

## Warwick Energy Limited

### Comments on Ofgem Consultation Document 142/08 Offshore Electricity Transmission: Competitive Tender Process 6<sup>th</sup> October 2008

#### Scope

This document summarises Warwick Energy Limited's (Warwick's) comments in response to the Ofgem Consultation Document 142/08 and associated Appendices and Annexes.

The present response should be considered along with the associated covering letter and comments already submitted by Warwick in response to earlier Ofgem consultations on Offshore Transmission.

#### Detailed Comments

Comments are detailed below against the following sections as per the structure of the consultation document.

##### Section 1 Introduction

###### Item 1.4

The reference to NGET's latest consultation on Charging Methodologies is noted. Warwick observes that NGET has raised legitimate and practical issues relating to the proposed tender process. In particular the issue of how the cost split between locational and non-locational costs could be correctly derived. Furthermore Warwick believes that this is unlikely to be resolved in a transparent manner, since the breakdown of OFTO prices will not be open book. These issues do not appear to be addressed by the proposed Tender process and therefore appear to be fundamental flaws in the Regulatory Proposals.

##### Section 2 Transitional Projects

###### Item 2.1

The proposed go active date is April 2009. The consultation appears to make no reference to the mechanism by which OFTO status of last resort can be conferred upon a developer. In particular it is unclear whether a developer will be required to register its intent to be considered as OFTO of last resort in the Tender Process. This issue has been raised by Warwick in previous consultation response. The present lack of clarity should be addressed by Ofgem since the industry requires certainty that transitional projects will be able to operate under the new regime.

In addition the mechanism for appointing an OFTO of last resort requires clarification well before the Go Active date. This will then allow developers to make any necessary preparations. Ofgem should address this issue as a matter of priority.

###### Item 2.2

While it may be true that the OFTO will not face a construction risk for transitional projects there will be issues of potential non-compliance with the proposed technical rules and Codes. In this respect Warwick has highlighted in previous consultation responses a number of areas where transitional projects may not comply with the evolving rules and Codes. It is disappointing that Ofgem's proposals do not appear to include any means by which these risks can be removed prior to the Tender Process. Such risk management (or suitable amendment of the proposed OFTO rules) would reduce OFTO risk and thereby ensure competitive bids for transitional assets.

Warwick therefore requests Ofgem to put a suitable mechanism in place to address these concerns.

### **Section 3 Overview of Regulatory Regime**

#### Item 3.6 (Period of revenue stream)

The proposal to allow the Authority the right to review the level of the revenue stream at predefined intervals over the license period is a welcome new proposal; i.e. this is an approach more in keeping with Onshore Regulatory practice. However it is unclear how Ofgem will determine whether tenders are “sufficiently competitive” to require this. The proposal requires further explanation/ development to clarify this before the new regime is put in place.

#### Item 3.8 (End of regulated revenue stream)

The treatment of the OFTO at the end of the 20 year license period is unclear. As noted in response to previous consultations it is likely that the OFTO assets will be required on an on-going basis beyond the 20 year period since Offshore sites are relatively scarce and new sites will be expensive to develop. The 20 year right down of costs will also act as a barrier to offshore developments in comparison to the 40 year period used for Onshore projects. This approach is discriminatory and will tend to prevent projects coming forward.

At the end of the 20 year license period Ofgem indicates that “*the Authority should determine the most sensible course of action*”. This introduces uncertainty and lack of transparency which OFTOs will need to account for in their proposals. Furthermore the approach does not provide an incentive to the OFTO to maintain assets adequately towards the end of the 20 year period. Indeed to minimise costs, and improve the chance of winning the tender, this will be a perverse incentive for potential OFTOs to cut maintenance in the final years of a project. This appears to be a flaw in the proposals which should be addressed.

#### Item 3.13 (Indexation)

Warwick supports the view that some form of indexation should be allowed. This should help reduce OFTO risks and therefore reduce costs to generator and wider demand customers. However the proposal that indexation should be the only means of managing the cost of unknowns is unlikely to minimise overall costs – and is inconsistent with Onshore regimes.

