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STATUTORY INSTRUMENTS

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**2015 No. 1555**

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

**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.