Early Competition Plan

Phase 3 Consultation: Chapter 5, End-to-end process

December 2020

nationalgridESO

Contents

1 Summary

This chapter focuses on the tender and post-tender award processes for early competition. It covers the entire process from when a project is deemed suitable for competition through the Network Options Assessment ("NOA") process to when a single bidder is selected as the Preferred Bidder ("PB"). This includes the stages for Pre-Qualification ("PQ"), Invitation to Tender ("ITT") (stage 1), ITT (stage 2) and the PB stage. It also sets out the post-tender period including the preliminary works, solution delivery and commissioning, operations and end of revenue period. This end-to-end process is set out in Figure 1.

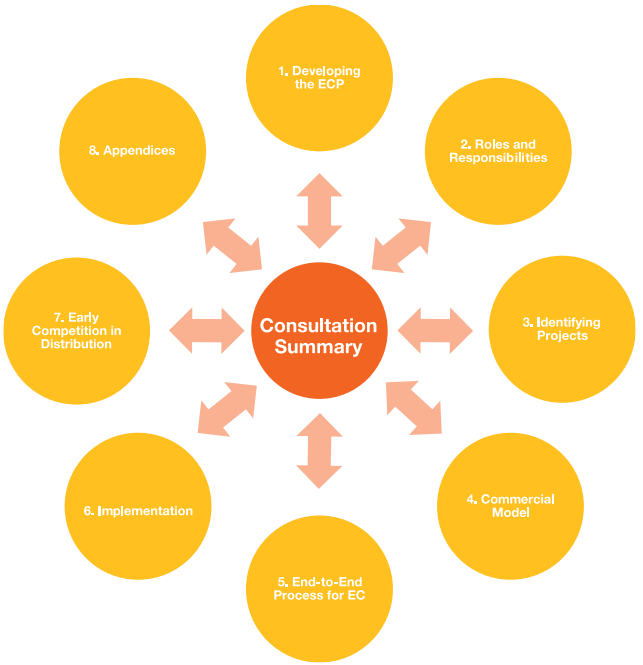


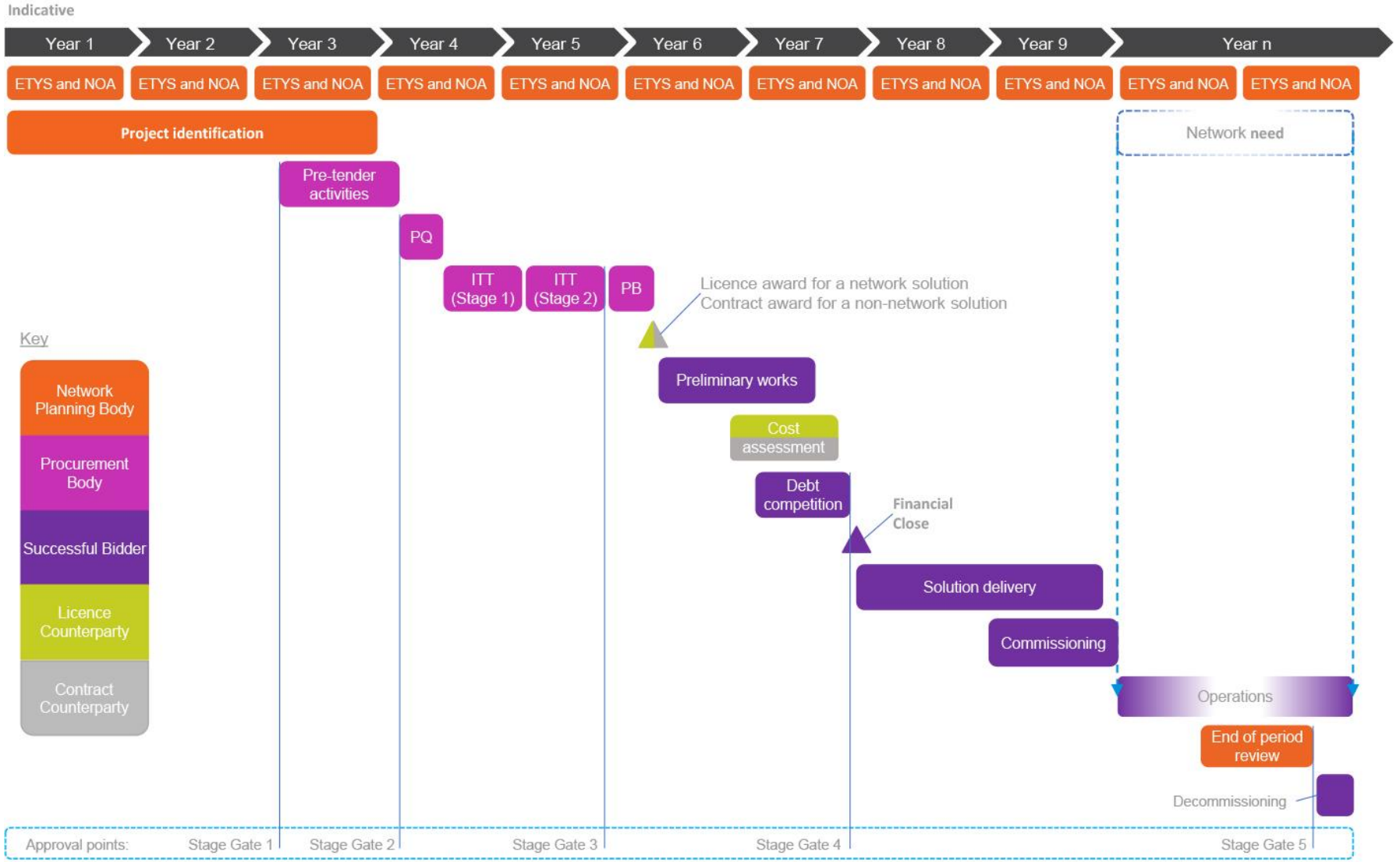
Figure 1: End-to-end process

The tender process was a core element of our Phase 2 consultation (see Section 5) and our views in this consultation build upon that work.

