
STATUTORY INSTRUMENTS

2010 No. 1903

**The Electricity (Competitive Tenders for Offshore
Transmission Licences) Regulations 2010**

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 and shall come into force on 29th July 2010.

Revocation

2.—(1) The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (“the 2009 Regulations”) are hereby revoked⁽¹⁾.

Interpretation

3.—(1) In these Regulations –

“the 1989 Act” means the Electricity Act 1989;

“the Authority” means the Gas and Electricity Markets Authority;

“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 17(3);

“bidder” means any person who submits a pre-qualification questionnaire to the Authority in accordance with these Regulations;

“bidder group” means two or more persons approved by the Authority acting together for the purposes of any submission to the Authority in accordance with these Regulations;

“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;

“cost recovery methodology” means the methodology for calculating and recovering the Authority’s tender costs in relation to a particular tender exercise published by the Authority in accordance with regulation 9(4);

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

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

(1) [S.I. 2009/1340](#).

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

“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;

“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 11(1);

“qualification to tender questionnaire” means a questionnaire of that description published by the Authority in accordance with regulation 13(2);

“qualifying bidder” means a bidder determined as a qualifying bidder in accordance with regulation 12(1);

“qualifying project” means a project as determined in accordance with regulation 6(3);

“reserve bidder” means a qualifying bidder determined as a reserve bidder in accordance with regulation 17(5) in relation to the best and final offer stage or regulation 16(4) 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;

“tender” means a submission by a qualifying bidder to the Authority in response to the invitation to tender documentation issued in accordance with regulation 15(2);

“tender rules” means the rules in relation to a particular tender exercise published by the Authority in accordance with regulation 9(4);

“transfer agreement” means the agreement to transfer any property interests, rights or liabilities in or relating to transmission assets from a developer to a successful bidder in respect of a qualifying project subject to a transitional tender exercise;

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

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

(2) Any notice required to be given by the Authority in accordance with these Regulations shall be given by publication 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 TRANSITIONAL TENDER EXERCISE

Calculation of costs incurred in connection with transmission assets

4.—(1) In respect of a transitional tender exercise, the Authority shall calculate, based on all relevant information available to the Authority at that time, 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) shall 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) In order to provide bidders, qualifying bidders, the preferred bidder, reserve bidder or successful bidder with the most accurate estimate of the costs which ought to be incurred in connection with developing and constructing the transmission assets in respect of a qualifying project, the Authority may request the developer to provide further information at a particular stage of a tender exercise for the purposes of enabling those bidders, qualifying bidders, or that preferred bidder, reserve bidder or successful bidder to take into account the most accurate estimate of the costs in order to meet any requirements of that particular stage.

(4) 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, undertake one or more further estimates of the costs which ought to be incurred in connection with the development and construction of those transmission assets, as it considers necessary, until such time as those transmission assets are available for use for the transmission of electricity in respect of that qualifying project.

(5) Where the Authority—

- (a) has previously estimated the costs in accordance with paragraph (2)(a) or (4); 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 shall, as soon as reasonably practicable, assess the costs which ought to have been incurred in connection with the development and construction of those transmission assets.

(6) 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 23(2), the assessment undertaken in accordance with paragraph (2)(b) or (5) shall be used by the Authority to determine the value of the transmission assets to be transferred to the successful bidder.

Payment of costs

5.—(1) Where the Authority has estimated the costs in accordance with regulation 4(2)(a) or 4(4) in relation to a particular qualifying project, it shall, prior to 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 a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in estimating the economic and efficient costs which ought to be incurred in connection with developing and constructing the transmission assets in respect of that qualifying project.

(2) Where the Authority has assessed the costs in accordance with regulation 4(2)(b) or 4(5) in relation to a particular qualifying project, it shall, as soon as reasonably practicable after the transitional tender exercise in relation to that qualifying project has been held in accordance with these Regulations, give notice to the successful bidder to make a payment to the Authority of a sum determined in accordance with the Authority's cost recovery methodology in relation to its costs in assessing the economic and efficient costs which ought to have been incurred in connection with developing and constructing the transmission assets in respect of that qualifying project.

