

**2015 No. 1555**

**ELECTRICITY**

**The Electricity (Competitive Tenders for Offshore Transmission  
Licences) Regulations 2015**

*Made* - - - - *11th July 2015*  
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**CONTENTS**

**PART 1**

**INTRODUCTORY**

1. Citation, commencement and revocation
2. Saving and transitional provisions
3. Interpretation

**PART 2**

**CALCULATION AND PAYMENT OF COSTS INCURRED IN CONNECTION WITH  
TRANSMISSION ASSETS FOR A GENERATOR BUILD TENDER EXERCISE**

4. Calculation of costs incurred in connection with transmission assets
5. Payment of costs incurred by the Authority in connection with transmission assets  
calculation of costs

**PART 3**

**CALCULATION AND PAYMENT OF COSTS INCURRED IN RELATION TO AN OFTO  
BUILD TENDER EXERCISE**

6. Calculation of costs incurred in connection with preliminary works and  
construction phase contracts
7. Payment of costs incurred by the Authority in connection with calculations relating  
to preliminary works and construction phase contracts

**PART 4**

**QUALIFYING PROJECTS AND DEVELOPER PAYMENTS AND SECURITY**

8. Qualifying projects
9. Developer's payment for early evaluation of construction phase contracts
10. Developer's payment and security to commence tender exercise

PART 5  
ENTRY CONDITIONS

11. Entry conditions in respect of qualifying projects

PART 6  
COMMENCEMENT OF A TENDER ROUND

12. Commencement of a tender round

PART 7  
STAGES OF A TENDER ROUND

13. Stages of a tender round

PART 8  
PRE-QUALIFICATION STAGE

14. Pre-qualification  
15. Determination of qualifying bidders at the pre-qualification stage

PART 9  
QUALIFICATION TO TENDER STAGE

16. Qualification to tender  
17. Determination of qualifying bidders to be invited to participate in the invitation to tender stage

PART 10  
INVITATION TO TENDER STAGE

18. Invitation to tender  
19. Determination of preferred bidders at the invitation to tender stage

PART 11  
BEST AND FINAL OFFER STAGE

20. Best and final offer

PART 12  
PREFERRED BIDDER STAGE

21. Notification of preferred bidder and reserve bidder  
22. Particular obligations of the developer from preferred bidder stage

PART 13  
WITHDRAWAL

23. Withdrawal

**PART 14**  
**RE-RUN, CANCELLATION AND TREATMENT OF PAYMENTS AND SECURITY ON CANCELLATION**

- 24. Re-run, and re-run leading to cancellation
- 25. Cancellation
- 26. Treatment of payments and security on cancellation

**PART 15**  
**DISQUALIFICATION FROM A TENDER EXERCISE OR TENDER ROUND**

- 27. Disqualification

**PART 16**  
**NOTIFICATION OF SUCCESSFUL BIDDER**

- 28. Notification of successful bidder
- 29. Information in respect of successful bidder

**PART 17**  
**COST RECOVERY**

- 30. Recovery of tender costs

**PART 18**  
**MISCELLANEOUS**

- 31. Failure to make payments or provide security
- 32. Application for a decision by the Authority
- 33. Changes to bidder groups
- 34. Changes to delivery of documents or actions
- 35. Disapplication of certain provisions

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SCHEDULE 1 — QUALIFYING PROJECTS  
SCHEDULE 2 — ENTRY CONDITIONS  
SCHEDULE 3 — PRE-QUALIFICATION  
SCHEDULE 4 — QUALIFICATION TO TENDER  
SCHEDULE 5 — INVITATION TO TENDER  
SCHEDULE 6 — BEST AND FINAL OFFER  
SCHEDULE 7 — EVENTS OF RE-RUN  
SCHEDULE 8 — EVENTS OF CANCELLATION  
SCHEDULE 9 — EVENTS OF DISQUALIFICATION

The Gas and Electricity Markets Authority(a), with the approval of the Secretary of State(b), makes the following Regulations in exercise of the powers conferred by sections 6C, 6D and 60 of the Electricity Act 1989(c).

## PART 1 INTRODUCTORY

### **Citation, commencement and revocation**

**1.**—(1) These Regulations may be cited as the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and come into force on 3rd August 2015.

(2) Subject to regulation 2, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (“the 2013 Regulations”)(d) are revoked.

### **Saving and transitional provisions**

**2.**—(1) Where the Authority has given notice in respect of the invitation to tender stage for a particular qualifying project in accordance with regulation 17(1) of the 2013 Regulations before these Regulations come into force, the 2013 Regulations continue to apply in respect of that tender exercise.

(2) If, before these Regulations come into force, the Authority has not given the notice referred to in paragraph (1) for a particular qualifying project which is subject to the 2013 Regulations—

- (a) a tender exercise in respect of that qualifying project is, after these Regulations come into force, to be treated as having been held and as continuing to be held under these Regulations;
- (b) a tender exercise in respect of that qualifying project that complied with all of the applicable requirements of the 2013 Regulations before they were revoked is not to be treated as defective under these Regulations by virtue only of its failure to comply with the requirements of these Regulations in respect of any aspect of the tender exercise held before these Regulations come into force.

### **Interpretation**

**3.**—(1) In these Regulations—

“the 1989 Act” means the Electricity Act 1989;

“associated” in relation to a body corporate has the meaning given in paragraph 37 of Schedule 2A to the 1989 Act(e);

“best and final offer” means a submission by a qualifying bidder to the Authority in response to the best and final offer documentation issued in accordance with regulation 20(3);

“bid costs” means the costs incurred by a qualifying bidder in the preparation of a tender in respect of a qualifying project;

“bidder” means a person, or a group of two or more persons acting together, that submits a pre-qualification questionnaire to the Authority in accordance with these Regulations;

“bidder group” means two or more persons acting together as bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder;

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(a) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).

(b) In accordance with section 6C(4) of the Electricity Act 1989 (c.29).

(c) 1989 c.29; section 6C was inserted by section 92 of the Energy Act 2004 (c.20) and section 6D was inserted by section 44 of the Energy Act 2008 (c.32).

(d) S.I. 2013/175.

(e) 1989 c.29; schedule 2A was inserted by section 44 of the Energy Act 2008 (c.32).

“confidentiality agreement” means the standard form agreement between a developer and a qualifying bidder in respect of confidential information disclosed in connection with a tender exercise;

“connection offer” means an offer by the holder of a co-ordination licence of a connection to or modification of a connection to the transmission system;

“construction phase contract” means, in respect of an OFTO build qualifying project, a contract for or connected with—

- (a) the engineering, construction, installation or commissioning of the transmission assets; or
- (b) the procurement of goods or services connected with the construction, installation or commissioning of the transmission assets.

“data room” means a secure store of information in respect of a qualifying project to be maintained by the Authority;

“developer” means a person within section 6D(2)(a) of the 1989 Act, or a developer group;

“developer group” means two or more persons acting together for the purposes of developing a qualifying project, at least one of whom is a person within section 6D(2)(a) of the 1989 Act;

“entry conditions” means the conditions specified in paragraph 1 or 2 of Schedule 2;

“generator build qualifying project” means a project that meets the requirements of regulation 8(6)(a);

“generator build tender exercise” means a tender exercise in respect of which the transmission assets have been, are being or are to be constructed or installed—

- (a) by or on behalf of any person (“A”) who falls, or at any time during such construction or installation fell, within section 6D(2)(a) of the 1989 Act; or
- (b) by a body corporate that is, or at any time during such construction or installation was, associated with A,

but does not include the case where A, the person acting on behalf of A, or the body corporate associated with A constructs or installs the transmission assets as a contractor under a construction phase contract notified in accordance with regulation 8(3) with respect to the tender exercise;

“information memorandum” means a memorandum of that description issued by the Authority to a qualifying bidder containing in summary form information in respect of a qualifying project;

“notified preliminary works” means the group of preliminary works specified in the notice given under regulation 8(3) and as modified by new information, if any, provided to the Authority pursuant to the undertaking given under paragraph 1(b) of Schedule 2;

“OFTO build qualifying project” means a project that meets the requirements of regulation 8(6)(b);

“OFTO build tender exercise” means a tender exercise other than a generator build tender exercise;

“preliminary works” means, in respect of an OFTO build qualifying project, necessary works obtained or to be obtained by a developer in relation to the development of the proposed transmission assets, before the grant of an offshore transmission licence to a successful bidder, including without limitation, works in relation to planning permissions, consents, wayleaves, easements, leases, topography and sea bed surveys, environment and archaeological surveys, and impact assessments;

“preliminary works transfer agreement” means the agreement to transfer any—

- (a) property interests, rights or liabilities in or relating to preliminary works;

(b) shares or other interests in an undertaking, having the meaning given in section 1161 of the Companies Act 2006(a), in which any property interests, rights or liabilities within paragraph (a) are vested; or

(c) beneficial interest in any property interests, rights or liabilities within paragraph (a) or shares or interests within paragraph (b),

from a developer to a successful bidder in respect of an OFTO build qualifying project;

“preferred bidder” has the meaning given in paragraph 35(1) of Schedule 2A to the 1989 Act;

