to EIB involvement at the Preferred Bidder Stage.
- 2.71. For the EIB PBCE instrument, Qualifying Bidders should engage directly with EIB during the ITT Stage.

### Licence Assumptions

- 2.72. Any Qualifying Bidder who assumes in its ITT Submission that the Authority may agree bespoke licence protections which amend the draft Westermost Rough specific OFTO Licence is doing so entirely at its own risk. The Authority's appointment of a Preferred Bidder shall not prejudice any consideration we may give to the Preferred Bidder's licence assumptions and any amendments to the licence prior to licence grant. The Authority will make a decision regarding any licence amendments on the specific circumstances prior to commencement of the section 8A licence consultation, and any decision shall be in line with our statutory duties and principal objectives. Please refer to

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<sup>15</sup> <http://www.eib.europa.eu/projects/pipeline/2014/20140200.htm?lang=de>

the guidance on the Offshore Transmission Owner Licences for the Third Tender Round for further information. In addition, Qualifying Bidders should note that assumptions made in respect of the provision of bespoke licence protections will be subject to evaluation in Section 8 of the ITT Questionnaire. If Qualifying Bidders intend to assume any bespoke licence amendments, they are advised to inform Ofgem via clarification questions before the ITT Submission deadline.

### Conditions Precedent

2.73. Qualifying Bidders are required to provide a TRS bid in their ITT Submission that will be subject only to the following conditions precedent:

- a) To execute the Project Transfer Agreement (and all ancillary agreements required as conditions or completion deliverables under the Project Transfer Agreement) within a specific timescale;
- b) To agree, within a specific timescale, to the grant of the OFTO Licence from Ofgem;
- c) To accede to relevant industry codes, to execute the Offshore Transmission System Development User Works (OTSDUW) Completion Report with NETSO and to execute any necessary interface agreements, where applicable, within a specific timescale; and
- d) To execute defined project contracts or other documentation within a specific timescale, including:
  - completion of relevant financing documents and confirmatory due diligence;
  - execution of an operations and maintenance agreement and/or relevant sub-contracts; and
  - establishment of the Special Purpose Vehicle (SPV) (where required).

### On-going regulation of the transmission assets beyond the 20-year revenue term

2.74. The Authority will make a decision at the relevant time about any on-going regulation of the transmission assets beyond the 20-year revenue term based on the on-going demand for the transmission assets and in the context of the Authority's statutory duties. The Authority has set out potential options previously (i.e. decommissioning and licence revocation; revenue period extension; or re-tender<sup>16</sup>) and will assess which course of action is appropriate and the duration of the measure decided upon based on a review of all available evidence and circumstances at the time. For the avoidance of doubt, Qualifying Bidders should assume the Regulatory Asset Value of the transmission assets at the end of the initial 20-year revenue term will be zero.

2.75. Qualifying Bidders may assume in their ITT Submissions a Value in Use of the Transmission Assets beyond the 20-year revenue term, but they will be doing so entirely at their own risk.

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<sup>16</sup> Statement on future Generator Build Tenders: <https://www.ofgem.gov.uk/publications-and-updates/offshore-electricity-transmission-statement-future-generator-build-tenders>

## 3. Invitation to Tender Questionnaire

### Chapter Summary

This chapter sets out the content of the ITT Questionnaire.

- 3.1. The ITT Questionnaire sets out the information that Qualifying Bidders are required to return in their ITT Submissions.
- 3.2. All questions are numbered. Qualifying Bidders should provide responses to these questions in the corresponding response template provided in the Portal.
- 3.3. The ITT Questionnaire is structured into the following sections:

Section 1	Confirmation of EPQ Submission
Section 2	Shareholding Structure
Section 3	Asset Takeover
Section 4	Ongoing Operations and Statutory and Regulatory Compliance
Section 5	Decommissioning
Section 6	Financial Deliverability
Section 7	Tender Revenue Stream (TRS)
Section 8	Underlying Assumptions
Section 9	ITT Certificate
Section 10	Confidentiality

- 3.4. Qualifying Bidders are required to tailor their response to the specific characteristics of the Westermost Rough Project, based on the information available.
- 3.5. References throughout the ITT Questionnaire to 'you' and 'your' are to the Qualifying Bidder.
- 3.6. The requirements for Sections 1 to 10 of the ITT Questionnaire are set out below.



## Section 1: Confirmation of EPQ Submission

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<b>[1A]</b> Name of Qualifying Bidder	
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<b>[1B]</b> Please confirm whether the information provided in your EPQ Submission has changed	
Yes	No

<b>[1C]</b> To the extent any information has changed, please provide updated responses to the relevant question(s) in the EPQ Questionnaire together with any supporting evidence (if applicable). Updated responses should be provided as a mark-up to your original EPQ Submission.  Please also provide below an overview of the information that has changed.

## Section 2: Shareholding Structure

The response to this section should be provided in a **maximum of five pages**. Supporting information may be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the shareholding structure for the entity that would be granted the OFTO Licence:

**[2A]** details of:

- a) the proposed shareholding structure, making clear:
  - the identity of the entity that will hold the OFTO Licence for the Westermost Rough Project
  - what decisions are taken at board level and what decisions are delegated to the senior management team and/or another entity
  - any reserved matters;
- b) which entity/ies will act as borrower (if applicable) and any entity/ies through which equity or debt financing will flow;
- c) each of the roles, decision-making responsibilities and delegated authority within the shareholding organisational structure; and
- d) where applicable, the relationship which each Bidder Group member will have within and/or with the OFTO, including identification of the Ultimate Controller(s) of the OFTO.

**[2B]** details of:

- a) the proposed ownership arrangements;
- b) the proposed ownership proportions; and
- c) how you propose to share liability between Bidder Group members (where applicable).

**[2C]** in relation to your structure:

- a) shareholding agreements;
- b) articles of association;
- c) loan note agreements (as referred to in Section 6D part c); and
- d) where appropriate, other relevant Bidder Group documentation

identifying any conditionality and outstanding items which are still to be agreed and subject to confirmatory due diligence.

## Section 3: Asset Takeover

The response to this section should be provided in a **maximum of twelve pages**. Supporting information may be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the takeover of the Transmission Assets from the Developer:

**[3A]** a fully detailed takeover plan identifying the key activities necessary to ensure effective acquisition of the Transmission Assets. This plan should cover the periods from the notification of Preferred Bidder through to Licence Grant and from Licence Grant to three months following asset transfer.

The takeover plan should:

- a) clearly cover the relevant legal, regulatory, commercial, financial, technical and communication activities. The plan should also include the due diligence activities planned up to Licence Grant;
- b) be accompanied by a Gantt chart showing the tasks, timings, key milestones, linkages and dependencies across each of the main work areas; timings should be shown to the nearest week; and
- c) set out the organisational and management team structure (including a diagram) identifying those responsible for delivering the takeover plan in this period providing:
  - i. a role description; and
  - ii. responsibilities of each team member.

Summary role descriptions and CVs for key post-holders already/provisionally appointed or a plan of the process for their appointment and any relevant knowledge transfer of the systems and processes in place should be provided separately in an appendix.

**[3B]** in respect of the takeover plan provided in response to [3A], set out how this will be implemented, including (but not limited to) each of the following:

- a) resources type (including technical/operational, administrative, finance and accounting) and confirmation of availability to provide the necessary input for the Westermost Rough project (including in instances where such resources are shared across other organisations/licence holders);
- b) shareholder representation in the takeover;
- c) procurement strategy;
- d) quality and risk management;
- e) health, safety and environmental management; and
- f) stakeholder engagement.

**[3C]** the following details of your approach to technical due diligence:

- a) on the basis of the information provided by the Developer, how you would use this to successfully complete your due diligence; and
- b) the criteria you would use to consider the relative risks to the OFTO's ownership of the assets arising from the findings of the technical due diligence and your proposed approach to addressing these, noting the need to achieve a timely and efficient transfer of assets at least cost to the consumer.

**[3D]**

- a) a takeover risk management register, identifying key business and operational risks and detailing proposed mitigation at the point of asset transfer;
- b) a description of obligations and dependencies on the Developer, NETSO, Ofgem, The Crown Estate, the MMO, NGET, landowners and other relevant stakeholders clearly defining the requirement and likely delivery date; and
- c) an explanation of the arrangements to ensure that the entity that will hold the OFTO Licence will be registered for VAT purposes, in accordance with the relevant provisions of the Final Project Transfer Agreement.

## Section 4: Ongoing Operations and Statutory and Regulatory Compliance

The response to this section should be provided in a **maximum of twenty pages**. Supporting information may be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the ongoing operations of the OFTO, referring to relevant past experience where applicable:

### **[4A]** Asset management policy and framework

- a) details of the asset management policy that you intend to apply as an OFTO to cover areas associated with:
  - i) asset condition monitoring;
  - ii) required planned and unplanned maintenance regime development;
  - iii) asset replacement planning;
  - iv) spares holdings and management (for both strategic and operational spares); and
  - v) transport logistics.
- b) outline what you see as the advantages of this particular approach and how it would be implemented using the transferred Transmission Assets and records data.
- c) referring to proposals for innovation in ongoing operation of offshore transmission assets identified in your response to Question 10B of the EPQ Questionnaire, please provide details as to how you have developed these proposals for the ITT Stage for the Westermost Rough project. Where you decided to take forward the proposal(s), clarify the nature and extent of the impact of the proposal(s) on your underlying TRS and/or stability of the OFTO over the 20-year revenue term for the Westermost Rough project. Where you decided not to take forward the proposal(s), clearly state your reasoning for this decision. For any innovations proposed in addition to those identified at the EPQ Stage, clarify the nature and extent of the impact of the proposal(s) on your underlying TRS and/or stability of the OFTO.
- d) an overview of the key deliverables of the asset management policy selected to ensure compliance with industry codes and standards, including inspection plans, routine maintenance schedules, repair plans, contingency plans for major failures, outage planning, security plans, data management, main stakeholder communications together with:
  - i) indicative resourcing needs;
  - ii) response time requirements (where applicable); and
  - iii) the key stakeholder interfaces, frequency and level of coordination required for each activity and/or deliverable.