PART 3

QUALIFYING PROJECTS AND DEVELOPER'S PAYMENT AND SECURITY

Qualifying projects

6.—(1) A developer who wishes the Authority to publish a notice in accordance with regulation 9 in order to commence a tender exercise, shall make a request to that effect in writing to the Authority.

(2) Where the Authority has received one or more requests in accordance with paragraph (1), the Authority shall, as soon as reasonably practicable thereafter, determine whether each of those requests relate to a qualifying project.

(3) A qualifying project is a project of which the Authority is satisfied—

(a) in the case of a transitional tender exercise, it is one where either—

(i) the requirements specified in paragraph 2 of Schedule 1 have been met; or

(ii) the provision specified in paragraph 3 of Schedule 1 applies; or

(b) in any other case, it is one where the requirements specified in paragraph 1 of Schedule 1 have been met.

(4) For the purposes specified in paragraph (3)(b), the Authority may determine that the requirement in paragraph 1(a) of Schedule 1 is met where—

(a) the connection offer has been referred to the Authority for determination in accordance with the provisions of a transmission licence; and

(b) the matter that has been referred to the Authority would not, in the opinion of the Authority, have a material impact on the design of the changes required to be made to the transmission system as specified in that connection offer.

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

(6) Where the Authority determines that a request relates to a qualifying project in accordance with paragraph (2), it shall give notice of that fact to the developer who made the request.

(7) Where the Authority determines that a request does not relate to a qualifying project in accordance with paragraph (2), it shall give notice of that fact to the developer who made the request and give reasons for its determination.

(8) Where the developer disagrees with the Authority's determination as notified to the developer in accordance with paragraph (7), the developer may make representations in writing to the Authority within seven days from receipt of the notice.

(9) The Authority shall consider any representations received from a developer in accordance with paragraph (8) and decide whether to amend its determination made in accordance with paragraph (2).

(10) The Authority shall give notice to the developer of the decision made in accordance with paragraph (9) and give reasons for its decision.

Developer's payment and security

7.—(1) Prior to publishing a notice in accordance with regulation 9, the Authority shall give notice to the developer of—

(a) the amount of payment that the Authority requires to be paid by the developer in relation to the Authority's tender costs as calculated in accordance with the Authority's cost recovery methodology for that tender exercise; and

- (b) the security that the Authority requires to be provided by the developer or such other person with whom the developer has made arrangements and has been approved by the Authority, in relation to the Authority's tender costs as calculated in accordance with the Authority's cost recovery methodology for that tender exercise.

PART 4

ENTRY CONDITIONS

Entry conditions in respect of qualifying projects

- 8.—(1) In respect of a qualifying project, the Authority shall notify the developer of—
- (a) the information that the Authority requires in order to be satisfied—
 - (i) in the case of a transitional tender exercise, that the conditions specified in paragraph 2 of Schedule 2 have been met in respect of that particular qualifying project; or
 - (ii) in any other case, that the 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 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 shall give notice to the developer in accordance with paragraph (1) at a time determined by the Authority.
- (3) The Authority may request the developer to provide any other information it considers necessary in order to satisfy itself that the conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met.
- (4) Where the Authority is satisfied that the conditions specified in paragraph 1 or 2 of Schedule 2, as the case may be, have been met in accordance with paragraph (1), it shall give notice of that fact to the developer.

PART 5

COMMENCEMENT OF A TENDER EXERCISE

Commencement of a tender exercise

- 9.—(1) As soon as reasonably practicable after the Authority—
- (a) has determined that one or more requests relate to a qualifying project in accordance with regulation 6;
 - (b) has received payment and security from the developer in accordance with regulation 7; and
 - (c) is satisfied that any 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 8(1)(b),
- the Authority shall publish a notice of its intention to commence a tender exercise in respect of those determined qualifying projects specifying the date on which the tender exercise shall be commenced in a given calendar year.