For Onshore networks the Regulatory framework allows justifiable cost expenditure against for example specific safety or equipment defect related expenditure. Warwick believes that similar mechanisms should be in place for OFTOs. For instance type faults on electrical equipment may lead to a requirement for replacement or significant modification during the 20 year license period; similarly changes in Health and Safety legislation may lead to significant increases in operational costs. For Onshore licensees such costs may be recoverable as specific items within the price control process. In contrast the Offshore proposals do not allow OFTOs any equivalent mechanism. This is clearly discriminatory against Offshore projects and will tend to increase OFTO risk – and thence cost.

For OFTOs there is no means within the proposed Offshore regime of mitigating against these risks - and there will therefore be a potential cost premium into the revenue stream. Warwick believes that there should be a mechanism introduced to allow recovery of a range of specific and pre-defined unknown costs.

#### 3.15 (Incremental capacity increases)

The 20% figure is an arbitrary level and Ofgem can “*make the decision on whether or not the investment falls within the threshold*”. This appears less than transparent and is unlikely to encourage OFTOs to provide incremental capacity.

### 3.18 (Capacity delivery incentives)

For the enduring regime the use of Liquidated Damages against OFTOs failing to deliver capacity on time should be considered. Warwick does not agree with Ofgem's expressed view that loss of revenue stream constitutes a sufficiently strong incentive. Use of Liquidated Damages is also more consistent with the Onshore regime.

### 3.19 (Operational incentives)

Warwick maintains the position that a 98% default availability target is arbitrary. It is further noted that there are examples of DC networks where this level of performance has not been consistently achieved in practice.

### 3.20 (Late delivery of onshore transmission assets)

Warwick believes that late delivery of Onshore transmission assets for connection of OFTO networks should be penalised using Liquidated Damages. Such an approach would be consistent with Onshore practice.

## **Section 4 Tender Process in the Transitional Regime**

### Item 4.2 (Introduction)

The timescales set out in Appendix 2 suggest it will take a full 12 months to award a license even in the transitional regime. This means that for transitional projects there is no margin for slippage given that the time between Go Active and Go Live is also 12 months. There is therefore a risk that transitional projects will be unable to operate after Go Live if there is any slippage in the entire OFTO tender process. Warwick believes that Ofgem should ensure that this situation cannot arise – and if necessary defer the Go Live date if it becomes apparent that this problem will arise.

For the enduring regime the timescale will also introduce unnecessary delays to new projects. Given that it will take 12 months for transitional projects the requirement to design and construct new networks is only likely to add further delay.

A particular concern is the proposed requirement that developers sign up to a Connection Agreement with NGET before there is any certainty over the design or cost of the OFTO network. Warwick has commented repeatedly on this problem in response to previous consultations. The latest consultation does nothing to address this basic issue – and a fundamental review of the arrangements is needed.

### Item 4.5 (Design of Process)

Ofgem states that “*we are designing a process that is unique to the electricity industry*”. In a new and emerging industry a unique means of regulation does not seem a prudent approach. Indeed it could act as a barrier to new projects coming forward and therefore prevent government targets being reached. Warwick has previously called for a fundamental review of the proposals and reiterates this request.

### Item 4.8/4.9 (Pre-Qualification Stage)

Comments on Annex 2 - the draft Prequalification Document (PQD) (Reference 142/08a) - are included later in this consultation response. On first inspection however it would appear that a significant portion of the PQD requests a level of detail that would be more appropriate at the tender stage.

### Item 4.11 (Advertising)

Warwick notes that the process requires potential bidders to nominate which projects it wishes to pre-qualify for at this early stage in the process. However the PQD makes it clear that only high level information on each project will be available at this stage. Hence it is likely that there will be insufficient information to allow potential bidders to select those

projects of greatest interest to them. The following then become potentially adverse consequences to this early selection:

- Potential OFTOs will seek to pre-qualify for all available projects – in the expectation that some of these will not be bid at the ITT stage. However in reality the potential OFTOs would only wish to bid for a subset of the available projects;
- Successful pre-qualifying entrants may choose not to enter the ITT stage for particular (or indeed all) projects. Reasons for not bidding might include insufficient funding, preference for other projects, or high perceived risks that only become apparent with access to the detailed information available at the ITT stage;
- There are a limited number of potential OFTOs and these seek to select the most advantageous projects to take forward. The early decision required at the PQQ stage increases the risk that there may be limited (or indeed no) competition for some projects.