**[4B] Detailed operations and maintenance arrangements and costs**

Qualifying Bidders are required to provide details of:

- a) the operations and maintenance (O&M) working arrangements you intend to apply. This must include your:
  - i) procurement approach;
  - ii) management arrangements;
  - iii) core skills;
  - iv) expected use of operational partners and/or subcontractors;
  - v) risk management approach, including an indication of where risks are managed through insurance arrangements or other means; and
  - vi) insurance arrangements.

In responding to this question, you are required to describe the relationship to the associated O&M assumptions and cost provisions provided in response to Section 8, in alignment with the cost breakdown template forming part of the proforma cost templates. You should also consult the OFTO Licence, The Crown Estate lease and any other relevant documentation to understand explicit insurance requirements;

- b) the approach you would take to ensure that you have necessary arrangements in place to effectively operate the Westermost Rough transmission system. Where applicable your response should identify how you have the appropriate deliverability capabilities and resources available to manage the Westermost Rough transmission assets, including in instances where such resources are shared across other organisations/licence holders;
- c) your proposal for mitigating against and responding to a Major Failure Event of the Transmission Assets and how you would cover the financial consequences of such an event (e.g. in circumstances where it would not be an exceptional event under the OFTO Licence);
- d) your proposed arrangements for operational control and 24/7 control room monitoring;
- e) site security requirements including statutory framework compliance, liaison with enforcement agencies and other stakeholders for both normal day to day operation and requirements in an emergency; and
- f) emergency cover requirements distinguishing between normal day to day operation and Major Failure Events.

**[4C] Statutory arrangements and compliance**

You are required to provide details of:

- a) how you would ensure, monitor and review compliance with all applicable health, safety and environmental legislation. Details must be provided in

relation to:

- i) the key regulatory and enforcement bodies involved with Safety, Health and Environmental (SHE) issues; and
  - ii) the organisational and management structure (including functional teams such as a compliance team, audit team) that will be put in place to oversee, manage, communicate and review the SHE compliance related matters of all parties involved (i.e. employees, subcontractors and members of public);
- b) how you would ensure, monitor and review regulatory compliance (e.g. with the OFTO Licence and relevant industry codes) and reporting. Details must be provided in relation to:
- i) the organisational and management structures for the Westermost Rough Project; and
  - ii) the procedures that will be put in place to oversee, manage, communicate and review the regulatory compliance and reporting related matters both internally and externally.
- As part of the response, you must explain:
- a) how the O&M provisions will relate to the performance incentive under the OFTO Licence;
  - b) how your financing strategy complies with the financial ring-fencing conditions, most notably licence conditions E7 (Restriction on Activity and Financial Ring Fencing), E10 (Indebtedness) and E11 (Credit Rating of Licensee);
  - c) how you would satisfy licence condition E17 (Obligations in relation to offers for connection etc.) in the event that a request for additional capacity was made (noting the reference in paragraph 5(d) of this condition to the limit of 20 per cent of the original investment cost);
  - d) how your approach ensures compliance with licence conditions in relation to management of information across parties, including the arrangements that you would require a third party to have in place to protect confidential information and ensure that it can provide services when required by the Westermost Rough OFTO;
- c) how you will engage with the certification process referred to in paragraph 1.29 to 1.35 of this ITT Document and monitor certification status in compliance with the requirement of section 10A of the Electricity Act.

## Section 5: Decommissioning

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The response to this section should be provided in a **maximum of six pages**. Supporting information should be provided in separate appendices.

Qualifying Bidders are required to provide the following in relation to the decommissioning of the Transmission Assets for the Westermost Rough project, referencing past experience where relevant:

**[5A]** a plan setting out the approach to decommissioning in line with the guidance provided by DECC, and including:

- a) the process and stakeholder engagement that you intend to adopt in your approach to development of a decommissioning plan and its implementation; and
- b) the proposed technical and environmental approach to decommissioning of the Transmission Assets (both onshore and offshore).  
Any assumptions should be clearly explained and supported by evidence. In responding to this question, you are required to describe the relationship to the associated decommissioning assumptions and cost provisions provided in response to Section 8, in alignment with the cost breakdown template forming part of the proforma cost templates.

**[5B]** an outline of how and when you would plan and manage any decommissioning liabilities at the end of the 20-year revenue period.

Details should be provided in relation to your proposals for delivery of decommissioning work at the end of this period, including where the decommissioning work needs to be undertaken by an unlicensed entity.

Any assumptions and relevant calculations should be clearly explained and supported by evidence.

## Section 6: Financial Deliverability

The response to this section should be provided in a **maximum of sixteen pages**. Supporting information should be provided in separate appendices.

Under this section you are required to set out your proposed financing strategy in support of your base case TRS<sup>17</sup> (as provided in Section 7). Your financing strategy must also be consistent with the shareholding structure described in Section 2. Your financing strategy must reflect the Estimated Transfer Date and your operation and management approach in respect of the Westermost Rough Project.

Your proposed financing strategy is also required:

- to clearly state the period for which each source of finance is committed and the relevant quantum so committed;
- as the Final Transfer Value for the Westermost Rough Project has not yet been determined, to provide minimum committed funds adequate to cover the funding required in the scenario where the Final Transfer Value is 120 per cent of the Indicative Transfer Value;
- to include all amounts in pounds sterling; and
- to clearly identify your preferred funding solution which should be reflected in your base case TRS presented in Section 7.

**All Qualifying Bidders must answer question [6A]; Qualifying Bidders should also answer questions [6B] and/or [6C] and/or [6D] where relevant for the base case TRS provided in response to Section [7A].**

### **[6A] Overall financing strategy**

All Qualifying Bidders are required to provide, as a minimum:

- a) An overview of the financing strategy and preferred funding solution including supporting analysis undertaken to identify the preferred funding solution, including a table setting out the sources and uses of the funding, letters of commitment and any other appropriate supporting documentation. Your response should also provide an outline of the analysis undertaken to consider alternative funding solutions and reasons for selecting your preferred solution - this could, for example, be set out as a summary table of options considered;
  
- b) In relation to the preferred funding solution:

<sup>17</sup> For the avoidance of doubt, the base case TRS bid is the TRS bid that you are committing to deliver as part of your ITT Submission and the TRS bid against which section 8 will be evaluated.

- i. a detailed plan for securing the preferred funding solution to financial close, including a clear statement as to how you will secure final approvals should you be appointed Preferred Bidder. This plan should include your approach, timing and key milestones, taking into consideration the various stages that will occur during the timeframe to asset transfer<sup>18</sup>;
- ii. a summary of the key risks to obtaining these approvals as planned along with details of how you will manage these risks;
- iii. details of your arrangements for managing interest, inflation and exchange rate risks following asset transfer and how these will be executed;
- iv. an outline and explanation of the assumptions (including any relationships to any RPI swaps used) that underpin your approach to the proportion of the TRS to be indexed to RPI over the length of the revenue term (as specified in your response to Question [7A]) and how you will ensure this approach remains appropriate up to the Estimated Transfer Date;
- v. details of the due diligence undertaken to date to secure funding. Ofgem expects that this will include details of technical, legal and financial due diligence undertaken (along with copies of any relevant reports), and the extent to which the financial model and sensitivity analysis have been reviewed. This should also include statements from relevant parties regarding their conclusions and level of comfort they have obtained from due diligence undertaken up to the time of ITT Submission;
- vi. a detailed plan of the confirmatory due diligence that the lender(s)/arranger(s) propose to undertake during the Preferred Bidder Stage, including timescales for completion with reference to the Westermost Rough Project. Ofgem expects that this will include technical, legal and financial confirmatory due diligence (including your approach to model audit and other due diligence as necessary);
- vii. evidence demonstrating the extent to which the preferred funding solution has firm pricing and availability to the Estimated Transfer Date and how you will manage the financing process to maintain competitive pricing of financing facilities up to financial close;
- viii. in respect of a delay to the Estimated Transfer Date of up to 3 months, or where Ofgem requests a review of the preferred funding solution in accordance with paragraph 2.8, please give details of the steps that you will take to ensure that:
  - sufficient funds will be available at financial close; and
  - funding terms remain competitive, for example through benchmarking alternative financing solutions and/or running an appropriate competition amongst funding providers;
- ix. details of your approach to funding any changes to the Indicative Transfer Value of up to 20 per cent (in determination of the Final Transfer Value). For the avoidance of doubt, the figure of 20 per cent is not a limit on the level of change to the Indicative Transfer Value which may occur.

<sup>18</sup> Please refer to page 9, where we set out the Transaction Process, and Ofgem guidance note on Process to Close for TR3 26 February 2014

### **[6B] Bank Debt Finance**

Qualifying Bidders who are using bank debt finance as a source of funding are required to provide as a minimum:

- a) individual letters of support and/or a consolidated mandate letter from the selected bank finance providers that you plan to use; these should clearly state the following in respect of the Westermost Rough Project:
  - the amount of debt finance offered by each bank;
  - a statement of the extent to which each bank's offer of finance is committed, based on credit and other committee approval(s) received (or equivalent approving body), with as full and clear a description as possible of the nature of such approval(s) received and what additional approvals (and from which committees) are still required in order to complete the transaction;
  - in the case of a loan that will involve an external credit rating prior to its issue, confirmation from each bank that it considers the credit rating proposed by the Qualifying Bidder to be achievable for the Westermost Rough project. Refer to Paragraph 2.57 for information on credit rating; and
  - the relevant commitment period(s) for which each bank can hold the terms provided;
- b) a conformed term sheet, which should be attached to each bank's letter of support and/or the consolidated mandate letter.