“pre-qualification questionnaire” means a questionnaire of that description published by the Authority in accordance with regulation 14(1)(a) or regulation 14(2)(a);

“qualification to tender questionnaire” means a questionnaire of that description issued by the Authority in accordance with regulation 16(2);

“qualifying bidder” means a bidder determined as a qualifying bidder in accordance with regulation 15(1);

“qualifying project” means a project as determined in accordance with regulation 8(6);

“relevant generating station” means a generating station that generates, or is to generate, electricity to be transmitted over the transmission assets;

“reserve bidder” means a qualifying bidder determined as a reserve bidder in accordance with regulation 20(5) in relation to the best and final offer stage or regulation 19(3) in any other case;

“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;

“system specification” means the requirements for the design and construction of the transmission assets in respect of an OFTO build qualifying project, consistent with any such requirements agreed in the bilateral agreement entered into by the developer with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system;

“tender” means a submission by a qualifying bidder to the Authority in response to the invitation to tender documentation issued in accordance with regulation 18(2);

“tender round” means one or more tender exercises being held or to be held, with a view to determining to whom offshore transmission licences are to be granted for each qualifying project subject to such tender exercises, commencing on the date specified in a notice given in accordance with regulation 12(1) or regulation 12(3);

“transfer agreement” means the agreement to transfer any–

(a) property interests, rights or liabilities in or relating to transmission assets;

(b) shares or other interests in an undertaking, having the meaning given in section 1161 of the Companies Act 2006, in which any property interests, rights or liabilities within paragraph (a) are vested; or

(c) beneficial interest in any property interests, rights or liabilities within paragraph (a) or shares or interests within paragraph (b),

from a developer to a successful bidder in respect of a qualifying project subject to a generator build exercise;

“transmission assets” has the meaning given in paragraph 1(3)(a) of Schedule 2A to the 1989 Act;

“transmission services” has the meaning given in the standard conditions of a transmission licence.

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(a) 2006 c.46.

(2) The Authority must, when publishing a notice under these Regulations, publish the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

## PART 2

### CALCULATION AND PAYMENT OF COSTS INCURRED IN CONNECTION WITH TRANSMISSION ASSETS FOR A GENERATOR BUILD TENDER EXERCISE

#### **Calculation of costs incurred in connection with transmission assets**

4.—(1) In respect of a generator build tender exercise, the Authority must calculate, based on all relevant information available to the Authority at that time, other than further information that the Authority required under paragraph (3) and decided not to take into account in accordance with paragraph (7), the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the transmission assets in respect of a qualifying project in accordance with paragraph (2).

(2) The calculation of costs in paragraph (1) is to be—

- (a) where the construction of the transmission assets has not reached the stage when those transmission assets are available for use for the transmission of electricity, an estimate of the costs which ought to be incurred in connection with the development and construction of those transmission assets; or
- (b) where the construction of the transmission assets has reached the stage when those transmission assets are available for use for the transmission of electricity, an assessment of the costs which ought to have been incurred in connection with the development and construction of those transmission assets.

(3) The Authority may require the developer to provide further information for the purpose of the calculation of costs in paragraph (1).

(4) Where the Authority requires the developer to provide further information in accordance with paragraph (3), the Authority must specify the date by which the developer must provide that information.

(5) Where the Authority considers that the information provided by the developer in accordance with paragraph (3) is a material change from the information already available to the Authority, it may, in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs to which the information relates, undertake one or more further estimates of those costs, as it considers necessary, until such time as the transmission assets are available for use for the transmission of electricity.

(6) Where the Authority—

- (a) has previously estimated the costs in accordance with paragraph (2)(a) or (5); and
- (b) is satisfied with the evidence provided by the developer that those transmission assets are available for use for the transmission of electricity,

the Authority must, as soon as reasonably practicable, assess the economic and efficient costs which ought to have been incurred in connection with the development and construction of those transmission assets.

(7) The Authority may decide not to take into account any information that is provided after the date specified by the Authority in accordance with paragraph (4) in undertaking an estimate or an assessment in accordance with this regulation.

(8) Where the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 28(2), the assessment undertaken in accordance with paragraph (2)(b) or (6) must be used by the

Authority to determine the value of the transmission assets to be transferred to the successful bidder.

**Payment of costs incurred by the Authority in connection with transmission assets calculation of costs**

5.—(1) Where the Authority has undertaken an estimate of the costs in accordance with regulation 4 in relation to a particular qualifying project, it must, before the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to the developer to make a payment to the Authority of an amount equal to the Authority's costs in undertaking the estimate.

(2) Where the Authority has undertaken an assessment of the costs in accordance with regulation 4 in relation to a particular qualifying project, it must—

- (a) before the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project; or
- (b) as soon as reasonably practicable after the generator build tender exercise has been held in accordance with these Regulations,

give notice to the successful bidder to make a payment to the Authority of an amount equal to the Authority's costs in undertaking the assessment.

### PART 3

#### CALCULATION AND PAYMENT OF COSTS INCURRED IN RELATION TO AN OFTO BUILD TENDER EXERCISE

**Calculation of costs incurred in connection with preliminary works and construction phase contracts**

6.—(1) In respect of a project that is, or is intended to meet the requirements for, an OFTO build qualifying project, the Authority must calculate—

- (a) the economic and efficient costs which ought to be, or ought to have been, incurred by the developer in connection with—
  - (i) obtaining the notified preliminary works;
  - (ii) finalising all construction phase contracts, if any, that are notified in accordance with regulation 8(3); and
- (b) the economic and efficient costs which ought to be incurred by the successful bidder after it is granted the offshore transmission licence relating to the project, in making payments to the contractor under each construction phase contract, if any, that is notified in accordance with regulation 8(3).

(2) The calculation of the costs referred to in paragraph (1)(a)(i) is to be—

- (a) where the notified preliminary works have not reached the stage at which all those preliminary works have been obtained by the developer in respect of a particular qualifying project, an estimate of the costs which ought to be incurred in connection with obtaining those preliminary works; or
- (b) where the notified preliminary works have reached the stage at which all those preliminary works have been obtained by the developer in respect of a particular qualifying project, an assessment of the costs which ought to have been incurred in connection with obtaining those preliminary works.

(3) The calculation of the costs referred to in paragraph (1)(a)(ii) or (b) is to be—

- (a) where the calculation is completed before publication of the notice referred to in regulation 20(1), an estimate of those costs; or



(b) where the calculation is completed after publication of the notice referred to in regulation 20(1), an assessment of those costs.

(4) The calculations of the costs referred to in paragraph (1) must be based on all relevant information available to the Authority at the time, other than further information that the Authority required under paragraph (5) and decided not to take into account in accordance with paragraph (9).

(5) The Authority may require the developer to provide further information for the purpose of the calculation of costs in paragraph (1).

(6) Where the Authority requires the developer to provide further information in accordance with paragraph (5), the Authority must specify the date by which the developer must provide that information.

(7) Where the Authority considers that the information provided by the developer in accordance with paragraph (5) is a material change from the information already available to the Authority, it may, in order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs to which the information relates, undertake one or more further estimates of those costs, until such time as it is possible to undertake an assessment of the costs.

(8) Where the Authority has previously undertaken an estimate of the costs referred to in paragraph (1)(a)(i), (a)(ii) or (b), the Authority must, as soon as reasonably practicable, undertake an assessment of those costs.

(9) The Authority may decide not to take into account any information that is provided after the date specified by the Authority in accordance with paragraph (6) in undertaking an estimate, or an assessment, of the costs referred to in paragraph (1)(a)(i), (a)(ii) or (b).

(10) Where the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 28(2) the Authority's assessments of the costs referred to in paragraph (1)(a)(i) and (ii) must be used by the Authority to determine the value of the work in—

- (a) obtaining the notified preliminary works; and
- (b) finalising the construction phase contracts that are to be transferred to the successful bidder.

(11) Where the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project in accordance with regulation 28(2), the Authority's assessment of the costs referred to in paragraph (1)(b) must be used by the Authority to determine the amount by which the person granted the offshore transmission licence will be reimbursed for making payments to the contractor under each construction phase contract.

**Payment of costs incurred by the Authority in connection with calculations relating to preliminary works and construction phase contracts**

7.—(1) Subject to paragraph (2), where the Authority has undertaken an estimate of costs in accordance with regulation 6 in relation to a particular qualifying project, it must, before the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to the developer to make a payment to the Authority of an amount equal to the Authority's costs in undertaking the estimate.

(2) Paragraph (1) does not apply to any costs recovered by the Authority under regulation 9(5).

(3) Where the Authority has undertaken an assessment of costs in accordance with regulation 6 in relation to a particular qualifying project, it must, before the grant of an offshore transmission licence to the successful bidder in relation to that qualifying project, give notice to that successful bidder to make a payment to the Authority of an amount equal to the Authority's costs in undertaking the assessment.

## PART 4

### QUALIFYING PROJECTS AND DEVELOPER PAYMENTS AND SECURITY

#### Qualifying projects

8.—(1) A developer who wishes the Authority to publish a notice in accordance with regulation 12(1) in order to commence a tender exercise must make a request to that effect in writing to the Authority.

