
STATUTORY INSTRUMENTS

2015 No. 1555

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

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.