

UK Offshore Electricity Transmission

John Laing understands that Ofgem and DECC are establishing a competitive tender process for the award of concessions relating to offshore electricity transmission. This paper provides our response to the questions posed in the consultation document published by Ofgem on 6 October.

As a leading investor in DBFO infrastructure schemes, principally PFI/PPP schemes, and with considerable experience of bidding and operating such schemes across many sectors, John Laing is interested in bidding for this investment opportunity. Within our response, we have sought to include any further thoughts that we believe may be helpful to Ofgem.

Ofgem questions

Chapter 4

We welcome feedback on:

- The extent of information that should be requested at the Pre-Qualification and Invitation to Tender stages;
- Our proposed approach to selecting bidders;
- Our proposed approach to identifying the preferred bidder;
- Our proposed approach to dealing with bids for multiple offshore projects;
- Our draft template Pre-Qualification Document, particularly whether any further questions need to be considered in the Pre-Qualification Questionnaire; and
- Our draft template Invitation to Tender document
- We would also be interested to receive stakeholders' views on the practical application of this proposed approach.

Chapter 5

We welcome feedback on:

- Our proposed approach to RAV assessments and agreeing to commence a tender; and
- The scope of information we should make available to market ahead of tenders commencing.

Chapter 6

We welcome feedback on:

- How we would ensure that information provided by the offshore developer (such as seabed surveys) would be transferred to the successful OFTO;
- Whether we should establish parameters for variant bids, to ensure that the evaluation process remains transparent;
- The proposal to introduce a new licence condition for NGET covering information provision and assistance in the enduring regime.
- We would also be interested to understand stakeholders' views on the practical application of the proposal to broadly apply the principles off the transitional regime tender process on an enduring basis.

John Laing's response to each of the above questions is set out below:

Chapter 4

The extent of information that should be requested at the Pre-Qualification and Invitation to Tender stages;

Under the procedure set out in the consultation document, tenderers will be required to identify at Pre-Qualification stage which projects they wish to bid for. This is relatively early in a bid process for such a decision to be made and we believe will lead to concern by potential tenderers as to the level of bid cost they will incur in advance of shortlisting.

In order that the most informed decision can be made by tenderers on their choice of projects, we would ask that Ofgem provide as much detailed information as possible at Pre-Qualification stage. In addition to the information already proposed, we would expect the following to be included to facilitate decision making:

- Details of consents granted and conditions thereto (title, planning etc) available at that time, and the scope of those consents expected to be obtained prior to transition;
- Where they are to be transferred / novated, details of survey results and environmental /strategic impact assessments, together with level of covenant supporting these, that are available at that time and the scope of those expected to be obtained prior to transition;
- Details of costs, if any, relating to existing surveys etc that are to be passed to the successful bidder;
- Developer's terms for transfer of the project, and;
- Developer's required maintenance regime on existing generating assets, including anticipated timings (- we note the maintenance regime for transmission assets will need to dovetail into the generation asset maintenance programme).

In respect to the Developer's terms for transfer, as referred to above, and the Transitional Projects in particular, we note a developer may have reactive compensation equipment located onshore for control and monitoring of the wind farm in which case a complicated interface between the Developer and OFTO will arise with significant commercial implications. We are not clear that this level of detail has been satisfactorily addressed as yet.

We believe that it is important that a bid group is evaluated on their overall package of financial strength, technical capability and finance raising capability etc and look forward to clarification of Ofgem's evaluation criteria at this and subsequent bid stages.

We would be happy to enter into one overarching Confidentiality Agreement that covers all members of the bid group, as queried by Ofgem in Paragraph 4.41 of the Consultation Document.

Our proposed approach to selecting bidders/ identifying the preferred bidder

Process

We would welcome further details of the process envisaged including:

- How the tenders will be brought to the market. Is the OJEU procurement process to be used?
- Confirmation of the number of bidders to be taken through the PQQ and ITN stages.
- Will a BAFO be the norm, or a last resort option?
- How progressed will bids need to be at the point of preferred bidder selection, especially in relation to detailed design?
- Clarification of the level of commitment Ofgem expecting from funders at the various stages of procurement, as this too affects the level of design as well as the cost of funder's due diligence at each stage.

In respect to the penultimate item above, we note that 4 months appears tight in terms of producing detailed designs for the ITN stage (an issue of concern for the enduring schemes rather than transitional ones) particularly where surveys etc need to be obtained before detailed work can proceed. Our assumption at this stage is that a significant element of detailed design work will take place at preferred bidder stage, and that this will inevitably mean elements of the price will remain provisional until that stage.