- (2) The Authority may, after consulting a developer in respect of a particular qualifying project, publish a notice specifying the date on which that particular tender exercise in respect of that

particular qualifying project shall be commenced (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 exercise on the date specified in that notice, the Authority shall publish a notice specifying a revised date on which that tender exercise shall be commenced.

(4) The Authority shall publish the tender rules and the cost recovery methodology no later than the date on which the tender exercise is to be commenced as specified in a notice published in accordance with paragraph (1), (2) or (3).

PART 6

STAGES OF A TENDER EXERCISE

Stages of a tender exercise

10.—(1) A tender exercise to be held in accordance with these Regulations shall comprise the following stages—

- (a) a pre-qualification stage in order to determine which bidders shall become qualifying bidders in respect of all qualifying projects within that tender exercise;
- (b) a qualification to tender stage in order to determine which qualifying bidders shall be invited to participate in an invitation to tender stage in respect of each qualifying project within that tender exercise;
- (c) an invitation to tender stage in order to determine which qualifying bidders shall be selected to become preferred bidders or reserve bidders in respect of each qualifying project within that tender exercise;
- (d) in the event that the Authority considers that it is unable to determine a preferred bidder in respect of a particular qualifying project, a best and final offer stage in respect of that particular qualifying project; and
- (e) a preferred bidder stage in order to determine the successful bidders to whom offshore transmission licences are to be granted in respect of each qualifying project with that tender exercise.

PART 7

PRE-QUALIFICATION STAGE

Pre-qualification

11.—(1) On the date specified in the notice published in accordance with regulation 9, the Authority shall commence the pre-qualification stage by publishing the pre-qualification documentation, which shall include the information specified in Schedule 3.

Determination of qualifying bidders at the pre-qualification stage

12.—(1) The Authority shall evaluate each completed pre-qualification questionnaire submitted to it by a bidder in accordance with the selection criteria set out in the pre-qualification documentation, in order to determine which bidders shall become qualifying bidders in respect of

all qualifying projects within that tender exercise and be invited to participate in the qualification to tender stage in accordance with regulation 13.

(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 11(1).

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

PART 8

QUALIFICATION TO TENDER STAGE

Qualification to tender

13.—(1) In respect of the qualification to tender stage the Authority shall 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 in accordance with paragraph (1), the Authority shall issue to that qualifying bidder the qualification to tender documentation, which shall include the information specified in Schedule 4.

(3) The Authority shall 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

14.—(1) The Authority shall 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 shall 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 13(2).

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

PART 9

INVITATION TO TENDER STAGE

Invitation to tender

15.—(1) In respect of the invitation to tender stage, the Authority shall give notice to all qualifying bidders of the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the invitation to tender stage of that tender exercise.

(2) As soon as reasonably practicable after a qualifying bidder has made the payment referred to in paragraph (1), the Authority shall issue to that qualifying bidder the invitation to tender documentation, which shall include the information specified in Schedule 5.

(3) The Authority shall invite all qualifying bidders who have been issued the invitation to tender documentation in accordance with paragraph (2) to submit a tender for providing offshore transmission services 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 grant of an offshore transmission licence to that qualifying bidder where that qualifying bidder becomes the successful bidder in accordance with these Regulations.

Determination of preferred bidders at the invitation to tender stage

16.—(1) The Authority shall 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 shall become the preferred bidder in respect of that 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 15(2).

(3) Where the Authority considers that it is unable to determine the preferred bidder in accordance with paragraph (1), it may hold a best and final offer stage in accordance with regulation 17.

(4) 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 shall become the reserve bidder in respect of that qualifying project.

PART 10

BEST AND FINAL OFFER STAGE

Best and final offer

17.—(1) Where regulation 16(3) applies, the Authority shall determine in accordance with the evaluation criteria set out in the invitation to tender documentation, which qualifying bidders shall be invited to participate in a best and final offer stage.