(2) The request must specify whether the project is intended to meet the requirements of paragraph (6)(a) or (b).

(3) Where a project is intended to meet the requirements of paragraph (6)(b), the request must include notice of—

- (a) the preliminary works that the developer has obtained or intends to obtain;
- (b) each construction phase contract, if any, that is to be executed by, or novated to, or the benefit of which is to be transferred to, the successful bidder or a person nominated by the successful bidder.

(4) Where a request includes notice of a construction phase contract, the request must be accompanied by a payment of an amount determined by the Authority in accordance with regulation 9(4).

(5) Where the Authority has received one or more requests in accordance with this regulation, the Authority must, as soon as reasonably practicable, determine whether each of those requests relates to a qualifying project in accordance with paragraph (6).

(6) A qualifying project is a project in respect of which the Authority is satisfied that—

- (a) in the case of a request for a generator build tender exercise, each requirement specified in paragraph 2 of Schedule 1—
  - (i) has been met; or
  - (ii) is deemed to have been met pursuant to paragraph 3 of Schedule 1; or
- (b) in the case of a request for an OFTO build tender exercise, each requirement specified in paragraph 1 of Schedule 1—
  - (i) has been met; or
  - (ii) is deemed to have been met pursuant to paragraph 3 of Schedule 1.

(7) The Authority may require the developer to provide any other information it considers necessary in order to carry out its assessment in relation to paragraph 1, 2 or 3 of Schedule 1.

(8) Where the Authority determines that a request relates to a qualifying project in accordance with paragraph (5), it must give notice to that effect to the developer who made the request.

(9) Where the Authority determines that a request does not relate to a qualifying project in accordance with paragraph (5), it must give notice to that effect to the developer who made the request and give reasons for its determination.

(10) Where the developer disagrees with the Authority's determination as notified to the developer in accordance with paragraph (9), the developer may make representations in writing to the Authority within seven days after the day on which the notice is received.

(11) The Authority must consider any representations received from a developer in accordance with paragraph (10) and decide whether to amend its determination made in accordance with paragraph (5).

(12) The Authority must give notice to the developer of the decision made in accordance with paragraph (11) and give reasons for its decision.

### **Developer's payment for early evaluation of construction phase contracts**

**9.**—(1) A developer may apply to the Authority for a determination of the amount of the payment referred to in regulation 8(4).

(2) The application must include information about each construction phase contract that the developer intends to notify in a request made under regulation 8.

(3) The Authority may require the developer to provide any other information it considers necessary in order to make a determination in accordance with paragraph (4).

(4) Where the Authority receives an application in accordance with paragraph (1) it must, as soon as reasonably practicable, notify the developer of the amount that the Authority determines is likely to be equal to the relevant tender costs.

(5) Where a request made under regulation 8 is accompanied by a payment, the Authority must recover its relevant tender costs, if any, from the payment and return the remaining payment, including any interest which accrued on the payment, to the developer as soon as reasonably practicable after—

- (a) the Authority completes the estimate, and makes the determination, referred to in paragraph (6);
- (b) the Authority notifies the developer, in accordance with regulation 8(9), that the request does not relate to a qualifying project and the developer does not make representations in accordance with regulation 8(10);
- (c) the Authority notifies the developer, in accordance with regulation 8(12), that the request does not relate to a qualifying project;
- (d) the developer withdraws the request; or
- (e) the Authority receives payment and security from the developer in accordance with regulation 10(1),

whichever occurs earlier.

(6) In this regulation, “relevant tender costs” means the total costs incurred by the Authority in—

- (a) undertaking an estimate, under regulation 6, of the costs which ought to be incurred under each construction phase contract in payments to the contractor;
- (b) determining whether each construction phase contract meets the requirement at paragraph 1(d) of Schedule 1.

### **Developer's payment and security to commence tender exercise**

**10.**—(1) Before publishing a notice in accordance with regulation 12(1), in respect of a qualifying project, the Authority must give notice to the developer requiring the developer to—

- (a) make a payment to the Authority of an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs; and
- (b) provide the Authority with security, in a form approved by the Authority, in respect of any liability that the developer has, or may in the future have, under these Regulations in respect of the Authority's tender costs.

(2) The developer may satisfy a requirement to provide security by arranging for a person approved by the Authority to provide the security.

## PART 5

### ENTRY CONDITIONS

#### **Entry conditions in respect of qualifying projects**

**11.**—(1) In respect of a qualifying project, the Authority must, at a time determined by the Authority, notify the developer of—

- (a) the information that the Authority will require in order to be satisfied—
  - (i) in the case of a request for a generator build tender exercise, that the entry conditions specified in paragraph 2 of Schedule 2 have been met in respect of that particular qualifying project; or
  - (ii) in the case of a request for an OFTO build tender exercise, that the entry conditions specified in paragraph 1 of Schedule 2 have been met in respect of that particular qualifying project; and
- (b) the date by which each of the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, must be met by the developer in respect of that qualifying project.

(2) The Authority may require the developer to provide any other information it considers necessary in order to satisfy itself that the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met.

(3) Where the Authority is satisfied that the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met in accordance with paragraph (1), it must give notice to that effect to the developer.

## PART 6

### COMMENCEMENT OF A TENDER ROUND

#### **Commencement of a tender round**

**12.**—(1) As soon as reasonably practicable after the Authority—

- (a) has determined that one or more requests each relates to a qualifying project in accordance with regulation 8(5); and
- (b) with respect to each determined qualifying project—
  - (i) has received payment and security from the developer in accordance with regulation 10(1); and
  - (ii) is satisfied that any entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, which must be met by the developer prior to the publication of a notice under this Regulation, have been met pursuant to regulation 11(1)(b),

the Authority must publish a notice of its intention to commence a tender round in respect of those determined qualifying projects specifying the date on which the tender round is to commence.

(2) The Authority may, after consulting a developer in respect of a particular qualifying project, publish a notice specifying the date on which a particular tender exercise is to commence (which may be earlier or later than the date specified in accordance with paragraph (1)).

(3) Where the Authority has published a notice in accordance with paragraph (1) or (2) and the Authority subsequently determines that it is impracticable to commence a tender round or a particular tender exercise on the date specified in that notice, the Authority must publish a notice specifying a revised date on which that tender round or particular tender exercise is to commence.

## PART 7

### STAGES OF A TENDER ROUND

#### **Stages of a tender round**

**13.**—(1) A tender round to be held in accordance with these Regulations comprises the following stages—

- (a) a pre-qualification stage in order to determine which bidders are to become qualifying bidders in respect of each qualifying project within that tender round;
- (b) subject to paragraph (2), a qualification to tender stage in order to determine which qualifying bidders are to be invited to participate in an invitation to tender stage in respect of each qualifying project within that tender round;
- (c) an invitation to tender stage in order to determine which qualifying bidders are to be selected to become preferred bidders or reserve bidders in respect of each qualifying project within that tender round;
- (d) where the Authority determines in accordance with the criteria set out in the invitation to tender documentation in respect of a particular qualifying project, a best and final offer stage in respect of that particular qualifying project within that tender round; and
- (e) a preferred bidder stage in order to determine the successful bidder to whom an offshore transmission licence is to be granted in respect of a particular qualifying project within that tender round.

(2) The Authority may determine not to hold a qualification to tender stage where the Authority considers it is not necessary in relation to a particular tender exercise.

## PART 8

### PRE-QUALIFICATION STAGE

#### **Pre-qualification**

**14.**—(1) Subject to paragraph (2), on the date specified in the notice published in accordance with regulation 12(1), (2) or (3) ('the intention to commence notice'), the Authority must commence the pre-qualification stage by publishing—

- (a) the pre-qualification documentation, which must include the information specified in Schedule 3; and
- (b) in respect of each qualifying project to which the intention to commence notice relates, a notice stating whether the Authority will reimburse a qualifying bidder's bid costs in accordance with regulation 26(5) or 29(6) and, if applicable, the maximum amount of reimbursement.

(2) Where the Authority determines not to hold a qualification to tender stage in accordance with regulation 13(2), on the date specified in the intention to commence notice, the Authority must commence the pre-qualification stage by publishing—

- (a) the pre-qualification documentation referred to in paragraph (1)(a);
- (b) the notice referred to in paragraph (1)(b);
- (c) the confidentiality agreement in respect of each qualifying project to which the intention to commence notice relates, to be signed and submitted to the Authority by bidders; and
- (d) any instructions that apply to the confidentiality agreement including the date, time and manner in which that confidentiality agreement is to be submitted to the Authority.

(3) Where paragraph (2) applies, as soon as reasonably practicable after a bidder has submitted one or more signed confidentiality agreements in respect of particular qualifying projects to the

Authority in accordance with paragraph (2)(d), the Authority must issue to that bidder any confidential information in respect of those particular qualifying projects.