Overall it would seem more logical to allow potential bidders to decide which projects to bid for at the ITT stage when greater project detail will be available.

#### Item 4.12 (Information available)

At the pre-qualification stage the high level of information on projects seems appropriate. However as noted above the level of detail required in the responses appears overly detailed.

#### Item 4.14 (Requirements of response)

The proposed time scales of 2 months for the response and a further 2 months for Ofgem to assess the response appear unnecessarily long. This in part is presumably driven by the overly complex detailed requirements of the Pre-qualification Questionnaire (PQQ) stage.

As noted above Warwick believes that the level of detail required is too onerous and hence the timescale required are excessive. It would seem more advantageous for the PQQ stage to be at a higher level and over a shorter timescale. The additional detail will in any case be required at the ITT stage.

#### Item 4.15 (Requirements of response)

It appears overly prescriptive to require potential bidders to confirm their compliance with industry codes and technical standards for transitional projects. It is expected that there will be cases where transitional projects do not fully comply with the codes and technical standards – since the project construction and/or design processes may have been completed prior to these standards being developed. Given that the PQQ stage will only contain high level information on projects it is unreasonable to expect bidders to state that their proposals will fully comply with the codes.

At present there appears no means of addressing potential non-compliance issues within the design of the tender process. This seems a notable deficiency. Warwick believes that Ofgem should introduce a suitable transparent process of dealing with any non-compliant networks well before the Go Active date. For example use of grand-fathering arrangements to permit non-compliance on an enduring basis.

#### Item 4.16 (Introduction)

The possibility that any potential OFTO may bid (and win) more than one project is an inherent part of the proposed regime. However there would be potentially significant extra work (and costs) for an OFTO to prepare independent compliant bids (and cost models) for separate projects as well as a further offers assuming more than one bid is successful. In view of this it seems unlikely that any potential economies of scale arising from successfully bidding more than one project will be realised.

The use of tender windows also increases the likelihood that bidder resource constraints will lead to cherry picking of projects. This is likely to reduce competition with potential cost increases in the resultant successful bids. Warwick remains opposed to the use of tender windows.

In these respects Warwick believes that the process needs modification.

Item 4.21 (Selection criteria and process Part 1)

The proposal to allow bidders the opportunity to amend non-compliant responses is sensible. However the need for this is partly driven by the scope of the required PQD. The suggested timescale of 48 hours to correct any deficiencies in the submission appears unrealistically short.

Item 4.22 (Selection criteria and process Part 2)

As noted before it seems likely that potential OFTOs will try to pre-qualify for multiple projects. This would be in the expectation that selection of preferred projects can then be made in a more informed manner – once greater project specific detail is made available in subsequent stages. The proposals do not appear to make adequate allowance for this.

In addition bidders may be capable of pre-qualifying for any single individual project but might not have the resources (financial or otherwise) to successfully bid for or indeed own/operate multiple networks. The fact that it is Ofgem which will effectively select which potential bidders are chosen to take forward to the ITT stage for each project seems inappropriate. The process should leave this choice to the bidders themselves to best foster competition and cost effective bids.

The above issue will also make Ofgem's task in selecting bidders to take forward on an individual project basis more difficult. Bidders may also drop out after the ITT is issued and this could lead to uncompetitive OFTOs being appointed.

There are also obvious problems of process where a bidder wishes to tender for multiple OFTO networks as a single package. There seems little prospect that the process will encourage should multiple bids – leading to loss of potential economies of scale.

Item 4.24/4.25 (Selection criteria and process Part 2)

It is noted that there could be significant numbers of bidders that meet the pre-qualification criteria. It is stated that *"it will be important to ensure that the number selected to bid for each project are limited to an efficient number"*. Section 4.25 goes on to propose a limit of 4 bidders for each project. Warwick believes that this proposal is artificial and could effectively eliminate the potentially most cost effective bid before the ITT stage is even reached. This in turn would lead to inefficient proposals being successful and adding costs to generators and demand customers alike.