The design objective for the tender process is to maximise value for consumers by allowing market forces to drive innovation and efficiency. The early competition tender process will aim to achieve this by minimising bid costs, maximising competitive tension and encouraging bidders to submit a wide range of innovative and efficient solutions.

In addition, the post-tender award process stage is covered towards the end of this chapter where we set out further views on key process steps and components e.g. the proposed incentive regime.

Figure 2: Whole-life early competition model



Note: Stages are based on our engagement with stakeholders but are not decided. Timescales are illustrative based on comparable precedents and are likely to vary between projects.

2 Pre-tender activities

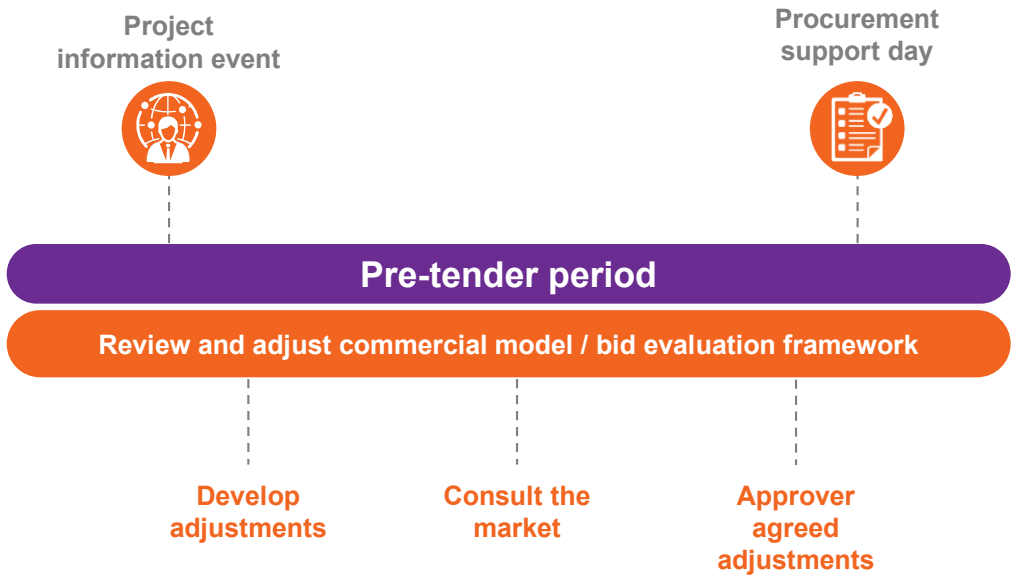
Pre-tender activities covers the year period between when a project is identified in the Network Options Assessment ("NOA") (see Chapter 2) as a proceed recommendation and suitable for early competition and the launch of the pre-qualification ("PQ"). The activities will be led by the Procurement Body and supported by the Contract and Licence Counterparties and the Network Planning Body.