#### **Determination of qualifying bidders at the pre-qualification stage**

**15.—**(1) The Authority must evaluate each completed pre-qualification questionnaire submitted to it by a bidder in accordance with the evaluation criteria set out in the pre-qualification documentation, in order to determine in respect of each qualifying project within that tender round—

- (a) where a qualification to tender stage is to be held, which bidders are to become qualifying bidders and be invited to participate in the qualification to tender stage in accordance with regulation 16; or
- (b) where a qualification to tender stage is not to be held, which bidders are to become qualifying bidders and be invited to participate in the invitation to tender stage in accordance with regulation 18.

(2) The Authority may decline to consider a pre-qualification questionnaire submitted to it by a bidder where the Authority determines that the submitted pre-qualification questionnaire does not comply in any material respect with the requirements specified in the pre-qualification documentation issued in accordance with regulation 14(1)(a) or regulation 14(2)(a).

(3) The Authority must give notice to each bidder of its determination in accordance with paragraph (1) or (2) and give reasons for its determination.

## **PART 9**

### **QUALIFICATION TO TENDER STAGE**

#### **Qualification to tender**

**16.—**(1) In respect of the qualification to tender stage the Authority must publish—

- (a) the confidentiality agreement in respect of each qualifying project to be signed and submitted to the Authority by qualifying bidders; and
- (b) any instructions that apply to the confidentiality agreement including the date, time and manner in which that confidentiality agreement is to be submitted to the Authority.

(2) As soon as reasonably practicable after a qualifying bidder has submitted one or more signed confidentiality agreements in respect of particular qualifying projects to the Authority, the Authority must issue to that qualifying bidder the qualification to tender documentation, which must include the information specified in Schedule 4.

(3) The Authority must invite all qualifying bidders who have been issued the qualification to tender documentation in accordance with paragraph (2) to submit a completed qualification to tender questionnaire in respect of one or more qualifying projects in accordance with the requirements set out in the qualification to tender documentation.

#### **Determination of qualifying bidders to be invited to participate in the invitation to tender stage**

**17.—**(1) The Authority must evaluate each completed qualification to tender questionnaire submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the qualification to tender documentation, in order to determine which qualifying bidders are to be invited to participate in the invitation to tender stage in respect of each qualifying project.

(2) The Authority may decline to consider a qualification to tender questionnaire submitted to it by a qualifying bidder where the Authority determines that the submitted qualification to tender questionnaire does not comply in any material respect with the requirements specified in the qualification to tender documentation issued in accordance with regulation 16(2).

(3) The Authority must give notice to each qualifying bidder of its determination in accordance with paragraph (1) or (2) and give reasons for its determination.

## PART 10

### INVITATION TO TENDER STAGE

#### **Invitation to tender**

**18.**—(1) In respect of the invitation to tender stage, the Authority may give notice to relevant qualifying bidders requiring each bidder to make a payment to the Authority of an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs.

(2) The Authority must issue to all relevant qualifying bidders the invitation to tender documentation, which must include the information specified in Schedule 5.

(3) The Authority must invite all qualifying bidders who have been issued the invitation to tender documentation in accordance with paragraph (2) to submit a tender in respect of one or more qualifying projects in accordance with the requirements set out in the invitation to tender documentation.

(4) The submission of a tender by a qualifying bidder is an application for the offshore transmission licence to which the tender exercise relates.

(5) In this regulation, “relevant qualifying bidder” means—

- (a) where a qualification to tender stage has been held, a qualifying bidder that the Authority, in accordance with regulation 17(1), has determined to invite to participate in the invitation to tender stage; or
- (b) where a qualification to tender stage has not been held, a bidder that the Authority, in accordance with regulation 15(1)(b), has determined to invite to participate in the invitation to tender stage.

#### **Determination of preferred bidders at the invitation to tender stage**

**19.**—(1) The Authority must evaluate each tender in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the invitation to tender documentation, in order to determine—

- (a) which qualifying bidder is to become the preferred bidder in respect of that qualifying project; or
- (b) whether to hold a best and final offer stage in accordance with the criteria set out in the invitation to tender documentation in respect of that particular qualifying project.

(2) The Authority may decline to consider a tender submitted to it by a qualifying bidder where the Authority determines that the submitted tender does not comply in any material respect with the requirements specified in the invitation to tender documentation issued in accordance with regulation 18(2).

(3) Where the Authority does not hold a best and final offer stage in accordance with paragraph (1)(b), the Authority may evaluate each tender in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the invitation to tender documentation, in order to determine which qualifying bidder is to become the reserve bidder in respect of that qualifying project.

## PART 11

### BEST AND FINAL OFFER STAGE

#### **Best and final offer**

**20.**—(1) Where the Authority determines to hold a best and final offer stage in accordance with regulation 19(1)(b), the Authority must determine in accordance with the evaluation criteria set out in the invitation to tender documentation which qualifying bidders are to be invited to participate in a best and final offer stage in respect of that particular qualifying project.

(2) The Authority must give notice to each qualifying bidder as to whether they have or have not been invited to participate in a best and final offer stage.

(3) The Authority must issue to the selected qualifying bidders the best and final offer documentation, which must include the information specified in Schedule 6.

(4) The Authority must evaluate each best and final offer in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which qualifying bidder is to become the preferred bidder in respect of that qualifying project.

(5) The Authority may evaluate each best and final offer in respect of a particular qualifying project submitted to it by a qualifying bidder in accordance with the evaluation criteria set out in the best and final offer documentation, in order to determine which qualifying bidder is to become the reserve bidder in respect of that qualifying project.

(6) The Authority may decline to consider a best and final offer submitted to it by a qualifying bidder where the Authority determines that the submitted best and final offer does not comply in any material respect with the requirements specified in the best and final offer documentation issued in accordance with paragraph (3).

## PART 12

### PREFERRED BIDDER STAGE

#### **Notification of preferred bidder and reserve bidder**

**21.**—(1) As soon as reasonably practicable after the Authority has determined the preferred bidder in respect of a particular qualifying project in accordance with regulation 19(1)(a) or 20(4), it must publish a notice to that effect.

(2) As soon as reasonably practicable after the Authority has determined the reserve bidder in respect of a particular qualifying project in accordance with regulation 19(3) or 20(5), it must give notice to that effect to that reserve bidder.

(3) The notice referred to in paragraph (1) must—

- (a) specify the name and address of the preferred bidder; and
- (b) describe, in general terms, the matters to be resolved by the preferred bidder to the Authority's satisfaction as specified in paragraph (4)(a) or (b), as the case may be, before that preferred bidder becomes the successful bidder in accordance with regulation 28(1).

(4) The matters referred to in paragraph (3)(b) must include—

- (a) in the case of a generator build tender exercise—
  - (i) that the preferred bidder has established necessary arrangements to provide transmission services for that particular qualifying project;
  - (ii) that the preferred bidder has in place a bilateral agreement with the holder of a co-ordination licence to provide transmission services for that particular qualifying project;



- (iii) that the preferred bidder has acceded to the contractual framework which defines the relationship between the holder of a co-ordination licence and any provider of transmission services that the co-ordination licence requires the holder of a co-ordination licence to have in force; and
  - (iv) any other matters which the Authority may determine are necessary in relation to that particular qualifying project, including without limitation the matter referred to in paragraph (5); or
- (b) in the case of an OFTO build tender exercise—
- (i) that the preferred bidder has established necessary arrangements to construct the transmission assets and to provide transmission services for that particular qualifying project;
  - (ii) that the preferred bidder has in place a bilateral agreement with the holder of a co-ordination licence to provide transmission services for that particular qualifying project;
  - (iii) that the preferred bidder has acceded to the contractual framework which defines the relationship between the holder of a co-ordination licence and any provider of transmission services that the co-ordination licence requires the holder of a co-ordination licence to have in force; and
  - (iv) any other matters which the Authority may determine are necessary in relation to that particular qualifying project, including without limitation the matter referred to paragraph (5).

(5) The Authority may determine that it is necessary that the preferred bidder has conducted a competition, of a kind specified by the Authority, for the purpose of securing finance for the qualifying project.

(6) As soon as reasonably practicable after the Authority has published a notice in accordance with paragraph (1), it must give notice to the preferred bidder—

- (a) as to the detail of the matters referred to in paragraph (4)(a) or (b), as the case may be, how such matters must be resolved and by what date; and
- (b) requiring the bidder to make a payment to the Authority of an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs.

(7) Where—

- (a) the matters referred to in paragraph (4)(a) or (b), as the case may be, are not resolved by the preferred bidder to the Authority's satisfaction in accordance with the notice issued by virtue of paragraph (6);
- (b) the preferred bidder fails to make the payment referred to in paragraph (6)(b);
- (c) the preferred bidder withdraws from the tender exercise in accordance with regulation 23(1); or
- (d) the preferred bidder is disqualified from the tender exercise or tender round in accordance with regulation 27(1),

the Authority may withdraw the notice published in accordance with paragraph (1) by publishing a further notice to that effect.

(8) Where the Authority has published a further notice in accordance with paragraph (7), it must discontinue the tender exercise with the preferred bidder and must treat the reserve bidder (where such reserve bidder has been determined in accordance with regulation 19(3) or 20(5)), as if that reserve bidder were the preferred bidder in respect of a particular qualifying project.