The costs of the ITT process itself are likely to be relatively small in comparison to the costs incurred of not selecting the most cost effective provider. For this reason Warwick believes that the choice of whether pre-qualifying bidders take part in the ITT should be left as a commercial decision for potential OFTOs. The concern over wasted bid costs could be resolved by Ofgem notifying all pre-qualifying entrants of the number of pre-qualifying projects – for instance if this number is greater than 4. This would then allow entrants to assess the level of commercial risk associated with entering the ITT stage. The most important factor is that the winning bid delivers a cost effective solution. The Ofgem proposal of limiting entrants to the ITT stage to 4 therefore appears perverse.



#### Item 4.30 (Invitation to Tender Stage)

The proposed structure requires potential bidders to submit separate proposals in response to individual ITT documents. This approach does nothing to encourage economies of scale made possible by entrants bidding for more than one project. This lack of co-ordination between bids appears a basic problem with the proposals and needs further consideration.

#### Item 4.33 (Information from the developer)

The meaning of the reference to the “*complete terms of transfer for the transmission assets*” is unclear. It is also unclear why the RAV assessment should take account of any such terms. Ofgem should clarify its proposed approach in these key areas.

#### Item 4.34 (Information from the developer)

The requirement for developers to provide “*a written warranty to the bidders in respect of the suite of information in the data room*” requires clarification. For example the data room may include third party information, such as detailed technical design. It should be possible for developers to warrant that the information is complete and the best available to the developer – however it is clearly not possible for the developer to provide a warranty on the design itself. Similar issues apply to all other aspects of information in the data room.

Ofgem should clarify the form of warranty required at an early stage and consult further with the industry on this requirement. Note that Warwick believes that the information from the developer should be included within the terms of the ITT documentation as “relied upon developer information”. This would allow suitable scope for OFTOs to renegotiate if this information (however well intended and irrespective of any possible warranty) proves inaccurate or incomplete.

#### Item 4.38 (Other information)

Warwick agrees that Ofgem should act a co-ordinating point for queries that may arise during the bid process. It will however be important to ensure that this does not act to delay any responses or as a barrier to communications between relevant parties. Suitable processes need to be put in place to address this concern.

#### Item 4.39 (Data room)

Warwick notes that confidentiality agreements with Ofgem may not be sufficient to allow release of all relevant project material to potential bidders. For example turbine manufacturers often have particularly onerous confidentiality requirements with direct agreement with the manufacturer being required in some cases. The confidentiality requirements need to take account of such issues – the proposal for a single overarching agreement to cover subcontractors may not be adequate. These issues need further consideration.

#### Item 4.40/4.41 (Data room)

Warwick believes that it will be necessary to supplement information in the data room with tripartite meetings between bidders, Ofgem and the developer for transitional projects. For the enduring regime additional information may be required from NGET in terms of the prospective connection point. Site visits are also likely to be required to help inform bidders. Suitable means of managing both meetings and site visits need to be defined within the tender process.

#### Item 4.45 (Evaluation strategy and process Part 1)

The proposed time to prepare bids and produce a “firm and binding” offer is 4 months. Warwick does not believe that delivering a firm and final offer which is cost effective within this timescale will be possible. This is particularly true for the enduring regime where the construction cost and risk will form a major part of the process. The 4 month window is unlikely to allow bidders time to obtain “firm” or cost competitive prices from potential sub-

suppliers – and in any case the duration of the tender process itself, and uncertainty over the construction/ connection dates is going to make fixing prices difficult.

Warwick would also refer Ofgem to the issues raised by NGET in its *“Open Letter to Industry – Offer Pricing Options”* dated 5<sup>th</sup> November 2008. This letter explains the difficulties and additional costs which arise from the need to agree a “firm” price before construction contracts can be tendered. For the OFTO regime the level of risk associated with fixed prices are likely to result in highly inflated bids being received.

Item 4.46 (Evaluation strategy and process Part 1)

The proposal to allow bidders the opportunity to amend non-compliant responses is sensible. The suggested timescale of 48 hours to correct any deficiencies in the submission appears unrealistically short.

Item 4.47 (Evaluation strategy and process Part 2)

The wording suggests that Ofgem’s key assessment criteria will be cost. Warwick is concerned that over-emphasis on cost may lead to bids with excessive risk or inadequate technical or operational processes being awarded licences. This may then lead to subsequent failure of the OFTO with its resulting adverse impact on the associated generation project(s).

