

SCHEDULE 1

Regulation 8

QUALIFYING PROJECTS

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;

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- (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.

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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;

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- (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⁽¹⁾.
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;

⁽¹⁾ 2010 c.23.

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- (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.