#### Notes:

- Letters of support must provide at least the amount of bank finance set out in your financial model multiplied by 120 per cent;
- The letters of support/mandate letter should state any conditionality which is related to the provision of finance and its pricing. In particular the terms should only be conditional upon:
  - i. fixing, if applicable, the underlying interest and RPI swap rate(s);
  - ii. agreed financing documentation;
  - iii. confirmatory due diligence; and
  - iv. the Qualifying Bidder being selected as the Preferred Bidder.
- The conformed term sheet should include as a minimum:
  - i. aggregate amount of debt provided by the bank group as a whole under each credit facility;
  - ii. margins on senior debt, with any applicable step-ups/downs;
  - iii. interest rate swap credit spread (inclusive of execution spread);
  - iv. RPI swap credit spread (inclusive of execution spread);
  - v. arrangement and commitment fees;
  - vi. agency fees;
  - vii. cover ratio requirements including LLCR (loan life coverage ratio), ADSCR (annual debt service cover ratio) (minimum and average) and other financial covenants where relevant;

- viii. gearing constraints;
- ix. maximum facility size;
- x. loan tenor;
- xi. amortisation profile and debt tail required;
- xii. availability and grace periods;
- xiii. the period for which the funding will be available and the extent to which it is committed;
- xiv. percentage of income amounts proposed to be swapped in any proposed RPI swap instrument;
- xv. full lists of conditions precedent, representations and warranties, undertakings, any lender sensitivities, events of default and other provisions customarily found in a 'long-form' term sheet;
- xvi. terms of any cash sweep and how they are addressed in your financial model;
- xvii. cancellation and prepayment fees where applicable; and
- xviii. other relevant information as would normally be provided for transactions of this nature.

Your response to [6B] should take into consideration any implications and/or interdependencies there may be with regards to EIB financing under [6A], where this is applicable.

#### **[6C] Other Debt Finance (e.g. capital markets solution)**

Qualifying Bidders who are using other forms of Debt Finance, such as listed bonds or a private placement, are required to provide as a minimum:

- a) letters of support from providers or arrangers of other such Debt Finance, and rating agencies as appropriate, that you plan to use as part of your financing strategy evidencing:
  - i. how you would access the funding and the timing;
  - ii. the extent to which such funding is/will be earmarked for OFTO investment/ appropriately ringfenced;
  - iii. details of any investment committee or equivalent approvals obtained and what additional approvals are still required in order to complete the transaction;
  - iv. details of how, should you be selected as the Preferred Bidder, you will maintain the competitiveness of your financing through the Preferred Bidder to financial close period in order to minimise any Market Rate Adjustment. This could be, for example, in the form of an incentive scheme with your bond arranger;
  - v. where applicable, any underwriting arrangements; and
  - vi. in the case of a financing instrument that will require an external credit rating for issue, confirmation from the bond or private placement arranger or the instrument purchaser(s), that it considers the credit rating proposed by the Qualifying Bidder to be achievable for the Westermost Rough project. Refer to Paragraph 2.57 for information on credit rating.
  
- b) a term sheet setting out the terms and conditions for each type of other Debt Finance that you plan to use as part of your financing strategy.

Notes:

- Letters of support must state the amounts of other Debt Finance to be arranged and should provide for at least the amount of other Debt Finance set out in your financial model multiplied by 120 per cent;
- Letters of support should identify the extent to which investors have already been contacted and assessed the financing (for example as in a private placement or a private listed bond issue to be purchased by a small number of parties) or whether a bookbuilding process is to be used with more limited initial sounding of potential purchasers;
- Letters of support should state any conditionality which is related to the provision of finance. In particular the terms should only be conditional upon:
  - i. fixing underlying market rates and bond spreads where relevant (e.g. Gilts and Indexed Linked Gilts where applicable);
  - ii. agreed financing documentation;
  - iii. confirmatory due diligence; and
  - iv. the Qualifying Bidder being selected as the Preferred Bidder;
- The term sheet should include as a minimum, where applicable:
  - i. underwriting, arrangement and other fees;
  - ii. rating agency fees, if applicable, and associated costs;
  - iii. cover ratio requirements, including the definitions of the cover ratios, and other financial covenants where relevant;
  - iv. any coupon and/or credit spread, in the case of credit spread specifying the reference instrument it is to be priced over;
  - v. gearing constraints;
  - vi. principal amount of the issue;
  - vii. amortisation profile;
  - viii. maturity date;
  - ix. the period for which the funding remains available and the extent to which it is committed;
  - x. amounts to be swapped in any proposed RPI swap instrument, and periods covered by such swap(s);
  - xi. full lists of conditions precedent, representations and warranties, undertakings, any lender sensitivities, events of default and other provisions customarily found in a 'long-form' term sheet;
  - xii. terms of any cash sweep and how they are addressed in your financial model;
  - xiii. cancellation and prepayment fees (and method of calculation) where applicable; and
  - xiv. other relevant information as would normally be provided for transactions of this nature;
- Where applicable, your response to [6C] should take into consideration any implications and / or interdependencies there may be with regards to EIB financing under [6A].

**[6D] Equity and/or Corporate Finance**

Qualifying Bidders who are using Equity and/or Corporate Finance are required to provide, where applicable:

- a) letters of support from the provider of Equity (and subordinated debt if applicable) and/or Corporate Finance, stating:
  - i. that the entity providing the letter(s) of support is the ultimate provider of the funds;
  - ii. the extent to which the commitment is confirmed;
  - iii. the amount of funds that they are willing to provide;
  - iv. the extent to which the funds to be provided are ear-marked for OFTO investment/appropriately ring-fenced, including confirmation of investment committee and/or board approvals obtained and what additional approvals are still required in order to complete the transaction; and
  - v. that they are committing to any credit rating proposed in the ITT Submission being achieved (save for material events outside the Qualifying Bidder's control). Refer to Paragraph 2.57 for information on credit rating.

Note: the amount stated in response to part iii) should provide for at least the full amount of Equity and/or Corporate Finance funding set out in your financial model multiplied by 120 per cent.

The letters of support should also state any conditionality which is related to the provision of finance. In particular terms should only be conditional upon:

- i. agreed documentation;
  - ii. confirmatory due diligence; and
  - iii. the Qualifying Bidder being selected as the Preferred Bidder;
- b) full and complete terms attached to any Equity Finance or Corporate Finance detailing each of the following as relevant:
    - i. any conditionality placed on the offering of such finance;
    - ii. the period for which the offer remains fixed and the extent to which it is committed and the basis upon which any terms will be adjusted after this period (as a minimum this should be up until expected date of asset transfer plus a further 3 months);
    - iii. any loan coupons for subordinated debt;
    - iv. coupon applicable to any subordinated debt;
    - v. the swap credit margin (inclusive of execution spread) if applicable to Corporate Finance (e.g. RPI or interest rate);
    - vi. any arrangement or commitment fees;
    - vii. the facility maximum amount;
    - viii. the loan tenor; and
    - ix. other relevant information as would normally be provided for transactions of this nature;

- c) copies of loan note documentation (including subordinated debt or shareholder loans) and any other Equity Finance or Corporate Finance agreements. Note: these documents should be in final form;
- d) In situations where the financing strategy relies on an investment fund raising additional capital, you are also required to provide:
- i. details of the fund raising – amount, level of commitment etc;
  - ii. details of the timing of the fund raising; and
  - iii. details of how the funding would be appropriately ring-fenced;
- e) where the financing strategy relies on your Equity or Corporate Finance sources raising new finance, letters of support from appropriate corporate relationship banks and/or bond lead managers should be provided. These letters should:
- i. indicate their assessment of the likelihood that the required finance can be raised from the markets in the time and nature anticipated in your financing strategy;
  - ii. identify any constraints imposed by investors; and
  - iii. indicate the extent to which the funds to be provided are ear-marked for OFTO investment/appropriately ring-fenced.

In situations where the financing strategy relies on an investment fund raising additional capital, you are also required to provide:

- i. details of the fund raising – amount, level of commitment etc;
  - ii. details of the timing of the fund raising; and
  - iii. details of how the funding would be appropriately ring-fenced;
- f) where the financing strategy relies on the provision of Corporate Finance, confirmation of the impact of raising new finance on the financial standing of the Corporate Finance provider should be provided.

Where the terms of the Corporate Finance relies upon the credit rating of the Corporate Finance provider, this should be supported by a letter from a board director of the Corporate Finance provider which sets out the anticipated impact on the Corporate Finance provider providing funds as outlined in this financing strategy.

Notes:

- The letter should take into account all relevant factors but in particular the impact of any debt raising exercise which the Corporate Finance provider will need to undertake in order to provide the Corporate Finance as outlined in this financing strategy; and
- The letter should clearly state whether it is believed that the provision of the Corporate Finance is likely to affect the senior long term issuer credit rating or rating outlook of the Corporate Finance provider.