Warwick is also concerned that Ofgem will need to develop the skills and procedures to assess tenders from scratch – since this is not an activity presently undertaken by the Authority. Hence there is a risk that early projects will suffer as Ofgem acquires these new skill sets and appropriate management controls are put in place.

Some form of industry overview/ governance procedures should be introduced into the process to ensure that Ofgem manages the entire process in a proper and effective manner.

Item 4.50-4.52 (Evaluation strategy and process Part 2)

It is not clear why Ofgem requires two sets of financial model data to be included in the bid.

The key issue is that Ofgem compares bids on a level playing field. This is not simply a matter of entering data into a single financial model. It will also be necessary to assess relative risk and technical capability – the proposed process appears to place little emphasis on these critical aspects.

Equally if Ofgem proceeds along the proposed two model route then it seems logical for Ofgem to provide its model to bidders directly. There is then however no reason for the bidder to disclose its own model to Ofgem. Warwick notes that the level of financial model required for balance sheet financing is unlikely to be as robust or rigorous as those required to obtain market place funding. Hence the model is more likely to include “window dressing” to make it appealing to Ofgem rather than being a genuine reflection of project costs and financing.

Item 4.53-4.55 (Bids for more than one project)

The proposals that require independent bids for individual projects plus variant bids for combinations of projects (with individual projects separately identified within) will add significantly to the work necessary by bidders. Further the number of possible variant bid permutations for bidders pre-qualifying for more than 2 projects become totally unmanageable. Warwick does not believe that the proposals offer a credible means of achieving economies of scale for transitional projects – indeed providing a co-ordinated approach to network development in the enduring regime.

These apparent deficiencies will lead to higher costs from OFTOs contrary to the regulatory objectives. The issue of multiple bids should be subject to fundamental review.

#### Item 4.57 (Negotiation)

A further area for negotiation is for issues of possible non-compliance of networks. It is disappointing that for the transitional regime no mention of possible non-compliance of the networks with rules and Codes is made. This is an area which requires further examination and a suitable process needs to be put in place.

#### Item 4.58/4.59 (Negotiation)

The suggestion that there may be negotiation to explore potential benefits/ alternative solutions is welcome. However the potential benefit of this could be increased by timing these discussions earlier in the process – i.e. at the pre-qualification stage.

Mention is made of discussions between Ofgem and the bidder – there may be greater benefits accruing if the developer may also be included (where appropriate) in the discussions.

#### Item 4.60/4.61 (Best and final offer)

The basic process and aims of this stage as set out in the consultation document are unclear. Ofgem should clarify its aims and objectives in this stage of the process. At present it is difficult to see any benefit from this stage – with the downside of adding delay to appointment of an OFTO licensee.

### **Section 5 Pre-Tender Requirements**

#### Item 5.1/5.2 (Introduction)

Ofgem also needs to propose a suitable process whereby potential non-compliance issues are identified for individual projects ahead of the Go Active date. This would allow suitable mitigation measures to be put in place to manage any inherent risks associated with non-compliance ahead of the tender process. Without this stage there will remain a residual risk that potential bidders will uncover compliance issues as the tender process proceeds. Alternatively bidders may choose to include a premium in their bids to cover possible (unknown) compliance risks.

The present consultation document makes no reference to these issues which could have an important impact on the level of project risk perceived by OFTOs. This seems a basic omission which needs to be addressed as it could significantly impact on numbers of bidders and costs.

#### Item 5.4/5.5 (Ex ante RAV Assessments)

Warwick and a number of other developers have previously objected to the proposed 75% guarantee on RAV. It is disappointing that Ofgem's position on this, as with many other aspects of the proposals, remains unchanged.

The issue of establishing the RAV is a pre-requisite for the tender process. It is concerning that Ofgem is *“still considering how this will be achieved”*. Clearly the initial RAV assessments need to be complete in early 2009 to allow developers the opportunity to respond to Ofgem's assessments and if necessary query these in an appropriate manner prior to the Go Active date. Warwick would therefore seek reassurance that Ofgem will place some priority on this work.