In respect to the final item above, we note that whilst funders will be willing to provide letters of comfort at ITN stage, their commitment to provide funds will remain subject to internal credit committee approval and therefore typically not be guaranteed until just prior to financial close. The events of recent months has reduced the certainty of senior debt pricing and terms at preferred bidder whereby banks are seeking to include “market flex” provisions in their conditions. Nevertheless, authorities are continuing to award project financed concessions. John Laing has significant hands-on experience of the funding market and we would be pleased to share this knowledge with Ofgem.

We would be prepared to complete input sheets for Ofgem’s reference model as queried in Paragraph 4.50 of the consultation document.

Offshore Developers

It appears likely incumbent offshore developers will bid the concessions for their transmission networks and we believe it essential that Ofgem ensures that no competitive advantage exists and that this can be demonstrated in advance to other potential bidders. Given that so much of the information relating to the tenders is intended to come from the incumbents, we seek clarification of how a level playing field can be maintained.

In particular, clarification is requested on how Ofgem intends interaction between bidders and the incumbent developer to operate. We suggest it would be difficult in practice to expect bidders to successfully conclude negotiations with both Ofgem and the developer, especially as it remains unclear to us how developers will be incentivised to co-operate with bidders to the level that the latter will require. In a worst-case scenario, we would want to avoid any potential of negotiations with a developer reaching an impasse, so preventing a bid to Ofgem from being submitted.

Our proposal is that Ofgem remain the only direct point of contact for the bidders and that Ofgem manages the input of the incumbent developer including their terms of transfer and quality and timeliness of their provision of information.

Length of concession

Given the potential size of these projects, we believe it likely that many bidders will utilise a project financing solution to support their bids. To facilitate this, a long-term revenue stream will need to be demonstrated by bidders to funders. Hence we would welcome further details of how Ofgem will determine:

- Whether or not a competitive tender process is “fully effective”;
- Whether a guaranteed minimum period could be included to enable project financing to be obtained in all scenarios; and
- Whether or not bidders costs would be recoverable should Ofgem choose to award a revenue stream of shorter duration, which then prevents existing project-finance backed bids from being deliverable.

Risk management

We welcome the recognition by Ofgem that it is better placed than the OFTOs to manage and mitigate certain risks including the “known unknowns” highlighted in the consultation document. This will provide best value for Ofgem by reducing bidders’ contingencies and we look forward to further discussion on the nature of these risks. Our expectation is that the allocation of “change in law” risks will follow the typical market position for infrastructure schemes.

In respect to “unknown unknowns” referred to in Paragraph 3.11 of the consultation document, we look forward to the Ofgem / DECC consultation on the proposed detailed regulatory regime that we note is to be issued shortly. It appears that equity returns are to be regulated and we would like to understand how this impacts on pricing and sharing of upside and downside risks.

The limited number of technology suppliers may present an issue for funders, particularly where there is limited scope for an alternative provider to step in should a technology supplier fall away. In addition, there may be issues related to the ability of the technology providers to offer sufficient bonding and guarantees given the likely significant commitment of their resources to all of the projects.

In relation to the question asked at Paragraph 3.20 of the consultation document, and based on our understanding of a typical onshore TO’s supply chain, we would anticipate that the TO should be able to recover losses from its construction subcontractor for late delivery, and that therefore the OFTO’s should not be exposed to this situation which would be fully outside their control.

Bid Costs

Although no specific questions have been asked by Ofgem in Chapter 7 of the consultation document, we believe that understanding by potential bidders of the quantum of likely bid costs will be key to encouraging a vigorous and successful competition, particular in the current economic situation.

The unknown, and potentially large quantum of Ofgem’s fees particularly in relation to third party advisers, is likely to give considerable concern and we believe that dialogue will be required to explore with Ofgem how it can be ensured in advance how these can be kept to an appropriate level.

We look forward to more detail of the intended impact of provisions in the Energy Bill for recovery by Ofgem of bid costs, not least in respect to:

- Can comfort be provided to bidders in respect to how Ofgem’s bid costs will be expended? We note, for example, that a disproportionate amount of cost may be expended by Ofgem on resolving one bid submission to the potential detrimental cost of other bidders.
- Will NGET, acting as an adviser to Ofgem, be responsible for its own costs?
- At what stage will bidders know definitive costs for the purposes of the financial modelling and therefore pricing?
- What is the level and quantum of security/collateral required at each stage?
- What is the quantum recoverable by a losing bidder in relation to costs paid or security/collateral posted?
- What is the quantum of compensation available to bidders should Ofgem decide not to proceed with a project for any reason?