## Section 7: Tender Revenue Stream (TRS)

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*Qualifying Bidders are required to populate Ofgem Financial Input Sheets in accordance with the Instruction Notes for Ofgem Financial Input Sheets.*

*Note that responses in relation to this section must be submitted in the template provided by Ofgem, as set out in the Data Room.*

**[7A]** You are required to provide a base case TRS bid (TRSt, expressed on an annual basis in real terms, that is before application of indexation) for the Westermost Rough Project and supporting financial model. This must be based on the draft Project Availability Standard, as set out in the Westermost Rough specific OFTO licence. It must be based on a 20-year revenue term from the Estimated Transfer Date.

You are also required to state what proportion of the base case TRS bid will be indexed to RPI over the length of the revenue term.

For the avoidance of doubt, the base case TRS bid is the TRS bid that you are committing to deliver as part of your ITT Submission and the TRS bid against which Section 8 will be evaluated.

**[7B]** You are required to provide a revised base case TRS, for the scenario where the Final Transfer Value is equal to 120 per cent of the Indicative Transfer Value. Please provide a detailed breakdown of any changes (including biddable indexation percentage) in assumptions which result in an amendment to the base case TRS coupled with a detailed approach of how any Final Transfer Value variation will be managed.

**[7C]** You are required to provide a revised base case TRS, for the scenario where the Final Transfer Value is equal to 90 per cent of the Indicative Transfer Value. Please provide a detailed breakdown of any changes (including biddable indexation percentage) in assumptions which result in an amendment to the base case TRS.

Qualifying Bidders should submit financial models supporting the TRS set out in both [7B] and [7C]. The two limits are for assumptions only and should not be taken as an indication of what the Final Transfer Value might be.

## Section 8: Underlying Assumptions

**[8A]** You are required to provide your assumptions in arriving at the base case TRS provided in response to Section 7, along with a detailed explanation supporting these assumptions. These should include but not be limited to the following:

- a) O&M costs;
- b) insurance;
- c) decommissioning costs;
- d) taxation;
- e) SPV and/or management costs;
- f) bid cost recoveries and/or development fees;
- g) any other income items, including any potential unregulated revenue, Value in Use beyond the initial 20-year revenue term or refinancing assumptions (to be expressed as a "negative cost");
- h) cost of Equity Finance, Corporate Finance, Debt Finance and Other Debt Finance service costs, including all interest payments and fees (price to reflect the financing strategy and required deliverability set out in your response to Section 6); and
- i) any other relevant foreseen costs which the Qualifying Bidder has included when deriving the TRS.

All of the above should be reconciled to the financial model and the indexation adjustments applying to the costs should be clearly stated.

Detailed statements in respect of the cost components should, **as a minimum**, cover the following:

- a) O&M costs
  - i. You are required to provide a cost breakdown of the proposed O&M arrangements in real terms. In doing so, you are required to state the assumptions used in deriving the costs including any additional operational spares, outline the basis of those assumptions, and explain how elements of O&M costs per annum (including any costed heads of terms) relate to the 20-year revenue stream in the financial model. In particular, you must distinguish between standard ongoing costs and any amount included to cover events such as Major Failure Events. Separately, Qualifying Bidders are required to detail any contingencies included in their assumptions;
  - ii. You are required to state the differences (if any) to the revenue assumptions which apply to the last five years of the project compared to the first 15 years. This should include details of the operational performance security package which you are required to put in place for each of the last five years of the project which shall be no less than 50% of base transmission revenue (in accordance with part B of amended standard condition E12 – J4 of the OFTO Licence);

b) Insurance

- i. You are required to detail the proposed insurance arrangements you intend to put in place in respect of the Transmission Assets together with revenue streams required for insurance cover. This should include categories of cover, levels of cover, conditions, rating and distinguish between external commercial insurers and any self insurance including deductibles and excess. Please also provide details of any reserve accounts which may support your proposals. Separately, Qualifying Bidders are required to detail any contingencies included in their assumptions;
- ii. If additional strategic spare equipment (as opposed to additional operational spare equipment covered in part a) above) is intended to be purchased over and above what is included in the Final Project Transfer Agreement, please include the total costs in this section and quantify the impact of these additional costs on the TRS (£/annum) in the self insurance section in the data input sheet to the financial model;

c) Decommissioning costs

- i. For the technical and environmental approach to decommissioning detailed in Section 5, you must provide an estimate of associated decommissioning costs. In doing so, you are asked to set out a fully detailed breakdown of how the decommissioning costs relate to the decommissioning plan explained in Section 5. Where relevant, provide any income being offset against your cost assumptions for items such as scrap. Separately, Qualifying Bidders are required to detail any contingencies included in their assumptions;

d) Taxation (including, but not limited to, Corporation Tax, VAT and Stamp Duty Land Tax (SDLT))

Qualifying Bidders should provide a statement setting out any tax assumptions made in the financial model and the basis for these. These should include:

- i. Corporation Tax assumptions, including but not limited to:
  - tax rates;
  - capital allowances;
  - disallowed expenditure;
  - reliefs;
  - treatment of losses;
  - treatment of finance costs;
  - transfer pricing;
  - withholding tax; and
  - payment timing;
- ii. VAT assumptions, including but not limited to:
  - VAT treatment of outputs;
  - exemptions;
  - recovery of VAT on cost inputs; and
  - details of where VAT is not recoverable on cost inputs.

- iii. SDLT assumptions, including but not limited to:
  - rates;
  - applicable assets and expenditure; and
  - exemptions.
- iv. Any other relevant tax assumptions
  - Qualifying Bidders must indicate whether they have obtained a formal opinion on taxation from their tax advisors or suitably qualified professional which sets out the basis for the treatments adopted within the financial model, and any risks associated with it.

Where a Qualifying Bidder has a formal opinion, please provide this as part of your supporting documentation;

- e) SPV and/or management costs
  - i. You should provide a breakdown of the key SPV and management costs and briefly outline the activities or risks held by the SPV to which these costs relate. You should also provide a reconciliation of this cost breakdown to the financial model;
- f) Bid cost recoveries
  - i. You should provide a breakdown of bid costs between internal and external costs and set out the extent to which they have already been incurred or committed;
- g) Any other income items
  - i. Please provide a fully detailed breakdown of any other income items, including any potential unregulated revenue, Value in Use beyond the initial 20-year revenue term or refinancing assumptions (which should be expressed as a "negative cost" and be reconciled to the financial model) included in your bid submission. These other income items should be fully supported by detailed assumptions and supporting documentation where available, having regard to the instructions at paragraphs 2.74 and 2.75 (where interest income is assumed please identify in the model the balances generating the income and the basis for the rates applied);
  - ii. You are also required to explain what arrangements are in place should other income assumed in your financial model supporting the base case TRS not materialise, including the impact on financial ratios;
- h) Cost of Equity Finance, Corporate Finance, Debt Finance and Other Debt Finance service costs;
  - i. Depending on the funding solution you proposed, you are required to provide term sheets, letters of support and other evidence as necessary to justify the costs of debt and equity presented in the financial model supporting the base case TRS submitted in Section 7. Where any key element of the proposed preferred funding solution is not supported by term sheets (or similar) you are required to provide sufficient evidence in order to demonstrate the robustness of the assumptions you have made for that element of financing;
  - ii. Please state the TRS impact of a 10 basis point increase and decrease in the bond spread (for bond financing), debt margin (for bank financing),

or equivalent for any other financing solutions;

- iii. For any solution which will require an external credit rating prior to financial close we require Qualifying Bidders to provide information and analysis to substantiate and support the proposed credit rating in their ITT Submission. Please outline the process and steps you would take to secure a final credit rating during the Preferred Bidder stage. Refer to Paragraph 2.57 for information on credit rating;
- iv. Where a debt margin or credit spread is not committed, please provide details of how you would manage the process from Preferred Bidder appointment to financial close for maintaining competitive pricing on financing including how the Qualifying Bidder would manage finance arrangers to get the best out of the market and minimise any MRA adjustment;
- v. In arriving at the proportion of the TRS to be indexed to RPI over the length of the revenue term, please provide the relevant suite of sensitivities and supporting information in support of this proportion;
- vi. Please provide details of how your approach to ensuring sufficient funds remain available and funding terms remain competitive in the circumstances set out in question 6Ab)viii), will mitigate any increase in the cost of your funding;
- vii. Please provide details of the key risks, liabilities and costs being borne by equity providers and how this relates to the proposed equity return;
- viii. Please provide details of any reserve accounts assumed and facilities which can be called upon, as distinct from those held for general purposes;
- ix. Please provide, if applicable, the rationale for your assumed bond spreads if using alternative bond spreads rather than those set out by Ofgem;
- i) Other relevant foreseen costs  
Please provide details of any other relevant foreseen costs which you have included in deriving the TRS.

**[8B]** You are required to provide a copy of the sensitivities which have been performed in support of the proposed funding solution, including those reviewed by funders and referenced in response to question [6Ab)iv)].

In particular, you are also required to provide a table showing the sensitivities which have been performed on the financial model and including the resulting key ratios and in relation to the covenants specified by the providers of financing.