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

(4) The Authority shall 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 shall 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 shall 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 11

PREFERRED BIDDER STAGE

Notification of preferred bidder and reserve bidder

18.—(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 16(1) or 17(4), it shall 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 16(4) or 17(5), it shall give notice of that fact 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), before that preferred bidder becomes the successful bidder in accordance with regulation 23(1).

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

- (a) that the preferred bidder has established necessary arrangements to provide offshore transmission services for that particular qualifying project;
- (b) 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;
- (c) 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
- (d) any other matters which the Authority may determine are necessary in relation to that particular qualifying project.

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

- (a) how the matters referred to in paragraph (4) shall be satisfied and by what date; and

- (b) the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the preferred bidder stage of that tender exercise.
- (6) Where—
 - (a) the matters referred to in paragraph (4) are not resolved by the preferred bidder to the Authority’s satisfaction in accordance with the notice issued by virtue of paragraph (5)(a);
 - (b) the preferred bidder fails to make the payment referred to in paragraph (5)(b);
 - (c) the preferred bidder withdraws from the tender exercise in respect of that qualifying project in accordance with regulation 19(1); or
 - (d) the preferred bidder is disqualified from the tender exercise in accordance with regulation 22(1),

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

(7) Where the Authority has published a further notice in accordance with paragraph (6), it shall discontinue the tender exercise with the preferred bidder and may determine to treat the reserve bidder (where such reserve bidder has been determined in accordance with regulation 16(4) or 17(5)), as if that reserve bidder were the preferred bidder in respect of a particular qualifying project.

(8) Paragraphs (1) and (3), (4), (5) and (6) shall apply in circumstances where the Authority determines to treat the reserve bidder as if it were the preferred bidder.

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

PART 12 WITHDRAWAL

Withdrawal

19.—(1) A bidder, qualifying bidder, preferred bidder, reserve bidder, successful bidder or bidder group may withdraw from the tender exercise in respect of a particular qualifying project by giving notice in writing of that fact to the Authority.

(2) Where a bidder or qualifying bidder withdraws from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1), that bidder or qualifying bidder may only be re-admitted to the tender exercise in respect of that or any other qualifying project, where there has been a permitted change to the membership of the bidder group incorporating that bidder or qualifying bidder in accordance with regulation 28.

(3) Where a preferred bidder, reserve bidder or successful bidder withdraws from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1), that preferred bidder, reserve bidder or successful bidder shall not be re-admitted to that tender exercise in respect of that qualifying project.

(4) Where a bidder, qualifying bidder, preferred bidder, reserve bidder, successful bidder or bidder group has withdrawn from the tender exercise in respect of a particular qualifying project in accordance with paragraph (1), 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 the Authority’s cost recovery methodology in relation to that tender exercise.

PART 13

CANCELLATION AND TREATMENT OF PAYMENTS AND SECURITY ON CANCELLATION

Cancellation

20.—(1) Where the Authority is satisfied that one or more of the events in Schedule 7 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 qualifying project from the tender exercise.

(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 qualifying project from the tender exercise; 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), the Authority may—

- (a) re-run that tender exercise in respect of that qualifying project, from the beginning or a particular stage of that tender exercise in accordance with these Regulations; or
- (b) determine that the tender exercise in respect of that qualifying project has failed.

(4) In the event that no preferred bidder, reserve bidder or successful bidder is determined pursuant to a tender exercise run as a consequence of a decision taken in accordance with paragraph (3), the Authority may—

- (a) re-run a further tender exercise in respect of that qualifying project, from the beginning or a particular stage of that tender exercise in accordance with these Regulations; or
- (b) determine that the tender exercise in respect of that qualifying project has failed.

(5) Where the Authority determines that the tender exercise has failed in accordance with paragraph (3)(b) or (4)(b), that tender exercise is finished in respect of that qualifying project.

Treatment of payments and security on cancellation

21.—(1) This regulation applies where the Authority cancels a qualifying project from a tender exercise in accordance with regulation 20(1) (whether or not that tender exercise in respect of that qualifying project is re-run or is determined as failed).