#### Item 5.6-5.10 (Pre-Conditions in the Transitional Regime)

Item 5.6 indicates that Ofgem is willing to accept balance sheet finance. Care should however be taken that guarantees and checks are equally rigorous for balance sheet finance as other forms of funding. Warwick notes that major companies have failed in the



recent past and that the need for adequate (and ring fenced) finance for OFTOs is therefore imperative. There is also an obvious concern that Ofgem could apply more onerous conditions to forms of finance other than balance sheet based finance - and therefore discriminate against non balance sheet funded projects.

#### Item 5.11 (Market Information)

Warwick agrees with the intention to market the OFTO process well in advance to attract appropriate levels of interest. There are however still considerable uncertainties in the proposed Rules and Codes for the arrangements. This will tend to prevent bidders coming forward.

Warwick would reiterate its comments made in relation to technical issues in the response to Consultation Reference 84-04. In particular there are a number of areas where the proposed Codes appear over-engineered and ill considered. This is therefore likely to lead to excess costs irrespective of the tender process itself.

### **Section 6 Tender Process in the Enduring Regime**

#### Item 6.2 (Introduction)

Warwick notes the proposed zonal arrangements under the Crown Estates Round 3 proposals. These imply some belated recognition that the current regime proposals for Offshore transmission offer no means of providing an overall co-ordinated approach to network development. This seems ironic given that in March 2007, the government decided that the offshore electricity transmission regime should be a competitive, or non-exclusive, rather than an exclusive monopoly activity. The Crown Estates proposals now imply that a regional monopolistic approach to Offshore transmission would be more favourable.

Having said that Round 1 and Round 2 projects will still most likely proceed on the basis of pure radial connections with little prospect of cost sharing. Warwick therefore believes that the entire enduring arrangements should be subject to major review for this reason. This would also allow the lessons learnt from transitional projects to be incorporated into the regime more readily.

#### Item 6.3 (Pre-Conditions in the Enduring Regime)

Warwick maintains its opposition to the proposed pre-condition on there being a pre-condition on entering into lease arrangements with The Crown Estate. These concerns are documented in Warwick's response to Consultation 84-04.

It is also disappointing that concerns raised over the pre-condition to enter into a CUSC bilateral Connection Agreement with NGET are not even mentioned in the latest documentation. The issues to address include the need to sign up to FSL and the fact that NGET has indicated it will not start any Onshore reinforcement works until an OFTO is appointed. Both these factors will tend to prevent new projects coming forward and then delay those that do.

#### Item 6.20 (Role of Stakeholder)

The need for the developer to prepare a functional specification for the offshore generation assets appears unclear. There is no such equivalent requirement for Onshore projects – where the requirement is defined by the requested capacity (TEC) and relevant industry codes.

Warwick's view remains that the developer will need to go a long way in designing the OFTO network in order to obtain the necessary consents and leases. Such information will also be a pre-requisite for subsea surveys – which logically must be undertaken prior to the

tender process commencing. The tender process is therefore likely to prevent innovative or integrated network design solutions being brought forward.

There will also be no certainty that particular projects will proceed within any given tender round. This acts as a further driver to developers and OFTOs offering standalone rather than integrated design solutions. The overall effect will be lack of co-ordination and increased costs. This issue needs to be addressed for the enduring regime and may require a major re-thinking of the proposed processes.

#### Item 6.25 (During the tender process)

Warwick notes Ofgem's new proposal that there will be "a key role for NGET to assist in the assessment of the technical proposals provided by bidders as part of their tenders". This raises a number of questions including:

- If the Codes are clear why is NGET's input required to assess the solutions?
- Is this a tacit acceptance that Ofgem does not (currently) possess the requisite technical resource to assess the tenders?
- What additional resource is NGET to use to carry out this work? Warwick notes that NGET design and technical staff appear to be stretched with existing levels of connection enquiries without taking on more work;
- How are business separation issues between system operator and transmission owner to be managed within NGET?
- Why is NGET selected by Ofgem for this role in preference to the other TOs?
- For embedded connections is NGET the most appropriate party to assist in the technical assessment of technical proposals? In such cases is an input from DNOs required?
- How are NGET's costs to be ring fenced and recovered?