## Section 9: ITT Certificate

<p>Each Qualifying Bidder must have a duly authorised officer of the Qualifying Bidder or Bidder Group indicate his or her confirmation of all of the statements in Sections [9A] to [9J] below by <b>initialling</b> next to each statement and <b>signing</b> where indicated below. An initialled and signed copy of the ITT Certificate must then be uploaded on to the Portal as part of your ITT Submission. In relation to the statement at Section [9D] only, if the duly authorised officer is not able to confirm the statement at Section [9D] then he or she need not initial this statement provided that the Qualifying Bidder provides a written description of the reasons why the duly authorised officer cannot give such confirmation such that Ofgem is satisfied whether to accept the ITT Certificate without that confirmation.</p> <p>"I, acting as a duly authorised officer of* _____ and on behalf of** _____, hereby confirm that:</p>	
<p><b>[9A]</b> The information provided in the EPQ Submission remains materially true, accurate, and complete, or has been updated where necessary to the extent that any information has materially changed by providing updated responses to the relevant question(s) in the EPQ Questionnaire.</p>	<p>Initial below</p>
<p><b>[9B]</b> The information provided in the ITT Submission is true, accurate, and complete.</p>	<p>Initial below</p>
<p><b>[9C]</b> Neither* , _____ , *** nor any of [its/their] Related Parties has breached any applicable legislation or regulations including any provision or requirement of the Tender Regulations, the Tender Rules, the EPQ Document, or the ITT Document in preparing or making the EPQ Submission, or this ITT Submission.</p>	<p>Initial below</p>
<p><b>[9D]</b> We are not aware of any application to place the Qualifying Bidder (or where relevant) any other Bidder Group member, or the shareholders of any of the foregoing in liquidation, administration or receivership, or to commence any analogous process or proceeding in any jurisdiction, and that no such process has been commenced.</p>	<p>Initial below</p>
<p><b>[9E]</b> The Qualifying Bidder is acting as a principal in the Tender Exercise and not as an agent for any undisclosed person and the Qualifying Bidder (and where relevant each Bidder Group member) has expressly authorised me to act on their behalf in making this ITT Submission.</p>	<p>Initial below</p>
<p><b>[9F]</b> The Qualifying Bidder (and where relevant each Bidder Group member) hereby consents to the disclosure by Ofgem to Ofgem's Advisers for the purposes of TR3 of any information given to Ofgem either before or during TR3 by such Qualifying Bidder or Bidder Group member.</p>	<p>Initial below</p>

<p><b>[9G]</b> The Qualifying Bidder (and where relevant each Bidder Group member) hereby confirms that it has considered the implications of the Electricity and Gas (Internal Markets) Regulations 2011 and understands that if appointed as a transmission licensee who participates in the transmission of electricity they will be required to comply with the ownership unbundling provisions therein.</p>	<p>Initial below</p>
<p><b>[9H]</b> In compiling this ITT Submission, neither I personally nor the Qualifying Bidder (and where relevant any Bidder Group member) has obtained an unfair commercial advantage including, in particular, such advantage from a preferential or discriminatory arrangement with associated parent companies or affiliates, any user of the Offshore Transmission System or Licensee.</p>	<p>Initial below</p>
<p><b>[9I]</b> The Qualifying Bidder (and where relevant each Bidder Group member) acknowledges and agrees that knowingly or recklessly making a false, incomplete, or misleading statement in support of this ITT Submission may result in</p> <ul style="list-style-type: none"> <li>a) disqualification of the Qualifying Bidder from the Tender Exercise;</li> <li>b) Licence Grant being refused or revoked if the Qualifying Bidder reaches these relevant stages in the process; and</li> <li>c) criminal proceedings being instituted under section 59 of the Electricity Act.</li> </ul>	<p>Initial below</p>
<p><b>[9J]</b> The Qualifying Bidder (and where relevant each Bidder Group member) hereby agrees that in the event that it is selected the Preferred Bidder for the qualifying project, Ofgem can release its TRS bid to:</p> <ul style="list-style-type: none"> <li>d) the windfarm developer for the Project, for the purpose of facilitating the finalisation of the transaction documentation during the Preferred Bidder Stage; and</li> <li>e) the NETSO, for the purpose of allowing the NETSO to calculate further indicative TNUoS charges for the windfarm developer.</li> </ul>	<p>Initial below</p>
<p>In providing this statement, I have made all due enquiries on behalf of the Qualifying Bidder or Bidder Group.</p>	
<p>Signed</p>	
<p>Authorised officer of _____ and on behalf of _____</p>	
<p>Name</p>	
<p>Position</p>	
<p>Dated</p>	
<p>* insert name of Qualifying Bidder (if a Bidder Group, the lead member of the Bidder Group) ** insert name of Qualifying Bidder and each of the Bidder Group members if applicable *** insert name of Qualifying Bidder and each of the Bidder Group members if applicable</p>	

## Qualifying Bidder Compliance Certificate

Each Qualifying Bidder must have a duly authorised officer of the Qualifying Bidder or Bidder Group indicate his or her confirmation of all of the statements (a) to (c) below by signing where indicated. A signed copy of the declaration must then be uploaded on to the Portal as part of the ITT Submission.

"I, acting as a duly authorised officer of [*insert name of Qualifying Bidder (if a consortium application, the lead member of the Bidder Group)*] and on behalf of [*insert names of Qualifying Bidder and where relevant each of the Bidder Group members*], hereby confirm that:

- a) the Qualifying Bidder (and where relevant each Bidder Group member) hereby accepts the standard conditions of the OFTO Licence;
- b) the TRS identified in the ITT Submission fully reflects:
  - the draft project amended standard conditions of the OFTO Licence; and
  - the terms of the Final Project Transfer Agreement; and
- c) the Qualifying Bidder (and where relevant each Bidder Group member) hereby accepts that the ITT Submission is firm subject only to the conditions precedent identified in paragraph 2.73 of this ITT Document and confirms that it is able to meet the timescales set in Table 1 of this ITT Document.

Signed	
Authorised officer of _____ and on behalf of _____	
Name	
Position	
Dated	

## Section 10: Confidentiality

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The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

You should identify which part(s) of your ITT Submission are provided in confidence and provide reasons why you consider the information is eligible for exemption under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should therefore be kept confidential. Ofgem is not bound by any such statements but will take them into account in considering whether an exemption applies.

Section of ITT Submission provided in confidence	Reason(s) for exemption under Freedom of Information Act 2000 and the Environmental Information Regulations 2004

## 4. Evaluation of ITT Submissions

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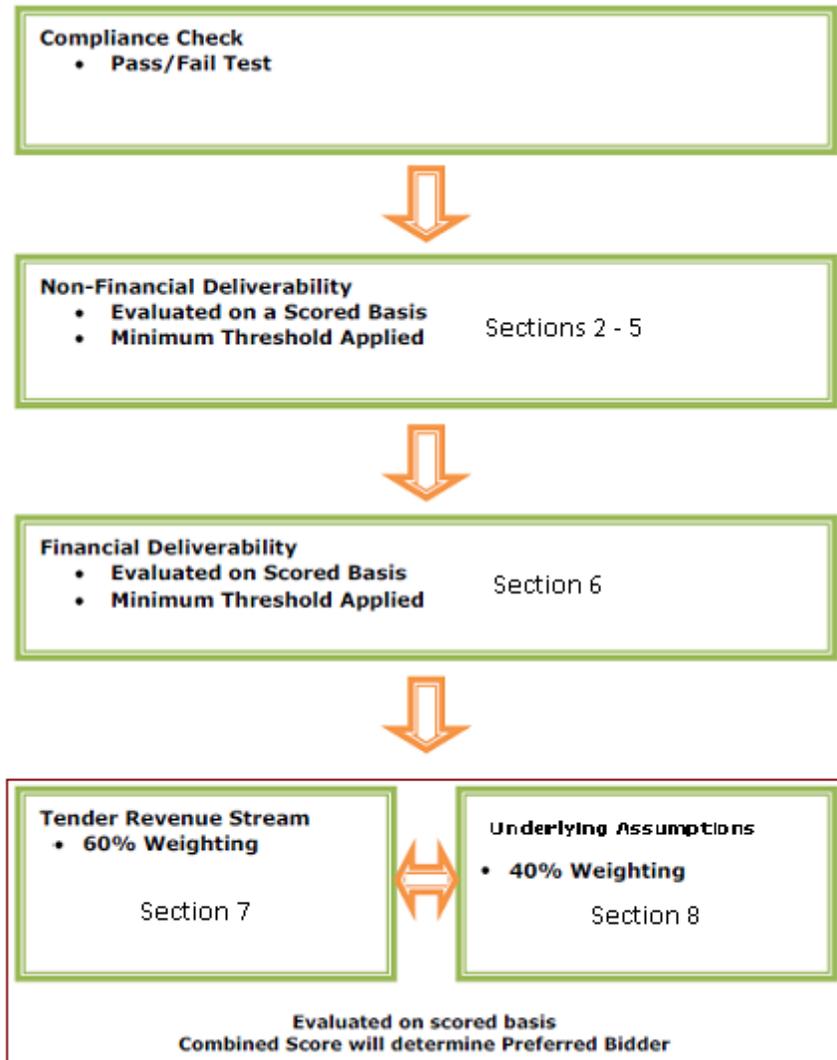
### Chapter Summary

This chapter sets out how Ofgem will evaluate ITT Submissions made by Qualifying Bidders. This includes the evaluation criteria Ofgem will apply and the process it will follow to evaluate ITT Submissions.

### Evaluation Process

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- 4.1. Ofgem will evaluate and score each Qualifying Bidder's ITT Submission for the Westermost Rough Project.
- 4.2. The conclusion of Ofgem's evaluation will be the identification of a Preferred Bidder (and possibly a Reserve Bidder) in respect of the Westermost Rough Project to whom Ofgem would grant an OFTO Licence, unless we decide to run a BAFO stage in accordance with the criteria in paragraph 4.42.
- 4.3. Ofgem will conduct its evaluation over the following sequential stages:
  - an assessment of completeness;
  - an assessment of compliance;
  - an assessment of the Qualifying Bidders' non-financial deliverability submissions (Sections 2 to 5);
  - an assessment of the Qualifying Bidders' financial deliverability submissions (Section 6); and
  - an assessment of the Qualifying Bidders' TRS bids combined with an assessment of the underlying assumptions (Sections 7 and 8).
- 4.4. Ofgem will evaluate responses to the ITT Questionnaire in accordance with the evaluation approach set out in this ITT Document, as illustrated in the following diagram:



### Assessment of Completeness

- 4.5. Prior to the evaluation process and following receipt of the ITT Submissions, Ofgem will undertake a completeness check of the information received. If this check identifies any omission(s) in the information required to be provided, Ofgem will notify the Qualifying Bidder, who will be given a period of time (to be notified by Ofgem) in which to rectify the omission(s). In this event, Ofgem will only commence evaluation of that Bidder's ITT Submission following receipt of the requested information.
- 4.6. Ofgem may decline to consider a Qualifying Bidder's ITT Submission if any omitted information requested is not provided within the required time.