We suggest that the opportunity is sought throughout to jointly appoint advisers, between bidders (and perhaps between bidders and Ofgem), where possible to reduce costs.

Our proposed approach to dealing with bids for multiple offshore projects

We agree that multiple bids should be encouraged as these are likely to lead to significant efficiencies, not just in cost, but also in operational effectiveness. Our initial reaction though is that the cost of bidding separate projects to the level of detail required will be considerable and reduce the likelihood of Ofgem receiving multiple bids.

To ensure maximum benefit is gained from the tender process, we suggest Ofgem consider instead inviting simplified variant bids in respect to multiple projects that, if of interest to Ofgem can be developed on an open book basis using parameters from the compliant bid. Alternatively Ofgem may consider proposing an enhanced element of bid cost recovery for multiple bids to overcome market hesitancy.

More radically, from our experience in the PFI/PPP sector, we suggest that the partnering approach, now being widely used by both central and local government bodies for multiple project procurement, may provide Ofgem with enhanced benefits, whilst ensuring a fair and simple competitive process. For instance, on current education schemes running under the Building Schools for Future framework, the authority awards an exclusive opportunity to develop individual schemes to a “partner” consortium. The bidding competition involves a small number of “sample schemes” being fully worked up prior to selection of a preferred bidder, intended to show how the partnership will work in practice. This also allows those sample schemes to be implemented immediately post financial close. The remainder of the schemes within the procurement are then awarded to the winning bidder over time, subject to their ongoing demonstration of value and competency. We believe this partnering route could provide significant benefits to Ofgem when applied to a multiple project, for the following reasons:

- The likely cost of bidding under the present proposal may deter variant multiple project bids, limiting the potential value of the procurement exercise;
- Considerable bid costs, and potentially time, could be saved for all parties;
- The “partnering” mechanism could deliver significant savings over time, for instance guaranteed continuous improvement targets could apply as schemes are added to the initial “samples”;
- Grouping projects should improve the ability of the limited number of technical providers within this sector to support all bids ;
- It could help to address the issue already identified by Ofgem in relation to developing larger Zones, where a “connector hub” solution could be awarded initially with individual radial elements following.
- It should provide some comfort to potential bidders that existing generators will not have a over-riding competitive advantage over a multiple scheme which includes their generation assets;

We would welcome the opportunity to discuss alternative procurement processes with Ofgem.

Our draft template Pre-Qualification Document, particularly whether any further questions need to be considered in the Pre-Qualification Questionnaire; and our draft template Invitation to Tender document

We have no further comments on these items.

We would also be interested to receive stakeholders’ views on the practical application of this proposed approach.

Whilst we support the philosophy of allowing bidders freedom to innovate in responding to a largely performance related requirement, we believe that there is an underlying need for a level of strategic planning to the routing of the main transmission cables to inform bidders proposals. Without this we fear that the procurement may not lead to the most economic overall solution to UK offshore grid transmission.

With reference to the question posed in Paragraph 4.41 of the consultation document, we are happy to support the concept of joint site-visits for all bidders. Given the need to establish early on which projects to target, we would suggest that there are site visit opportunities at PQQ as well as ITN stage. We would expect bidders to have the opportunity to ask detailed questions/seek personal consultations separately following such visits.

Chapter 5

The scope of information we should make available to market ahead of tenders commencing.

Please refer to our response under Chapter 4 above.

Chapter 6

How we would ensure that information provided by the offshore developer (such as seabed surveys) would be transferred to the successful OFTO.

The proposal to introduce a new licence condition for NGET covering information provision and assistance in the enduring regime.

We have no comments on these items.

Whether we should establish parameters for variant bids, to ensure that the evaluation process remains transparent

In our opinion, to encourage the most flexible, innovative and best value bids, no parameters should in general be set in relation to variant bids. In our experience of other infrastructure market sectors this has not proved to be a significant issue in the procurement process.

We would also be interested to understand stakeholders' views on the practical application of the proposal to broadly apply the principles of the transitional regime tender process on an enduring basis.

We believe that it would in general be sensible to utilise the principles developed during the transitional regime to the enduring schemes.