(9) Paragraphs (1) and (3), (4), (6) and (7) apply where the Authority treats the reserve bidder as if it were the preferred bidder.

(10) The Authority must give notice to any qualifying bidder of the fact that it is not a preferred bidder or a reserve bidder.

### **Particular obligations of the developer from preferred bidder stage**

**22.** In order to facilitate the making of the Authority's determination of the successful bidder to whom an offshore transmission licence is to be granted in respect of a particular qualifying project in accordance with regulation 28(2), the developer must from the date of the notice given in accordance with regulation 21(6) use its reasonable endeavours to—

- (a) enable the preferred bidder to resolve the matters specified in the notice given in accordance with regulation 21(6) to the extent that the resolution of those matters depends on the actions of the developer;
- (b) in respect of a generator build qualifying project, enable the transmission assets to be transferred to the successful bidder; and
- (c) in respect of an OFTO build qualifying project—
  - (i) enable the notified preliminary works to be transferred to the successful bidder; and
  - (ii) enable each construction phase contract, if any, to be executed by, or novated to, or enable the benefit of that contract to be transferred to, the successful bidder or a person nominated by the successful bidder.

## PART 13 WITHDRAWAL

### **Withdrawal**

**23.—**(1) A bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder may withdraw from a tender exercise by giving notice in writing to that effect to the Authority.

(2) A bidder or qualifying bidder who has not withdrawn pursuant to paragraph (1) but who fails to submit a qualification to tender questionnaire, a tender or a best and final offer within the date and time specified by the Authority is deemed to have withdrawn from that tender exercise.

(3) Where a bidder or qualifying bidder withdraws from a tender exercise in accordance with paragraph (1) or is deemed to have withdrawn in accordance with paragraph (2), that bidder or qualifying bidder may only be re-admitted to that tender exercise, where there has been a permitted change to the membership of a bidder group incorporating that bidder or qualifying bidder in accordance with regulation 33.

(4) Where a preferred bidder, reserve bidder or successful bidder withdraws from a tender exercise in accordance with paragraph (1), that preferred bidder, reserve bidder or successful bidder must not be re-admitted to that tender exercise.

(5) Where a bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder has withdrawn from a tender exercise in accordance with paragraph (1) or a bidder or qualifying bidder is deemed to have withdrawn in accordance with paragraph (2), any payment provided to the Authority by that bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder in accordance with these Regulations, including any interest which may have accrued on that payment, will only be repaid by the Authority in accordance with regulation 30(6).

## PART 14 RE-RUN, CANCELLATION AND TREATMENT OF PAYMENTS AND SECURITY ON CANCELLATION

### **Re-run, and re-run leading to cancellation**

**24.—**(1) Where the Authority is satisfied that any of the events in Schedule 7 are occurring or have occurred in respect of a qualifying project, it may re-run that tender exercise from the beginning or from a particular stage in accordance with these Regulations.

(2) In the event that no preferred bidder, reserve bidder or successful bidder is or can be determined pursuant to a tender exercise run as a consequence of a decision taken in accordance with paragraph (1), the Authority may—

- (a) further re-run that tender exercise from the beginning or from a particular stage in accordance with these Regulations; or
- (b) determine that the tender exercise is to be cancelled from the tender round.

(3) Where the Authority determines that the tender exercise is to be cancelled in accordance with paragraph (2)(b), it may, in the circumstances specified in paragraph (4), publish a notice cancelling that tender exercise from the tender round.

(4) The circumstances in which the Authority may publish a notice in accordance with paragraph (3) are that the Authority has—

- (a) given seven days notice of its intention to cancel the tender exercise from the tender round; and
- (b) considered any representations which have been duly made in relation to the notice published in accordance with sub-paragraph (a).

(5) Where the Authority has published a notice in accordance with paragraph (3), that tender exercise is finished.

### **Cancellation**

**25.**—(1) Where the Authority is satisfied that any of the events in Schedule 8 are occurring or have occurred in respect of a qualifying project, it may, in the circumstances specified in paragraph (2), publish a notice cancelling that tender exercise from the tender round.

(2) The circumstances in which the Authority may publish a notice in accordance with paragraph (1) are that the Authority has—

- (a) given seven days' notice of its intention to cancel the tender exercise from the tender round; and
- (b) considered any representations which have been duly made in relation to the notice published in accordance with sub-paragraph (a).

(3) Where the Authority has published a notice in accordance with paragraph (1), that tender exercise is finished.

### **Treatment of payments and security on cancellation**

**26.**—(1) This regulation applies where the Authority cancels a tender exercise from a tender round in accordance with regulation 24(3) or 25(1).

(2) Where any of the events in paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (m) of Schedule 7 or paragraph (a) of Schedule 8 are occurring or have occurred in respect of a qualifying project, the Authority must—

- (a) with respect to any payment that has been made by a bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment, not repay that payment wholly or in part;
- (b) with respect to the payment that has been made in accordance with regulation 10(1)(a), including any interest which may have been accrued on the whole or part of that payment, repay to the person who made the payment so much of the payment as remains after the Authority has recovered an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs; and
- (c) with respect to the security that has been provided in accordance with regulation 10(1)(b), including any interest which may have been accrued where that security provided is a monetary deposit, release the security.

(3) Where any of the events in paragraphs (a) or (b) of Schedule 7 or paragraphs (b), (c), (d) (e), (f), (g), (h) or (i) of Schedule 8 are occurring or have occurred in respect of a qualifying project, the Authority must—

- (a) with respect to any payment that has been made by a bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment, repay to the person who made the payment so much of the payment as remains after the Authority has recovered an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs;
- (b) with respect to the payment that has been made in accordance with regulation 10(1)(a), including any interest which may have been accrued on the whole or part of that payment, not repay the payment wholly or in part; and
- (c) with respect to the security provided in accordance with regulation 10(1)(b), including any interest which may have been accrued where that security provided is a monetary deposit, determine that the security is to be forfeited wholly or in part as the Authority determines is reasonable for the purpose of recovering the Authority's tender costs.

(4) Before the Authority recovers an amount from security in accordance with the determination under paragraph (3)(c) the Authority must give notice to the developer requiring the developer to make a payment to the Authority of that amount.

(5) Where—

- (a) any of the events in paragraph (a) of Schedule 7 or paragraphs (b), (c), (d) (e), (f), (g), (h) or (i) of Schedule 8 are occurring or have occurred in respect of a qualifying project; and
- (b) the Authority has published a notice under regulation 14 stating that it will reimburse a qualifying bidder's bid costs in accordance with this regulation,

the Authority must reimburse a qualifying bidder, preferred bidder or successful bidder that has neither withdrawn nor been disqualified so much of its bid costs that do not exceed the maximum amount stated in the notice.

(6) Where the Authority reimburses bid costs under paragraph (5) it must give notice to the developer requiring payment to the Authority of an amount that is equal to the Authority's costs in reimbursing bid costs.

## PART 15

### DISQUALIFICATION FROM A TENDER EXERCISE OR TENDER ROUND

#### **Disqualification**

27.—(1) Where the Authority is satisfied that any of the events in Schedule 9 are occurring or have occurred and that the occurrence would materially affect the outcome of a tender exercise or tender round, it must disqualify that developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, from the tender exercise or tender round by giving notice to that effect to that developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be.

(2) Where the developer has been disqualified in accordance with paragraph (1), the Authority must—

- (a) with respect to the payment that has been made in accordance with regulation 10(1)(a), including any interest which may have been accrued on the whole or part of that payment, not repay the payment wholly or in part; and
- (b) with respect to the security provided in accordance with regulation 10(1)(b), including any interest which may have been accrued where that security provided is a monetary deposit, determine that the security is to be forfeited wholly or in part as the Authority determines is reasonable for the purpose of recovering the Authority's tender costs.

(3) Before the Authority recovers an amount from security in accordance with the determination under paragraph (2)(b) the Authority must give notice to the developer requiring the developer to make a payment to the Authority of that amount.

(4) Where a bidder, qualifying bidder, preferred bidder or successful bidder has been disqualified in accordance with paragraph (1), the Authority must not repay wholly or in part any payment that has been made by that bidder, qualifying bidder, preferred bidder or successful bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment.

(5) Where a bidder, qualifying bidder, preferred bidder or reserve bidder, as the case may be, has been disqualified from the tender exercise or tender round in accordance with paragraph (1), no document, tender or any information submitted by that bidder, qualifying bidder, preferred bidder or reserve bidder to the Authority may be taken into consideration for the purpose of determining the successful bidder in respect of each qualifying project to which that tender exercise or tender round relates.

## PART 16

### NOTIFICATION OF SUCCESSFUL BIDDER

#### **Notification of successful bidder**

**28.**—(1) Where the Authority is satisfied that the preferred bidder has resolved the matters described in the notice published in accordance with regulation 21(6), that preferred bidder shall become the successful bidder.

(2) As soon as reasonably practicable after the Authority has determined to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project it must publish a notice to that effect.

(3) The notice must specify the name and address of the successful bidder.