## Assessment of Compliance

- 4.7. Following the completeness check, Ofgem will assess whether ITT Submissions received are compliant. An ITT Submission will be considered compliant if all the information requested under paragraph 2.3 is provided.
- 4.8. Qualifying Bidders are required to complete Section 9 (ITT Certificate) and Section 10 (Confidentiality) for compliance; the content of both of these sections will need to be acceptable to Ofgem but will not be graded.
- 4.9. Ofgem may decline to consider a Qualifying Bidder's ITT Submission if it does not comply in any material respect with the requirements specified in this ITT Document.

## ITT Evaluation Criteria

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- 4.10. The evaluation criteria for each section of the ITT Questionnaire are as follows:

### Section 1: Changes to EPQ

- 4.11. Ofgem will evaluate any changes made to a Qualifying Bidder's EPQ Submission to ensure the requirements for EPQ have still been met.

### Sections 2 to 5: Non-Financial Deliverability

- 4.12. ITT Submissions assessed as being compliant will be evaluated in terms of the deliverability across a number of non-financial areas. This evaluation will demonstrate to Ofgem the robustness of the Qualifying Bidder's ability to deliver on its operational and management obligations as an OFTO over the duration of the revenue period.
- 4.13. Any proposals on non-financial areas will be evaluated on a graded basis in relation to deliverability, with Qualifying Bidders required to meet each minimum threshold set out below. Each of the sections below will be graded on the scale of A through to D as set out in the Evaluation Scale for Graded Sections at Table 5. The threshold for each section is an overall grade of B and above (including B-). Qualifying Bidders that do not demonstrate to Ofgem's satisfaction that they meet each of these minimum thresholds will not be considered further.

### Section 2: Shareholding structure

- 4.14. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place, or will have in place by the time of the Estimated Transfer Date for the Westermost Rough Project, a robust and coherent structure for the entity that would be granted the OFTO Licence.

Section 3: Asset Takeover

- 4.15. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place robust, coherent and deliverable proposals for the takeover of the Transmission Assets from the Developer by the Estimated Transfer Date for the Westermost Rough Project.

Section 4: Ongoing operations and Statutory and Regulatory Compliance

- 4.16. Ofgem will evaluate proposals submitted by the Qualifying Bidder against the following minimum thresholds in relation to ongoing operations and statutory and regulatory compliance:

*Asset management policy and framework*

- 4.17. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have in place robust, coherent and deliverable operational plans for the Westermost Rough Project.
- 4.18. For question [4A(c)], Qualifying Bidders will be evaluated on the robustness and coherence of the justification for their decision to apply/not apply the proposals for innovation identified.

*Detailed operations and maintenance arrangements and costs*

- 4.19. Qualifying Bidders must demonstrate to Ofgem's satisfaction that the O&M working arrangements they intend to apply to operate the Westermost Rough OFTO are robust, coherent and deliverable.

*Statutory arrangements and compliance*

- 4.20. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they understand statutory and regulatory requirements and have robust, coherent and deliverable plans in place to ensure compliance.

Section 5: Decommissioning

- 4.21. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have a thorough understanding of the decommissioning requirements for the Westermost Rough Project and that these are reflected in a pragmatic and deliverable decommissioning programme. As appropriate, this must take into account any decommissioning plans already identified by the Developer and any guidance provided by DECC.

**Section 6: Financial Deliverability**

Section 6: Financial Deliverability

- 4.22. Financial proposals will be evaluated on a graded basis in relation to deliverability. Qualifying Bidders are required to meet the minimum threshold set out below. Section 6 will be graded on the scale of A through to D as set out in the Evaluation Scale for Graded Sections at Table 5. The threshold for this section is an overall grade of B and

above (including B-). Qualifying Bidders that do not demonstrate to Ofgem's satisfaction that they meet the minimum threshold for Section 6 will not be considered further.

*Extent to which financing proposals are deliverable*

- 4.23. Qualifying Bidders must provide all the information requested in the relevant parts of Section 6, and must demonstrate to Ofgem's satisfaction that their financing proposals are robust, coherent and deliverable by the Estimated Transfer Date for the Westermost Rough Project.

*Approach to due diligence*

- 4.24. Qualifying Bidders must demonstrate to Ofgem's satisfaction that they have a fully developed due diligence plan in place for the Westermost Rough Project, which also sets out any remaining confirmatory due diligence required on appointment as Preferred Bidder.

**Section 7 (TRS) and Section 8 (Underlying Assumptions)**

- 4.25. Each Qualifying Bidder that meets the threshold requirements in respect of non-financial deliverability and financial deliverability will be evaluated on the basis of its base case TRS bid and the robustness of the assumptions underlying the base case TRS.

Section 7: Tender Revenue Stream

- 4.26. Qualifying Bidders must submit their TRS bid for the Westermost Rough Project in accordance with the requirements set out in the ITT Questionnaire. This must be submitted with both the Qualifying Bidder's own financial model and completed financial input sheets for Ofgem's evaluation purposes. These input sheets will be used to inform consideration of the assumptions underlying the TRS bid in Section 8.
- 4.27. Ofgem will evaluate the TRS bid of each Qualifying Bidder on a scored basis as set out below.
- 4.28. Scores will be allocated across Qualifying Bidders for the Westermost Rough Project on the basis of the TRS bids received in response to question [7A], with the lowest TRS bid (in NPV terms) being awarded the highest score.
- 4.29. To determine the Section 7 score for each TRS bid, we will firstly determine the mean TRS value in NPV terms across all compliant ITT Submissions that have passed the threshold requirements of Sections 2 to 6. Each TRS bid will then be allocated a numeric score based on its value relative to the mean TRS value. The mean TRS value will score 5 out of 10 with bids with lower values scoring more than 5 and bids with higher values scoring less than 5.
- 4.30. Questions [7B] and [7C] will not be scored but the information provided will be considered in evaluating Section 8: Underlying Assumptions.
- 4.31. Section 7 will be assigned a 60 per cent weighting of the overall score.

## Section 8: Underlying Assumptions

- 4.32. Qualifying Bidders must submit the assumptions underlying their TRS bid in accordance with the requirements set out in the ITT Questionnaire.
- 4.33. Ofgem will evaluate the underlying assumptions in Section 8 and their impact on the robustness of the TRS. This evaluation will be undertaken for each cost component in Section 8 on a graded basis using the scale of A to D as set out in the Evaluation Scale for Scored Sections at Table 5. The overall grade for Section 8 will then be determined taking into account the impact on the TRS of all underlying assumptions. The cost components that form a greater part of the TRS bid, in particular cost of finance, will be correspondingly more significant in determining the overall grade.
- 4.34. The overall grade will be converted to the corresponding numeric score as set out in Table 5. Please note the numeric score associated with each grade in Table 5 has changed from previous ITT Stages. This is to reflect a decrease in the relative value of the robustness of underlying assumptions at higher grades.
- 4.35. As part of this evaluation Ofgem will take into account Qualifying Bidders' responses to Sections 2 to 6 where they relate to the underlying assumptions. In evaluating the underlying assumptions Ofgem will, where relevant, consider:
- whether the underlying approach supports the proposed costs and their deliverability;
  - the firmness of the TRS, including conditionality;
  - contingency arrangements that apply before and after Financial Close;
  - project specific analysis and impact;
  - appropriate due diligence and necessary sign-off/approvals; and
  - consistency of information provided in Sections 2-6 and Section 8
- 4.36. Where Qualifying Bidders have provided details of potential savings that could arise during the transaction process, these potential savings will be evaluated in terms of how they may support the robustness of the base case TRS bid. The robustness of the proposed savings themselves will therefore be relevant.
- 4.37. Question [8B] will not be graded, but will be taken into account in the evaluation of the robustness of the underlying assumptions in question [8A].
- 4.38. Section 8 will be assigned a 40 per cent weighting of the overall score.

### **Determining the overall score**

- 4.39. The scores from the evaluation of Sections 7 and 8 will be combined to determine the overall score for each ITT Submission. The scores for these sections will be combined on a 60/40 weighted basis to determine the overall score, i.e. the overall scores will be determined by adding the score from Section 7 multiplied by 60 per cent and the score from Section 8 multiplied by 40 per cent.
- 4.40. Subject to paragraph 4.41 and 4.42 the Qualifying Bidder with the highest overall score will be selected as the Preferred Bidder for the Westermost Rough Project.

### **Consideration of Preceding Scores**

- 4.41. In instances where Ofgem's evaluation determines two or more Qualifying Bidders with the same overall scores, Ofgem reserves the right to consider the grades relating to non-financial deliverability and financial deliverability as a means of determining a Preferred Bidder.

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

- 4.42. At its discretion, Ofgem may determine to hold a BAFO Stage in the event that:
- Ofgem's evaluation of Sections 7 and 8 determines two or more Qualifying Bidders with overall scores that are within a small percentage of each other; or
  - Ofgem considers further value can be obtained from the tender process.