If NGET is required to assess tenders should there be an equivalent technical input into preparation of the ITT documentation itself. (The apparent lack of technical input to the ITT is highlighted elsewhere in this response.) Warwick notes that potentially wide ranging technical solutions will make tender assessment on a level playing field impossible.

There is clearly scope for further work and industry consultation over this new aspect of the proposals for the enduring regime.

#### Item 6.31 (Consents and leases)

Warwick agrees that it will be necessary for developers to continue to obtain consents and leases.

The concerns expressed in the response to Consultation 84-04 remain unaddressed by the proposals. In particular the leases consents and surveys will mean that the technical solution adopted for each project will need to be effectively defined by the developer prior to the tender process. This will tend to prevent a co-ordinated approach to design and limit opportunities for innovative solutions.

## **Annex 2 - Draft Template Prequalification Document (Ref: 142/08a)**

### Overview

As noted elsewhere the documentation appears to cover much ground that would normally be contained within an ITT document. Warwick believes that the time spent on the pre-qualification process should be reduced to enable greater time to prepare tender returns. This would allow greater possibility of prices being "firm" since the proposed 4 month timescale appears woefully inadequate for the enduring regime without bidders including significant risk and uncertainty premiums.

### Important Notice

Information provided by the developer will remain vested in the developer and will not be subject to any copyright from Ofgem. Similar comments apply to the notice within the ITT document – except in this case the extent of information vested in the developer will most likely significantly exceed any information provided by Ofgem. It is important that intellectual property is treated in an appropriate manner and the wording of the proposals is inadequate in this respect.

Item (v) prevents bidders from entering into discussions to develop variant bids. The beneficial situation where two existing OFTOs may combine to provide a co-ordinated connection proposal does not appear to have been considered. This issue needs to be addressed particularly for the enduring regime.

Ofgem indicates that all information is provided “in good faith”, similar criteria should apply to information within the project “data room”. This is contrary to Ofgem’s requirements elsewhere that the developer must provide a warranty on such information. This inconsistency should be corrected.

### Item 1.3 Overview of Project

Since the level of detail will be high potential bidders are likely to want to pre-qualify for all available projects. Selection of their preferred project(s) is more likely to be possible at the ITT stage. The level of detail requested for pre-qualification appears overly complex within this context.

### Item 1.4.4 Preferred Bidder

The reference to the Preferred Bidder needing to have “*necessary land arrangements, both offshore and onshore*” in place requires clarification. Elsewhere Ofgem’s proposals require the developer to obtain consents and leases – and by default these will need to include both onshore and offshore substation sites. It is difficult to see how the Preferred Bidder can be expected to be responsible for these as well.

### Item 2.3.2B Evaluation Criteria

For the enduring regime the OFTO will be responsible for design, construction and operation of the network as well as all necessary funding. The lack of any evaluation criteria regarding engineering competence for the design and construction stages is a notable omission. This should be corrected.

### Section C Financial and Economic Information

It seems likely that OFTOs will be special purpose vehicles. Given this much of the historical information requested may have little relevance. It is also unreasonable to suppose that project insurances will be in place at this stage.

### Section D Operational and Management Capability and Experience

The level of detail requested appears inappropriate to a pre-qualification document. For instance staff skills and requirement to name all “critical” subcontractors. It is unlikely that this level of detail will be available until the ITT stage (at best).

### Section E Technical and Specialist Capability

There is no information requested on design/ construction capability. Warwick notes that for the enduring regime this will be required. In any case a basic competence or ability to manage such issues would be required; e.g. for major repairs and for capacity increases. There should be a requirement even in the transitional regime for suitable process to be in place to manage such issues.

## **Annex 2 - Draft Template Prequalification Document (Ref: 142/08b)**

### Important Notice

Similar comments apply to this as to the equivalent statement in the Prequalification Document. In addition the condition that bidders may not engage in any publicity for the duration of the Transmission License without Ofgem's agreement appears both unreasonable and unmanageable. Warwick believes a alternative wording is required.

### Item 1.4 Overview Of Tender Process

There should be no requirement to include the names of those parties that have pre-qualified to bid for the project. This information would potentially comprise competition, e.g. in the instance where only one or two parties have pre-qualified. As such names of pre-qualifying bidders should remain confidential between each bidder and Ofgem.