(4) The Authority must give notice to the successful bidder requiring the bidder to—

- (a) make a payment to the Authority of an amount determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs; and
- (b) where the Authority has published a notice under regulation 14 stating that the Authority will reimburse bid costs in accordance with regulation 29(6), make a payment to the Authority of an amount that is equal to the Authority's costs in reimbursing bid costs.

#### **Information in respect of successful bidder**

**29.**—(1) Subject to paragraph (3), the Authority must as soon as practicable after a determination has been made in accordance with regulation 28(2), give notice to each qualifying bidder of its determination in relation to the successful bidder in respect of that qualifying project.

(2) The notice referred to in paragraph (1) must include—

- (a) the evaluation criteria applied by the Authority in evaluating tenders;
- (b) the reasons for the determination, including the characteristics and relative advantages of the successful tender;
- (c) the result obtained by—
  - (i) the qualifying bidder which is to receive the notice; and
  - (ii) the successful bidder;
- (d) the name of the successful bidder; and
- (e) a statement of when the period specified in paragraph (4) is expected to end.

(3) The Authority may withhold any information to be provided in accordance with paragraph (1) where the disclosure of such information—

- (a) would impede law enforcement;
- (b) would otherwise be contrary to law;
- (c) would otherwise be contrary to the public interest;
- (d) would prejudice the legitimate commercial interests of any qualifying bidder; or
- (e) may prejudice fair competition between qualifying bidders.

(4) Where the Authority gives a notice in accordance with paragraph (1), the Authority must not grant an offshore transmission licence to the successful bidder before the end of ten working days following the day on which the notice was given.

(5) As soon as reasonably practicable after the end of the period specified in paragraph (4), the Authority must confirm its determination made pursuant to regulation 28(2), to grant an offshore transmission licence to the successful bidder in respect of a particular qualifying project and must—

- (a) publish a notice to that effect; and
- (b) give notice to the reserve bidder (where such reserve bidder has been determined in accordance with regulation 19(3) or 20(5)) of the fact that it is being stood down.

(6) Where the Authority has published—

- (a) a notice in accordance with paragraph (5)(a); and
- (b) a notice under regulation 14 stating that it will reimburse a qualifying bidder's bid costs in accordance with this regulation,

the Authority must reimburse a qualifying bidder who has received a notice in accordance with paragraph (1) so much of the bidder's bid costs that do not exceed the maximum amount stated in the notice.

(7) Where the Authority publishes a notice in accordance with paragraph (5)(a), that tender exercise is finished.

## PART 17

### COST RECOVERY

#### **Recovery of tender costs**

**30.—**(1) The Authority must recover its tender costs in relation to a tender round in accordance with these Regulations.

(2) A notice given in accordance with these Regulations by the Authority in respect of any payment or security must specify—

- (a) the amount of the payment or the nature of the security;
- (b) the date and time by which the payment is to be made or the security is to be provided; and
- (c) the manner in which it is to be made or provided.

(3) Where a developer is required to make a payment in accordance with these Regulations, and the developer is a developer group, the payment must be made by a member of the group that is a person within section 6D(2)(a) of the 1989 Act.

(4) As soon as reasonably practicable after a tender round is finished, the Authority must—

- (a) calculate its total tender costs in relation to that tender round; and
- (b) undertake an aggregation of—
  - (i) the payments made in accordance with these Regulations by a developer, bidder, qualifying bidder, preferred bidder or successful bidder and not repaid; and

- (ii) the value of any security forfeited in accordance with these Regulations by the developer or person approved by the Authority with whom the developer has made arrangements in accordance with regulation 10(2).

(5) Where the total amount identified as a result of the aggregation undertaken in accordance with paragraph (4)(b)—

- (a) exceeds the total tender costs incurred by the Authority in respect of that tender round, paragraph (6) applies;
- (b) is less than the total tender costs incurred by the Authority in respect of that tender round, paragraph (7) applies.

(6) Where the event in paragraph (5)(a) occurs, the Authority must as soon as reasonably practicable—

- (a) repay wholly or in part, as the Authority determines is reasonable, any payment that has been made to any person in paragraph (4)(b)(i) who made the payment, including any interest which may have been accrued on the whole or part of that payment; and
- (b) repay wholly or in part, as the Authority determines is reasonable, the security that has been forfeited to any person in paragraph (4)(b)(ii) who provided that security, including any interest which may have been accrued where that security provided is a monetary deposit,

so as to ensure that the Authority's total tender costs have not been exceeded.

(7) Where the event in paragraph (5)(b) occurs, the Authority must, with respect to each tender exercise within the tender round, give notice to the successful bidder, or to the person granted the offshore transmission licence to which the tender exercise related, to make a payment to the Authority of an amount (if any) determined by the Authority to be reasonable for the purpose of recovering the Authority's tender costs.

(8) As soon as reasonably practicable after an offshore transmission licence has been granted to the successful bidder in respect of a particular qualifying project, the Authority must release any security that has not been forfeited to any person in paragraph (4)(b)(ii) who provided that security, including any interest which may have been accrued where that security provided is a monetary deposit.

## PART 18

### MISCELLANEOUS

#### **Failure to make payments or provide security**

**31.**—(1) Where a developer fails to make the payment or provide the security in accordance with regulation 10(1), the Authority may permit that payment or security to be made or provided within a further period specified by the Authority by notice to the developer, such period to be no later than the date on which a notice is published in accordance with regulation 12(1).

(2) Where either a bidder or a qualifying bidder fails to make any payment before the date specified in a notice given under these Regulations, the Authority may disqualify that bidder or qualifying bidder from that tender exercise in accordance with regulation 27 if that failure is not remedied within a period not exceeding ten days specified by the Authority by notice to that bidder or qualifying bidder.

#### **Application for a decision by the Authority**

**32.**—(1) A bidder or qualifying bidder may apply to the Authority for a decision as to the effect of any—

- (a) restriction applied as a result of these Regulations on the making of an application for the grant of an offshore transmission licence; or

- (b) requirement applied by virtue of these Regulations that operates so as to prevent an application for the grant of an offshore transmission licence from being considered or further considered.

(2) Where a bidder or qualifying bidder makes an application in accordance with paragraph (1), the Authority may charge that bidder or qualifying bidder a fee of an amount equal to the Authority's costs in assessing the application.

### **Changes to bidder groups**

**33.**—(1) No change may be made to the membership of a bidder group unless the Authority has permitted the change in accordance with paragraph (3), (4), or (5).

(2) Where a bidder group seeks to change its membership it must notify the Authority in writing of the proposed change as soon as reasonably practicable.

(3) Where a bidder group seeks to change its membership between the pre-qualification stage of a tender exercise and before submitting a qualification to tender questionnaire to the Authority, the Authority must permit that change provided that the new membership of that bidder group meets the pre-qualification evaluation criteria set out in the pre-qualification documentation issued in accordance with regulation 14(1)(a).

(4) Any proposed change to the membership of a bidder group notified to the Authority after a qualification to tender questionnaire has been submitted to the Authority or, where the Authority determines not to hold a qualification to tender stage in accordance with regulation 13(2), after a pre-qualification questionnaire has been submitted to the Authority, and before the Authority has published a notice in accordance with regulation 21(1), may be permitted by the Authority provided that—

- (a) the Authority determines that change would be fair and equitable to all other bidders or qualifying bidders participating in that tender exercise; and
- (b) the new membership of that bidder group meets the evaluation criteria set out in the later of—
  - (i) the qualification to tender documentation issued in accordance with regulation 16(2) or, where the Authority determines not to hold a qualification to tender stage in accordance with regulation 13(2), the pre-qualification documentation issued in accordance with regulation 14(2)(a);
  - (ii) the invitation to tender documentation issued in accordance with regulation 18(2); or
  - (iii) the best and final offer documentation issued in accordance with regulation 20(3).

(5) Any proposed change to the membership of a bidder group notified to the Authority after the Authority has published a notice in accordance with regulation 21(1) may be permitted by the Authority provided that—

- (a) the Authority determines that change would be fair and equitable to all other qualifying bidders who were invited to participate in the latest stage of the tender exercise, being either the invitation to tender stage or the best and final offer stage; and
- (b) the new membership of that bidder group—
  - (i) meets the evaluation criteria set out in the later of the invitation to tender documentation issued in accordance with regulation 18(2) or the best and final offer documentation issued in accordance with regulation 20(3); and
  - (ii) where applicable, confirms in writing to the Authority that where the matters specified in the notice given in accordance with regulation 21(6) have previously been resolved by the preferred bidder to the Authority's satisfaction, such matters remain resolved by the new membership of that bidder group.

(6) Where a bidder group gives notice in accordance with paragraph (2), the Authority may give notice to the bidder group to make a payment to the Authority of an amount equal to the Authority's costs in determining whether to permit the proposed change.



### Changes to delivery of documents or actions

34.—(1) Paragraph (2) applies where the Authority determines that it is impracticable—

- (a) for any document or notice which is to be delivered to or published by the Authority in accordance with these Regulations to be delivered or published by the time, date or in the manner specified in accordance with these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations, to be completed by the time, date or in the manner specified.

(2) Where this paragraph applies, the Authority must take reasonable steps to give notice to a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, that—

- (a) delivery or publication will be made by a different time or date or in a different manner; or
- (b) the action will be completed by a different time or date or in a different manner.