## Evaluation Scale for Graded Sections

4.43. For all graded sections of the ITT Questionnaire (Section 2 through to Section 6, and Section 8), responses will be graded against each criterion using a four grade evaluation scale. Table 5 sets out the standard of response that correlates to each grade on the scale on a generic basis. Where a response meets most of the criteria of a particular grade, but a smaller number of the criteria of a grade above or below, Ofgem may assign the response a + or - grade.

4.44. Table 5 also sets out the numeric score relating to each grade, for the purposes of determining the overall score for Section 8.

Table 5 Grades and Scores for Evaluation

Grade	Score (Section 8 only)	Standard of response	Guidance
A+	10	<p><b>Excellent response</b></p> <p>- will indicate that, in the judgement of the Authority, the response entirely or almost entirely satisfies the requirements tested by the criterion.</p>	<p>The response entirely satisfies the requirements tested; or any issues or concerns identified with the response are considered to be immaterial. The response is also likely to demonstrate:</p> <ul style="list-style-type: none"> <li>• a coherent, robust viable and/or deliverable approach;</li> <li>• a clear and comprehensive understanding of project-specific issues (where required);</li> <li>• excellent examples of relevant experience (where required);</li> <li>• excellent supporting documentation (where required).</li> </ul> <p>In addition, in relation to Section 8, there are no, or minimal, outstanding issues to impact on the robustness of the TRS bid.</p>
A	9.7		
A-	9.3		
B+	9	<p><b>Good response</b></p> <p>- will indicate that, in the judgement of the Authority, the response substantially satisfies the requirements tested by the criterion, although the Authority has some reservations with regard to certain aspects of the response.</p>	<p>Some issues or concerns identified with the response, but these are considered unlikely to significantly impact upon the robustness of the Bidder's proposals.</p> <p>The response is also likely to demonstrate:</p> <ul style="list-style-type: none"> <li>• a largely coherent, robust, viable and/or deliverable approach;</li> <li>• some recognition of project-specific issues (where required);</li> <li>• good examples of relevant experience (where required);</li> <li>• good supporting documentation (where required).</li> </ul>
B	7.7		

B-	6.4		In addition, in relation to Section 8, there are some outstanding issues, however they are not expected to materially impact on the robustness of the TRS bid.
C+	5.1	<p><b>Basic response:</b></p> <p>- will indicate that, in the judgement of the Authority, the response partially satisfies the requirements tested by the criterion and includes some of the expected supporting documentation, although the Authority either:</p> <p>- has a number of significant reservations with regard to certain aspects of the response; and/or</p> <p>- has one major reservation with regard to a particular aspect of the response.</p>	<p>Significant issues or concerns identified with the response which may impact upon the overall robustness of the Qualifying Bidder’s proposals.</p> <p>The response is also likely to demonstrate:</p> <ul style="list-style-type: none"> <li>• Issues or concerns about the coherence, robustness, viability and/or deliverability of the approach;</li> <li>• limited recognition of project specific issues (where required);</li> <li>• few or poor examples of relevant experience (where required);</li> <li>• limited supporting documentation (where required).</li> </ul>
C	3.9		
C-	2.6		In addition, in relation to Section 8, there are some outstanding issues which are likely to materially impact on the robustness of the TRS bid.
D	0		<p><b>Unacceptable response:</b></p> <p>- will indicate that, in the judgement of the Authority, the response does not satisfy the requirements tested by the criterion in a material way and the Authority has, either a significant number of reservations with regard to certain aspects of the response or one (or more) very serious reservation(s) with regard to a particular aspect(s) of the response.</p>

# Selection of Preferred Bidder and next steps

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## Notification to Qualifying Bidders

- 4.45. In accordance with paragraph 6.17 of the Tender Rules, Ofgem will notify each Qualifying Bidder as to whether its ITT Submission has been successful or unsuccessful. Paragraph 6.17 of the Tender Rules further states that Ofgem will give reasons for its determination. Please note that these reasons will not accompany this notification at the end of the ITT Stage, however will be provided at the end of the PB Stage when the Preferred Bidder becomes the Successful Bidder. Confidential feedback will still be available to Qualifying Bidders at the end of the ITT Stage in accordance with paragraph 4.52 below.

## Matters to be resolved by the Preferred Bidder

- 4.46. Once a Preferred Bidder has been identified for the Westernmost Rough Project, it will be notified by Ofgem. This notice will set out the next steps it will need to take in order to become the Successful Bidder for the Westernmost Rough Project.
- 4.47. Following this notification, the Preferred Bidder will have to satisfy the Preferred Bidder Matters in accordance with the timescales notified to the Preferred Bidder.
- 4.48. In addition to the above, the Preferred Bidder will be required to make a further payment to Ofgem in accordance with the Cost Recovery Methodology.
- 4.49. Qualifying Bidders are advised that the selection of a Preferred Bidder does not in any way oblige Ofgem to grant an OFTO Licence to that party.
- 4.50. Information on the Preferred Bidder process is set out in the Process to Close for TR3 guidance. Further details will also be provided to the Preferred Bidder on appointment.

## Reserve Bidder

- 4.51. Ofgem may, at its discretion, identify a Reserve Bidder that it may determine is to replace the Preferred Bidder if the Preferred Bidder fails to satisfy the Preferred Bidder Matters, fails to make the Preferred Bidder payment, or withdraws or is disqualified from the tender process.

## Qualifying Bidder feedback

- 4.52. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the ITT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 4.45.

## Appendix 1: Disclaimers and Notices

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### Introduction

- 1.1. This ITT Document is issued by the Authority and applies to the Westermost Rough Project in TR3.
- 1.2. By accepting and participating in the Tender Exercise each Qualifying Bidder agrees to be bound by, and to comply with, the rules and requirements set out in the Tender Regulations, the ITT Document and the Tender Rules, issued by the Authority.
- 1.3. A material breach of the Tender Regulations, ITT Document or the Tender Rules may result in disqualification of a Qualifying Bidder from the Tender Process, as set out in the Tender Regulations.

### Non-reliance, Accuracy of Information and Exclusion of Liability

- 1.4. Neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) in relation to the Tender Round or any information provided by the Developer through the Data Room or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the ITT Document or based on or relating to its use by a Qualifying Bidder and/or any other interested party.

### Use of Information

- 1.5 This ITT Document is not intended to provide the basis of any investment decision, nor is it intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Qualifying Bidder and any other interested party must make its own independent assessment of the Westermost Rough Project after making such investigation and taking such professional advice as it deems necessary.
- 1.6 The material in this ITT Document is not and should not be regarded as legal or professional advice. Qualifying Bidders and other interested parties should seek their own legal or other professional advice where appropriate.
- 1.7 Nothing in this ITT Document is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Qualifying Bidder.

### Freedom of Information

- 1.8 The Freedom of Information Act 2000 provides a general right of access to all

information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Qualifying Bidders should identify which parts, if any, of their submissions are provided to Ofgem in confidence and provide reasons why they consider the information to be eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.

- 1.9 Although Ofgem is not under any statutory obligation to consult with a Qualifying Bidder in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Qualifying Bidder of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Qualifying Bidder has identified any information as being in its opinion eligible for exemption. For further information and guidance, Qualifying Bidders' attention is drawn to the Codes of Practice issued under Section 45 and 46 of the Freedom of Information Act 2000<sup>19</sup>.

### Data Protection

- 1.10 In participating in the Tender Round, Qualifying Bidders must comply with the Data Protection Act 1998 and all relevant regulations, together with any codes of conduct and guidance issued by the Information Commissioner. Qualifying Bidders must not do, or cause or permit to be done, anything which may cause or otherwise result in a breach by Ofgem of such requirements. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Qualifying Bidders. In order to participate in the Tender Round, Qualifying Bidders must agree to such data being collected, held and used.

### Confidentiality and Publicity

- 1.11 Qualifying Bidders must comply with their obligations under the Confidentiality Agreement that they signed with the Developer of the Westermost Rough Project at the start of the EPQ Stage. Qualifying Bidders must ensure compliance by their directors, employees, advisers, subcontractors, etc, as provided for under such agreements.
- 1.12 Qualifying Bidders shall not undertake (or permit to be undertaken) at any time during the Tender Round any publicity activity with any section of the media in relation to the Westermost Rough Project other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist

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

press, the internet and e-mail accessible by the public at large and the representatives of such media.

## Copyright

- 1.13 The information contained within this ITT Document is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in this ITT Document is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

## National Audit Office

- 1.14 The Comptroller and Auditor General of the National Audit Office is the auditor for central government. Ofgem and any documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) may be subject to audit by the Comptroller and Auditor General.
- 1.15 Accordingly, Qualifying Bidders should be aware that for the purposes of the National Audit Act 1983 the Comptroller and Auditor General may:
- a) examine and take copies of documents and information held by Ofgem in connection with the Tender Round (including commercially sensitive information and information marked as confidential) and request such information as he may reasonably require; and
  - b) has the right to publish information related to the Tender Round (including commercially sensitive information and information marked as confidential) in its reports to Parliament. In this context, please refer to the report published by the National Audit Office in June 2012 on the offshore transmission regime<sup>20</sup>.

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<sup>20</sup> [http://www.nao.org.uk/publications/1213/offshore\\_electricity.aspx](http://www.nao.org.uk/publications/1213/offshore_electricity.aspx)

## Appendix 2: Glossary

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### A

#### A-/A3 Publicly listed Nominal Bond

A bond to pay a fixed interest rate, not linked to an inflation index, to be listed on a recognised securities exchange and available for trading and with a credit rating of A- from Standard & Poors and/or Fitch and/or A3 from Moodys or equivalent accepted in securities markets. To the extent the bond has different equivalent ratings from different agencies; the majority will be either A-/A3.

