STATUTORY INSTRUMENTS

2015 No. 1555

ELECTRICITY

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

Made - - - -	*11th July 2015*
Coming into force - -	*3rd August 2015*

The Gas and Electricity Markets Authority(**1**), with the approval of the Secretary of State(**2**), makes the following Regulations in exercise of the powers conferred by sections 6C, 6D and 60 of the Electricity Act 1989(**3**).

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")(**4**) 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—

(**1**) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).
(**2**) In accordance with section 6C(4) of the Electricity Act 1989 (c.29).
(**3**) 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).
(**4**) S.I. 2013/175.

(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(**5**);

"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;

"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—

(**5**) 1989 c.29; schedule 2A was inserted by section 44 of the Energy Act 2008 (c.32).

(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(**6**), 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;

(**6**) 2006 c.46.

"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.

(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.