### Disapplication of certain provisions

35.—(1) No application for an offshore transmission licence may be considered or granted by the Authority other than in accordance with these Regulations.

(2) Sections 6A and 6B of the 1989 Act and any regulations made under them are dispensed with insofar as they relate to an application for an offshore transmission licence.

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of



*Dermot Nolan*  
A member of the Authority

9th July 2015

I approve

*Andrea Leadsom*  
Minister of State  
Department of Energy and Climate Change

11th July 2015

## SCHEDULE 1 QUALIFYING PROJECTS

Regulation 8

1. The requirements in this paragraph are that the developer has—

- (a) entered into a bilateral agreement with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system;
- (b) entered into an agreement for lease of the seabed;
- (c) obtained, or secured financing to obtain, the notified preliminary works for the transmission assets and provided the Authority with evidence in writing of how preliminary works that are not yet obtained, will be obtained;

- (d) satisfied the Authority that the terms of each construction phase contract, if any, are conducive to the development of an efficient, coordinated and economical system of electricity transmission; and
- (e) provided the Authority with evidence in writing of its commitment to secure financing to construct the relevant generating station.

2. The requirements in this paragraph are that the developer has—

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

3. Where the Authority considers that the developer has not met a requirement in paragraph 1(a) or (d) or paragraph 2(c) or (d), it may deem a project to be a qualifying project with respect to the requirement, provided the developer gives an undertaking to meet the requirement within a period notified by the Authority to the developer.

## SCHEDULE 2

Regulation 11

### ENTRY CONDITIONS

1. The conditions in this paragraph are that the developer has—

- (a) provided information to the Authority's satisfaction to enable the Authority to both issue an information memorandum and establish a data room;
- (b) provided an undertaking in writing to the Authority that where the information provided in sub-paragraph (a) has changed, or where new relevant information becomes available, the developer will provide that information to the Authority;
- (c) provided a written warranty to the Authority, in a form reasonably acceptable to the Authority, that any information provided pursuant to sub-paragraph (a) or (b) is to the best of the knowledge and belief of the developer, having made reasonable enquiries, true, accurate and complete and is not misleading in all material respects;
- (d) signed the confidentiality agreement;
- (e) provided an undertaking in writing to the Authority to obtain the notified preliminary works and ensure that any preliminary works which are capable of being assignable to the successful bidder are so assignable;
- (f) provided to the Authority the preliminary works transfer agreement completed, as far as possible, with all relevant information available to the developer and provided an undertaking in writing to the Authority to continue to complete the preliminary works transfer agreement with all relevant information;
- (g) provided to the Authority a copy of each construction phase contract, if any, ready for execution or novation or otherwise completed, as far as possible;
- (h) provided an undertaking in writing to the Authority to assist the Authority during any evaluation pursuant to regulations 19(1), 19(3), 20(4) and 20(5);
- (i) provided an undertaking in writing to the Authority to respond to all queries from the Authority within a reasonable period, whether arising from the Authority or forwarded by the Authority on behalf of a third party;

- (j) provided to the Authority a system specification in respect of the transmission assets completed, as far as possible, with all relevant information available to the developer and provided an undertaking in writing to the Authority to continue to complete the system specification with all relevant information;
- (k) provided an undertaking in writing to the Authority that in the event that the developer decides to participate in any stage of a tender exercise as a bidder or qualifying bidder in respect of a qualifying project for which it is the developer, it will put in place and maintain appropriate internal information barriers to the satisfaction of the Authority, in order to prevent information passing between the developer and the bidder or qualifying bidder as the case may be;
- (l) provided an undertaking in writing to the Authority to provide reports as required to the Authority in connection with the development of the relevant generating station and the qualifying project;
- (m) provided an undertaking in writing to the Authority to carry out its activities in respect of the qualifying project in an efficient manner including making available all necessary management, technical, commercial and legal resources for the purposes of facilitating the making of the Authority's determination to grant an offshore transmission licence to the successful bidder; and
- (n) complied with such other conditions as the Authority may determine are necessary in relation to that particular qualifying project.

2. The conditions in this paragraph are that the developer has—

- (a) provided information to the Authority's satisfaction to enable the Authority to both issue an information memorandum and establish a data room;
- (b) provided an undertaking in writing to the Authority that where the information provided in sub-paragraph (a) has changed, or where new relevant information becomes available, the developer will provide that information to the Authority;
- (c) provided a written warranty to the Authority, in a form reasonably acceptable to the Authority, that any information provided pursuant to sub-paragraph (a) or (b) is to the best of the knowledge and belief of the developer, having made reasonable enquiries, true, accurate and complete and is not misleading in all material respects;
- (d) signed the confidentiality agreement;
- (e) provided to the Authority the transfer agreement completed, as far as possible, with all relevant information available to the developer, and provided an undertaking in writing to the Authority to continue to complete the transfer agreement with all relevant information;
- (f) provided an undertaking in writing to the Authority that in the event that the developer decides to participate in any stage of a tender exercise as a bidder or qualifying bidder in respect of a qualifying project for which it is the developer, it will put in place and maintain appropriate internal information barriers to the satisfaction of the Authority, in order to prevent information passing between the developer and the bidder or qualifying bidder as the case may be;
- (g) provided an undertaking in writing to the Authority to respond to all queries from the Authority within a reasonable period, whether arising from the Authority or forwarded by the Authority on behalf of a third party;
- (h) provided an undertaking in writing to the Authority to provide reports as required to the Authority in connection with the development of the relevant generating station and the qualifying project;
- (i) provided an undertaking in writing to the Authority to carry out its activities in respect of the qualifying project in an efficient manner including making available all necessary management, technical, commercial and legal resources for the purposes of facilitating the making of the Authority's determination to grant an offshore transmission licence to the successful bidder; and

- (j) complied with such other conditions as the Authority may determine are necessary in relation to that particular qualifying project.

### SCHEDULE 3

Regulation 14

#### PRE-QUALIFICATION

1. The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the stages of the tender exercise and where the Authority determines not to hold a qualification to tender stage in accordance with regulation 13(2), the reasons for its determination;
- (b) the rules particular to the pre-qualification stage of the tender exercise;
- (c) the pre-qualification questionnaire;
- (d) the instructions that apply to the pre-qualification questionnaire;
- (e) the date, time and manner in which the completed pre-qualification questionnaire is to be submitted to the Authority;
- (f) the evaluation criteria to be applied by the Authority in evaluating a completed pre-qualification questionnaire submitted to the Authority; and
- (g) any other such information in relation to the pre-qualification stage of the particular tender exercise as the Authority may determine is necessary.

### SCHEDULE 4

Regulation 16

#### QUALIFICATION TO TENDER

1. The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the rules particular to the qualification to tender stage of the tender exercise;
- (b) the qualification to tender questionnaire;
- (c) the instructions that apply to the qualification to tender questionnaire;
- (d) the date, time and manner in which a completed qualification to tender questionnaire is to be submitted to the Authority;
- (e) the evaluation criteria to be applied by the Authority in evaluating a completed qualification to tender questionnaire submitted to the Authority; and
- (f) any other such information in relation to the qualification to tender stage of the particular tender exercise as the Authority may determine is necessary.

### SCHEDULE 5

Regulation 18

#### INVITATION TO TENDER

1. The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the rules particular to the invitation to tender stage of the tender exercise;
- (b) a description of the information required by the Authority for the submission of a tender;
- (c) the date, time and manner in which a tender is to be submitted to the Authority;
- (d) the evaluation criteria to be applied by the Authority in evaluating tenders;

- (e) the criteria to be applied by the Authority in determining whether to hold a best and final offer stage; and
- (f) any other such information in relation to the invitation to tender stage of the particular tender exercise as the Authority may determine is necessary.

## SCHEDULE 6

Regulation 20

### BEST AND FINAL OFFER

1. The information specified in this Schedule in relation to a particular tender exercise is as follows—

- (a) the rules particular to the best and final offer stage of the tender exercise;
- (b) a description of the information required by the Authority for the submission of a best and final offer;
- (c) the date, time and manner in which a best and final offer is to be submitted to the Authority;
- (d) the evaluation criteria to be applied by the Authority in evaluating best and final offers; and
- (e) any other such information in relation to the best and final offer stage of the particular tender exercise as the Authority may determine is necessary.