#### Ancillary Documentation

The disclosure letter, the Interface Agreement and other transactional documents to be entered into between the Developer and the Successful Bidder under or in connection with the Transfer Agreement.

#### Advisers

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

#### Authority

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

### B

#### BBB+/Baa1 Publicly listed Nominal Bond

A bond to pay a fixed interest rate, not linked to an inflation index, to be listed on a recognised securities exchange and available for trading and with a credit rating of BBB+ from Standard & Poors and/or Fitch and/or Baa1 from Moodys or equivalent accepted in securities markets. To the extent the bond has different equivalent ratings from different agencies, the majority will be either BBB+/Baa1.

#### BAFO Submission

A selected Bidder's response to the BAFO Document.

### Base Case TRS

TRS bid required to be stated in Section 7A that you are committing to deliver as part of your ITT Submission and the TRS against which Section 8 will be evaluated.

### Best and Final Offer (BAFO) Stage

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

### Bid

The submission made by a Bidder to Ofgem in response to the ITT Document.

### Bidder Group

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

### Blended Equity Nominal IRR

A calculation that takes into account all payments received on both capital (equity) and junior debt, i.e. not just dividends, but also interest and capital repayments on the junior debt, which is not adjusted for inflation.

## C

### Capital Allowance

Allowance made by HMRC for capital expenditure incurred on the provision of Plant and Machinery (P&M) for use in a relevant revenue generating activity.

### Confidentiality Agreement

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

### Completion Notice

Notice issued by NGET under the Generator Commissioning Clause in the Energy Act 2013 once the final stage of a Generator Build project is able to transmit electricity.

### Corporate Finance

Any finance provided by the company without recourse to external parties, e.g. intercompany loans, where the shareholders or parent company are the sole source of finance.

### Cost Recovery Methodology (CRM)

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

### Credit Rating

A credit rating view provided by a relevant rating committee of a recognised long term credit rating agency based upon analysis of project specific information.

## D

### Data Room

In respect of the Westermost Rough Project, a secure electronic Data Room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Bidders through the Portal.

### Debt Finance

Any non-recourse or limited recourse senior debt finance including any enhancement or mezzanine structures.

### DECC

The Department for Energy and Climate Change, which is the government department responsible, among other things, for the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations.

### Developer

The Tender Regulations define a 'developer' as 'any person within section 6D(2)(a) of the 1989 Act or within a developer group'. Section 6D(2)(a) of the Electricity Act 1989 defines such person as 'the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held'. In practice, such person is also the entity responsible for the construction of the generation assets and, under Generator Build, the transmission assets.



## Invitation to Tender Document for Tender Round 3 (TR3): Westermost Rough

Under Generator Build, this is the person who requests that Ofgem commences a Tender Exercise in respect of a proposed project.

### Draft Project Transfer Agreement

The draft of the Transfer Agreement prepared by the Developer in respect of the Westermost Rough Project and provided in the Data Room at the commencement of the ITT Stage.

## E

### Electricity Act

The Electricity Act 1989 as amended from time to time.

### Enduring Regime

The regulatory regime for offshore transmission for any project qualifying for a Tender Exercise after 31 March 2012. This regime allows Developers to choose between Generator Build and OFTO Build for the construction of offshore Transmission Assets.

### Enhanced PQ (EPQ) Stage

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

### EPQ Document

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

### EPQ Questionnaire

The questionnaire that forms part of the EPQ Document.

### EPQ Submission

A Bidder's response to the EPQ Document.

### Equity Finance

Any direct equity and mezzanine finance.

Ownership in any asset, usually in the form of shares or quasi-equity subordinated debt.

### Equity IRR

Represents the return to investors after taking account of Senior Debt service.

### Estimated Transfer Date

The expected date of transfer of the Transmission Assets for the Westermost Rough Project from the Developer to the OFTO being, 21 September 2015.

## F

### Final Project Transfer Agreement

The revised draft of the Transfer Agreement prepared by the Developer in respect of the Westermost Rough Project and provided in the Data Room during the ITT Stage.

### Final Transfer Value

Ofgem's assessment of the efficient and economic costs which ought to have been incurred in connection with the development and construction of the relevant Transmission Assets.

### Funders

Any party which intends to provide finance to the OFTO for the purposes of financing the OFTO in the event that the Qualifying Bidder becomes the Successful Bidder. For the avoidance of doubt this does not include finance which is incidentally provided.

## G

### Generator Build

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

## I

### Indicative Credit Rating

A credit rating view provided by a relevant rating committee of a recognised long term credit rating agency based upon analysis of project specific information, but which is not necessarily published

### Indicative Transfer Value

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

- (a) for a Generator Build Tender Exercise, the development and construction of the relevant Transmission Assets; or
- (b) for an OFTO Build Tender Exercise, obtaining the relevant preliminary works.

### Information Commissioner

The meaning given to that term in the Data Protection Act 1998 as amended from time to time.

### Interface Agreement

The Interface Agreement to be entered into between the Developer and OFTO under the requirements of the Connection and Use of System Code (CUSC).

### Invitation to Tender (ITT) Stage

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

### ITT Certificate

Qualifying Bidder ITT Certificate and compliance certificate set out in Chapter 3, Section 9 of the ITT Document.

### ITT Document

This document in respect of the Westermost Rough Project

### ITT Questionnaire

The Invitation to Tender Questionnaire made available at the ITT Stage, as Chapter 3 of the ITT Document, to Qualifying Bidders.

## L

### Licence Grant

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

## M

### Major Failure Event

Failures that result in long repair times for a single item of equipment (for example cable or transformer), a fault, design or installation fault or other events (for example fire) that results in long repair times.

## N

### NGET

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

### NETSO

The National Electricity Transmission System Operator (formally known as the GB System Operator). This role is fulfilled by NGET in accordance with its Electricity Transmission Licence. Under its standard licence conditions, NGET is required to provide Ofgem with certain information and assistance in relation to any Tender Exercise and the Offshore Electricity Transmission System to which it relates.

## O

### Offshore Transmission Licence (OFTO Licence)

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

### Offshore Transmission Owner (OFTO)

The holder of an OFTO Licence.

### Offshore Transmission System

A Transmission System made up of Transmission Assets that is used for purposes connected with transmission of electricity in offshore waters, where offshore waters means:

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;



## Invitation to Tender Document for Tender Round 3 (TR3): Westernmost Rough

- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964;  
and
- (c) waters within an area under section 84(4) of the Energy Act 2004.

### Ofgem<sup>21</sup>

Office of Gas and Electricity Markets.

### Ofgem Financial Input Sheets

The Excel spreadsheet which Qualifying Bidders should complete as part of their ITT Submissions.

### OFTO Build

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

## P

### PB Matters

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

### Portal

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

### Preferred Bidder (PB)

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

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<sup>21</sup> "Ofgem" and "the Authority" are used interchangeably in this document.

### Preferred Bidder (PB) Stage

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

### Preliminary Information Memorandum (PIM)

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

### Project Availability Standard

The availability standard as set out in the project specific OFTO Licence.

### Project IRR

The weighted average cost of capital for a project. It is usually calculated from all of the non-financing project cash flows, including capital costs, operating and maintenance costs, revenues and working capital adjustments.

### Project Finance

Financing based upon a non-recourse or limited recourse financial structure where project debt and equity are used to finance the project.

## Q

### Qualifying Bidder

Any person or Bidder Group that makes an ITT Submission, a Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

### Qualification to Tender (QTT) Stage

The stage of a Tender Exercise starting from the distribution by Ofgem of the QTT Document to Bidders, including the preparation, submission and evaluation of the QTT Submissions and ending once Ofgem has published the shortlist of Bidders who are invited to participate in the ITT Stage. This has been replaced by the EPQ Stage for TR3.

### Qualifying Project

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

## Invitation to Tender Document for Tender Round 3 (TR3): Westernmost Rough

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

### R

#### Regulatory Asset Value (RAV)

The value ascribed by Ofgem to the capital employed in the licensee's regulated transmission business.

#### Related Parties

In relation to a Qualifying Bidder who is a principal undertaking; any parent or subsidiary undertakings of the principal undertaking or any subsidiary undertakings of the parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and in relation to any Qualifying Bidder means any connected persons of the Qualifying Bidder within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992.

#### Reserved Bidder

The Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the ITT Submissions received (and any BAFO Submissions requested), as the second choice Qualifying Bidder to which Ofgem would consider granting the OFTO Licence should Ofgem ultimately decide not to grant the OFTO Licence to the Preferred Bidder.

### S

#### Successful Bidder (SB) Stage

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

#### Security

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

### Submission(s)

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

### Successful Bidder (SB)

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

## T

### Tender Entry Conditions

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

### Tender Exercise

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

### Tender Regulations

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

### Tender Revenue Stream (TRS)

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

### Tender Round

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

### Tender Round 3 (TR3)

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

### Tender Rules

These rules published by Ofgem in accordance with regulation 11(4) of the Tender Regulations.

### The Crown Estate

The body that manages Crown property and that is responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or licence with The Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed.

### Third Package

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

### Third Package Regulations

The Electricity and Gas (Internal Markets) Regulations 2011.

### Transfer Agreement

The agreement to transfer any:

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

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

### Transmission Assets

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

### Transmission System

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

### Transmission Services

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

### U

#### Ultimate Controller

Is defined in the standard conditions of the OFTO Licence.

### V

#### Value in Use

The present value of the future cash flows expected to be derived from the transmission assets.

### W

#### Westermost Rough Project

The Transmission Assets for Westermost Rough, a Qualifying Project in TR3.