(2) Where one or more of the events in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (s) of Schedule 7 are occurring or have occurred in respect of a qualifying project, the Authority shall, in accordance with its cost recovery methodology—

- (a) not repay wholly or in part 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;
- (b) repay to the developer wholly or in part the payment that has been made in accordance with regulation 7(1)(a), including any interest which may have been accrued on the whole or part of that payment; and
- (c) release to the developer or person approved by the Authority with whom the developer has made arrangements, wholly or in part the security that has been provided in accordance with regulation 7(1)(b), including any interest which may have been accrued where that security provided is a monetary deposit.

(3) Where one or more of the events in paragraphs (a), (l), (m), (n), (o), (p), (q) and (r) of Schedule 7 are occurring or have occurred in respect of a qualifying project, the Authority shall, in accordance with its cost recovery methodology—

- (a) repay to a bidder, qualifying bidder, preferred bidder or successful bidder 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;
- (b) not repay wholly or in part the payment that has been made in accordance with regulation 7(1)(a), including any interest which may have been accrued on the whole or part of that payment; and
- (c) determine that the security provided in accordance with regulation 7(1)(b) shall be forfeited wholly or in part, including any interest which may have been accrued where that security provided is a monetary deposit.

PART 14

DISQUALIFICATION FROM A TENDER EXERCISE

Disqualification

22.—(1) Where the Authority is satisfied that one or more of the events in Schedule 8 are occurring or have occurred and that the occurrence would materially affect the outcome of the tender exercise, it shall disqualify that developer, bidder, qualifying bidder, preferred bidder, reserve bidder or successful bidder, as the case may be, from the tender exercise in respect of that and any other qualifying project by giving notice of that fact 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 shall in accordance with its cost recovery methodology—

- (a) not repay wholly or in part the payment that has been made in accordance with regulation 7(1)(a), including any interest which may have been accrued on the whole or part of that payment; and
- (b) determine that the security provided in accordance with regulation 7(1)(b) shall be forfeited wholly or in part, including any interest which may have been accrued where that security provided is a monetary deposit.

(3) Where a bidder or qualifying bidder has been disqualified in accordance with paragraph (1), the Authority shall in accordance with its cost recovery methodology not repay wholly or in part any payment that has been made by that bidder or qualifying bidder in accordance with these Regulations, including any interest which may have been accrued on the whole or part of that payment.

(4) Where a bidder, qualifying bidder, preferred bidder or reserve bidder, as the case may be, is disqualified from the tender exercise 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 shall be taken into consideration for the purpose of determining the successful bidder in respect of each qualifying project.

PART 15

NOTIFICATION OF SUCCESSFUL BIDDER

Notification of successful bidder

23.—(1) Where the Authority is satisfied that the preferred bidder has resolved the matters described in the notice published in accordance with regulation 18(5), 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 shall publish a notice to that effect.

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

(4) The Authority shall give notice to the successful bidder of the amount of payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to the offshore transmission licence grant stage of that tender exercise.

Information in respect of successful bidder

24.—(1) Subject to paragraph (3), the Authority shall as soon as practicable after a determination has been made in accordance with regulation 23(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) shall 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 (5) 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 paragraph (1) applies, the Authority shall not grant an offshore transmission licence to the successful bidder before the end of the period specified in paragraph (5).

(5) Where the Authority gives notice to each qualifying bidder in accordance with paragraph (1), it shall allow a period to elapse ending not before midnight at the end of the tenth working day after the date on which the notices referred to in paragraph (1) are given.

(6) As soon as reasonably practicable after the end of the period specified in paragraph (5), the Authority shall confirm its determination made pursuant to regulation 23(2), to grant an offshore

transmission licence to the successful bidder in respect of a particular qualifying project and shall publish a notice to that effect.

(7) Where the Authority publishes a notice in accordance with paragraph (6), that tender exercise is finished in respect of that qualifying project.

PART 16

COST RECOVERY

Recovery of tender costs

25.—(1) The Authority shall recover its tender costs in relation to a tender exercise in accordance with the Authority's cost recovery methodology published pursuant to regulation 9(4).