### Item 1.4.4 Preferred Bidder

The reference to the Preferred Bidder needing to have "*necessary land arrangements, both offshore and onshore*" in place requires clarification. Elsewhere Ofgem's proposals require the developer to obtain consents and leases – and by default these will need to include both onshore and offshore substation sites. It is difficult to see how the Preferred Bidder can be expected to be responsible for these as well.

### Item 2.9.2 The Great Britain Security and Quality of Supply Standard (GBSQSS)

Since OFTOs will also be governed by this document ownership of the GBSQSS should be extended to include all OFTOs. There is no reason to limit ownership to the Onshore TOs. The ownership and participation within governance procedures for all other relevant applicable codes should also be extended to include OFTOs.

### Item 2.11.2 Decommissioning

The issue of decommissioning requires clarification. The life of the OFTO network may exceed the initial 20 year license the meaning of decommissioning costs becomes questionable. Decommissioning costs are a potentially significant risk for the OFTO and this aspect of the regime requires clarification. It may be simpler to exclude decommissioning from the initial License regime and hold a separate tender at the appropriate time when there is greater certainty over timing.

### Item 3.2 Technical Overview

A major point of concern is the extent to which the OFTO network needs to be designed in advance of the tender process. The consents will require substation locations, cable routes and landfall points to be determined in advance. This will most likely need to be done by the developer. Hence the scope for innovative solutions will be restricted before the tender round commences.

Notwithstanding the above limitations it will be impossible to compare prices on a level playing field since the technical solutions proposed by OFTOs may differ significantly. Ofgem appears to wish to compare standardised cost models but the technical solution chosen, and its associated performance may profoundly affect costs. For example a very efficient system design may lead to cost savings which outweigh inefficiencies elsewhere in a bid. It may then be the case that if the same (optimum) system design were considered by another bidder that significant cost savings could be achieved. The proposed process allows no means of identifying and realising the most cost effective design. This fundamental flaw in the process is likely to increase costs to generators and demand customers alike.

Warwick believes that the issue of technical design, and its effect both on future network performance (and possible extension) is key to the entire Offshore industry. There is currently no mechanism in the entire process (tender or otherwise) to achieve design optimisation.

A further difficulty in comparing OFTO bids is that there are no industry standards – other than the high level ones included in the industry codes. For the Onshore network it is straightforward for the TOs to optimise the overall network design. Suitable detail of scope can then be included during the tender stage. Contract award to the lowest cost solution is only possible because the technical scope is tightly defined. Such bid comparisons will not be possible in the OFTO regime.

There is also no equivalent common design process in the Offshore regime. This appears to be another major flaw in the tender process since it will not be possible to compare bids on a level playing field – or indeed have all bidders compared on the most cost effective design.

#### Item 3.3.3 Change

There appears to be no means by which an OFTO can mitigate against Regulatory change – e.g. changes to technical, code and legal requirements. For Onshore regimes risk management is possible due to the Regulatory Review process. The lack of review is likely to lead to increased costs being included by OFTOs. Furthermore OFTOs may fail to allow for factors which significantly influence (increase) future costs to allow for code changes. This could lead to financial failure of the OFTO in the worst case. The emphasis by Ofgem on lowest cost bids increases the likelihood of successful bidders having included lesser amounts for risk mitigation. Hence this feature of the regime will tend to increase the risk of future OFTO failure – which would be to the detriment of all concerned.

#### Item 4.2 Shortlisted Bidders

The publication of bidders names is only likely to reduce competitive drivers and lead to increased prices. Warwick does not agree with this publication.

#### Appendices

These appear to show that parts of financial modelling requirements are relatively well developed in comparison to the technical requirements of the ITT. Warwick is concerned that lack of clear technical input to preparation of the ITT will lead to potentially inefficient OFTO designs being tendered. The fact that Ofgem has indicated a new proposal that NGET should assist in tender assessment does little to address this problem. The technical content in the ITT is key to being able to compare tenders fairly and also in arriving at least cost solutions. Ofgem is therefore requested to clarify:

- Technical content included in the ITT;
- How this technical content is to be developed on a project by project basis;
- What resources are available to Ofgem to carry out these critical tasks?