## SCHEDULE 7

Regulation 24

### EVENTS OF RE-RUN

1. The events in this Schedule are—

- (a) a material change to the qualifying project;
- (b) the Authority does not receive any completed and compliant pre-qualification questionnaires in accordance with regulation 14;
- (c) the Authority does not receive any completed and compliant qualification to tender questionnaires in accordance with regulation 17;
- (d) the Authority does not receive any compliant tenders in accordance with regulation 19;
- (e) the Authority does not receive any compliant best and final offers in accordance with regulation 20;
- (f) a preferred bidder withdraws or is disqualified from a tender exercise and the Authority has not determined a reserve bidder in respect of that qualifying project;
- (g) the matters referred to in the notice published in accordance with regulation 21(6) are not resolved by a preferred bidder and the Authority has not determined a reserve bidder;
- (h) a reserve bidder withdraws or is disqualified from a tender exercise after a preferred bidder has withdrawn or has been disqualified from that tender exercise or after a preferred bidder has failed to resolve the matters referred to in the notice published in accordance with regulation 21(6);
- (i) the matters referred to in the notice published in accordance with regulation 21(6) are not resolved by a reserve bidder and the preferred bidder has withdrawn or has been disqualified from that tender exercise, or the preferred bidder has failed to resolve those matters;
- (j) a successful bidder withdraws from a tender exercise;
- (k) a successful bidder has been disqualified from a tender exercise;
- (l) a successful bidder fails to make a payment in accordance with regulation 28(4);

- (m) the Authority determines that it would not be appropriate to grant an offshore transmission licence to any qualifying bidder.

## SCHEDULE 8

Regulation 25

### EVENTS OF CANCELLATION

**1.** The events in this Schedule are—

- (a) the Authority determines that there are no bidders or qualifying bidders in respect of a qualifying project;
- (b) a developer has been disqualified from a tender exercise in accordance with regulation 27(1);
- (c) a developer breaches an undertaking given to the Authority pursuant to paragraph 3 of Schedule 1;
- (d) a developer fails to meet the entry conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, in accordance with regulation 11;
- (e) a developer does not agree the variation to the bilateral agreement with the holder of a co-ordination licence in order that the preferred bidder has in place a valid bilateral agreement;
- (f) a developer terminates its bilateral agreement with the holder of a co-ordination licence;
- (g) a developer withdraws its qualifying project from a tender exercise for any reason;
- (h) a developer notifies the Authority that it wishes to change its request made in accordance with regulation 8 by—
  - (aa) re-specifying whether the project is intended to meet the requirements relating to a generator build qualifying project or an OFTO build qualifying project; or
  - (bb) notifying a construction phase contract that was not previously notified;
- (i) a developer modifies a construction phase contract in such a way that the Authority is no longer satisfied that the terms of the contract are conducive to the development of an efficient, coordinated and economical system of electricity transmission.

## SCHEDULE 9

Regulation 27

### EVENTS OF DISQUALIFICATION

**1.** The events in this Schedule in relation to a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, are—

- (a) causing or inducing any person to enter into an agreement to collude or to inform a developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder of the amount of any rival tender;
- (b) a material breach of any rules particular to the pre-qualification, qualification to tender, invitation to tender and best and final offer stages of a tender exercise or any requirements specified in these Regulations;
- (c) submitting any information to the Authority which is false or misleading unless the provision of further information is acceptable to the Authority;
- (d) engaging in, attempting to engage in, allowing or encouraging any anti-competitive behaviour by or between any developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder;

- (e) doing anything which would constitute the commission of an offence under section 1, 2 or 6 of the Bribery Act 2010(a).

**2.** The events in this Schedule in relation to a developer are—

- (a) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of the Authority, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder who is involved in a tender exercise (or any related party of these) in relation to any actions or omissions;
- (b) contacting a bidder or qualifying bidder who is subject to a tender exercise (or any related party of these) outside any requirements specified in these Regulations, including without limitation contact for the purposes of discussing the possible transfer of an employee of a bidder or qualifying bidder to the employment of the developer for the purpose of a tender exercise;
- (c) a breach of any warranty or undertaking (other than an undertaking pursuant to paragraph 3 of Schedule 1) provided to the Authority in accordance with these Regulations, unless the Authority permits that breach to be remedied within a period specified by the Authority by notice to the developer;
- (d) failure to provide information to the Authority in accordance with regulation 4(3) or 6(5);
- (e) failure to comply with the obligations specified in regulation 22.

**3.** The events in this Schedule in relation to a bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder are—

- (a) failure to make any payment as required in accordance with these Regulations, unless that failure has been remedied within a period not exceeding ten days in accordance with regulation 31(2);
- (b) fixing or adjusting the amount of its tender by or in accordance with any agreement or arrangement with any other bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder or by improperly using insider information;
- (c) entering into any agreement or arrangement with any other bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder to refrain from submitting a tender or as to the amount of the tender submitted;
- (d) communicating to any person other than the Authority the details of its proposed tender in respect of a qualifying project, except where this disclosure is made in confidence in order to obtain quotations necessary for the preparation of that tender;
- (e) where the bidding entity is a bidder group, any change to the membership of that bidder group other than a change which has been permitted by the Authority;
- (f) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of the Authority, the holder of a co-ordination licence or a developer, who is subject to a tender exercise in relation to any actions or omissions;
- (g) contacting—
  - (i) any officer of the Authority or the holder of a co-ordination licence; or
  - (ii) in relation to a bidder or qualifying bidder only, contacting any officer of a developer who is subject to a tender exercise,

outside any rules particular to the pre-qualification, qualification to tender, invitation to tender and best and final offer stages of a tender exercise or any requirements specified in these Regulations, including without limitation contact for the purposes of discussing the possible transfer of such officer to the employment of the bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder for the purpose of a tender exercise.

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(a) 2010 c.23.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the process for competitive tenders that will apply to the grant of offshore transmission licences.

Regulation 2 provides saving and transitional arrangements for a tender exercise in respect of a particular qualifying project where the invitation to tender stage has commenced under the 2013 Regulations but the tender exercise has not finished at the date upon which these Regulations come into force.

Regulations 4 and 5 provide for the Authority to undertake an estimate or assessment of the total costs required to develop and construct the transmission assets for a generator build qualifying project and for the Authority to recover its costs in doing so.

Regulations 6 and 7 provide for the Authority to undertake an estimate or assessment of certain costs incurred in relation to an OFTO build qualifying project and for the Authority to recover its costs in doing so.

Regulation 8 sets out how projects qualify for a tender exercise. Schedule 1 contains the details of how a qualifying project will be determined.

Regulation 9 provides for the Authority to determine the amount of a developer's payment for early evaluation of construction phase contracts, and for the Authority to recover certain costs from that payment.

Regulation 10 requires a developer to make a payment and provide security to the Authority in respect of the Authority's tender costs.

Regulation 11 provides that certain conditions must be satisfied by a developer. Schedule 2 contains the details of those conditions.

Regulation 12 requires the Authority to publish a notice specifying the date on which a tender round will begin for one or more qualifying projects.

Regulation 13 sets out the stages of a tender round.

Regulations 14 and 15 describe the pre-qualification stage of a tender round and how qualifying bidders will be determined. Schedule 3 sets out the information in the pre-qualification documentation.

Regulations 16 and 17 describe the qualification to tender stage of a tender round and how qualifying bidders will be determined to participate in an invitation to tender stage. Schedule 4 sets out the information in the qualification to tender documentation.

Regulation 18 describes the invitation to tender stage of a tender round. Schedule 5 sets out the information in the invitation to tender documentation.

Regulation 19 describes how the Authority will determine a preferred bidder. The Authority may also identify a reserve bidder. The Authority may hold a best and final offer stage under regulation 20. The Authority may also identify a reserve bidder at the best and final offer stage. Schedule 6 sets out the information in the best and final offer documentation.

Regulation 21 requires the preferred bidder to resolve certain matters before it becomes the successful bidder and describes the circumstances in which the reserve bidder, if any, must be treated as the preferred bidder.

Regulation 22 requires the developer to meet particular obligations from the preferred bidder stage.

Regulation 23 provides for participants to withdraw from a tender exercise or be deemed to have withdrawn and allows the Authority to retain any payments made to the Authority in the event of a withdrawal.



Regulation 24 provides for the Authority to re-run a tender exercise from a particular stage until a preferred bidder or reserve bidder is identified or determine that a tender exercise has failed. Schedule 7 sets out the events which give rise to the power for the Authority to re-run the tender exercise.

Regulation 25 provides for the Authority to cancel a tender exercise under the circumstances described in Schedule 8. Regulation 26 describes how payments and security will be forfeited, repaid or released in the event of cancellation of a tender exercise.

Regulation 27 allows the Authority to disqualify a participant from a tender exercise or tender round under the circumstances described in Schedule 9 and describes whether payments are to be repaid or security is to be forfeited.

Regulation 28 requires the Authority to publish details of the successful bidder. Regulation 29 requires the Authority to give details of the successful bidder to unsuccessful bidders and allows at least ten working days to elapse before an offshore transmission licence is granted to the successful bidder. The Authority must publish a notice to confirm its determination to grant an offshore transmission licence to the successful bidder.

Regulation 30 allows the Authority to recover its costs in running a tender round and return any overpayment and security where tender costs have been exceeded.

Regulation 31 relates to failure to make payments or provide security.

Regulation 32 allows an application to the Authority for a decision as to the effect of any restriction or requirement resulting from these Regulations.

Regulation 33 describes the rules for changes to bidder groups.

Regulation 34 requires the Authority to take reasonable steps to notify a participant of changes relating to the time at which, or the manner in which, a document is to be delivered or published or an action is to be completed.

Regulation 35 dispenses with sections 6A and 6B of the Electricity Act 1989 for an application in respect of an offshore transmission licence.

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