(2) The Authority shall give notice to the developer in respect of any payment or security required in accordance with these Regulations of—

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

as calculated in accordance with the Authority's cost recovery methodology.

(3) The Authority shall give notice to a bidder, qualifying bidder, preferred bidder or successful bidder in respect of any payment required in accordance with these Regulations of—

- (a) the amount of the payment;
- (b) the date and time by which it is to be made; and
- (c) the manner in which it is to be made,

as calculated in accordance with the Authority's cost recovery methodology.

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

- (a) calculate its total tender costs in relation to that particular tender exercise; 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 7(1)(b),

in order to identify whether the total of the payments made and the security provided exceeds the Authority's total tender costs in respect of that particular tender exercise.

(5) Where the total amount identified as a result of the aggregation undertaken in accordance with paragraph (4)(b) exceeds the total tender costs incurred by the Authority in respect of that particular tender exercise, the Authority shall as soon as reasonably practicable after that tender exercise is finished—

- (a) repay wholly or in part any payment that has been made which exceeds the tender costs 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) release wholly or in part the security that has been provided which exceeds the tender costs 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,

in accordance with the Authority's cost recovery methodology in relation to that tender exercise, so as to ensure that the Authority's total tender costs have not been exceeded.

PART 17

MISCELLANEOUS

Failure to make payments or provide security

26.—(1) Where the developer fails to make the payment or provide the security in accordance with regulation 7, 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 9.

(2) Where the developer fails to make the payment or provide the security in accordance with regulation 7 within the further period specified in accordance with paragraph (1), the Authority may cancel that qualifying project from that tender exercise in accordance with regulation 20.

(3) Where either a bidder or a qualifying bidder fails to make any payment in accordance with these Regulations, the Authority may disqualify that bidder or qualifying bidder from that tender exercise in accordance with regulation 22 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

27.—(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 in accordance with the Authority's cost recovery methodology for any decision given in response to it.

Changes to bidder groups

28.—(1) Where a bidder group seeks to change its membership between the pre-qualification and qualification to tender stages of a tender exercise, the Authority shall permit that change provided that the new membership of that bidder group meets the pre-qualification selection criteria set out in the pre-qualification documentation issued in accordance with regulation 11(1).

(2) Any change to the membership of a bidder group after a qualification to tender questionnaire has been submitted to the Authority shall be considered by the Authority on a case by case basis and will be subject to the Authority's discretion to determine whether or not to allow that change would be fair and equitable to all other bidders or qualifying bidders participating in the tender exercise in respect of that particular qualifying project.

(3) Where the Authority has permitted any change to the membership of bidder group in accordance with paragraph (1) or (2), it may give notice to a bidder or qualifying bidder of the amount of any payment payable to the Authority as calculated in accordance with its cost recovery methodology in relation to its bidder group determination.

Changes to delivery of documents or actions

29.—(1) 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,

then paragraph (2) applies.

(2) Where this paragraph applies, the Authority shall 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 shall be made by a different time or date or in a different manner; or
- (b) the action shall be completed by a different time or date or in a different manner.

Disapplication of certain provisions

30.—(1) No application for an offshore transmission licence shall 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 shall be dispensed with insofar as they relate to an application for an offshore transmission licence.

Transitional provisions

31.—(1) Where a tender exercise has commenced under the 2009 Regulations but has not finished in accordance with the 2009 Regulations at the date upon which these Regulations come into force, that tender exercise shall be treated thereafter as having being held under these Regulations.

(2) A tender exercise to which paragraph (1) applies which conforms to the requirements of the 2009 Regulations shall not be treated as defective by virtue only of failure to comply with the requirements of these Regulations in respect of any aspect of the tender exercise held prior to the date upon which these Regulations come into force.

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



20th July 2010

Steve Smith
A member of the Gas and Electricity Markets
Authority

I approve

22nd July 2010

Charles Hendry
Minister of State
Department for Energy and Climate Change