The objective of pre-tender activities is to maximise the benefits of early competition by supporting the market where it offers value to the consumer. Pre-tender activities were covered in our Phase 2 consultation (see Section 5.1). Our preferred options in our Phase 2 consultation were to run project information and networking events, sharing technical information with the market, supporting consortia building, innovation workshops and Transmission Owner ("TO") liaison. Feasibility studies were an alternative option considered in our Phase 2 consultation.

We are not proposing any additional activities to our Phase 2 consultation. Each following sub-section shown below will present our Phase 2 consultation stance, stakeholder feedback and our updated preferred option.

Our current preferred options during the pre-tender stage are for the Procurement Body to undertake the following two activities: 1) To run procurement support and project information events; and 2) to review and adjust the bid evaluation framework and commercial model based on the need specifics and any policy steers (See Figure 3).

Figure 3: Pre-tender period



*Illustrative timescales

2.1 Potential bidder support

This section sets out the potential bidder support activities undertaken by the Procurement Body during the pre-tender stage. This includes procurement support and project information, consortia building and innovation workshops, TO liaison and feasibility assessments.

Procurement support and project information

Phase 2 consultation

Our Phase 2 consultation proposed running individual events to disseminate information on specific needs, share technical information and support bidders on the procurement process.

Stakeholder feedback

Stakeholders were broadly supportive of these activities and noted that they are required for such procurements.

Updated preferred option

Our updated preferred position is that both project information and procurement support are key activities to be undertaken during the pre-tender period.

Project information

The purpose of these events would be to inform the potential bidders about the need specification details, the initial solution from the NOA process, understand the technical requirements, to provide potential bidders with an opportunity to ask questions or could be to facilitate site visits.

The Procurement Body, with support of the Network Planning Body, would present all the technical details of the need specification. This would include, for example, system requirements, length of the need, geographic boundaries and information from the 'very early engagement'.

Information which could be provided would include solutions submitted as part of the NOA process, substation and land information from the TO's and technical modelling information (see Section 3). All information shared at this stage would also be publicly available.

Procurement support

The purpose of these events would be to ensure that bidders were appropriately prepared to develop their bids and enter the procurement process.

These events and supplementary information would set out in detail the procurement process, evaluation criteria, the commercial model, the contractual or licence documents and the submission interactions. Bidders and their advisers can ask specific questions of the procurement team about any of the previously mentioned topics.

For both project information and procurement support we considered that the costs of running such events would be relatively low as the Procurement Body, Contract and Licence Counterparties and Network Planning Body would have these capabilities. The experience of other large infrastructure procurement in (e.g. Offshore Transmission Owners ("OFTOs") is that it helps to attract new investors and potential bidders and can reduce the number of clarification questions.

Consortia building and innovation workshop

Phase 2 consultation

Our Phase 2 consultation suggested consortia building activities and innovation workshops.

Stakeholder feedback

Stakeholders were not convinced that consortia building activities or innovation workshops would drive significant value for consumers. They also noted that consortia building would happen as part of other market engagement sessions and that they have established approaches to this.

Updated preferred option

Our updated preferred option is that there is not clear evidence that consortia building support and innovation workshops creates value for consumers.

Consortia networking event days and online portals

Consortia networking event days could support new entrants in presenting their technologies. They could also support other supply chain members marketing their capabilities to investors and potential consortia leads.

We considered whether an outline portal could be set up to allow potential bidders to share profiles on their experience, contract information and capabilities. Companies would still need to undertake due diligence on potential bid partners, but it would allow them to identify potential partners. This could be of value to smaller potential bidders.

However, it is not clear whether supporting bidders to build consortia would lead to a better overall outcome for consumers. Stakeholders told us that market engagement events are typically how they begin consortia building. They also saw due diligence activities on potential consortia members as something they would do without support.

We would also expect other activities, such as project information days, to facilitate the building of consortia. On that basis our preferred position is not to introduce any focused consortia building activities during the pre-tender stage.

Innovation workshops

We work with innovation partners to adapt to changes in the energy system. The necessity for new energy technologies and more renewables mean that we need to operate the electricity transmission network in new and different ways. We work with academic and industry partners to co-create and deliver innovation projects that will help us to operate the transmission network more effectively in the future to meet our 2050 net zero target. Early competition is not designed to introduce untested technologies into the network (see Section 5). As set out in our Phase 1 update (see Page 20) Innovation Competitions will seek how to develop design only competition. The NOA process will allow interested parties to submit solutions to meet the need which the Network Planning Body will challenge and adapt. Therefore, our current position is to not include innovation workshops as a pre-tender activity.

TO liaison

Phase 2 consultation

Our Phase 2 consultation suggested that the Procurement Body could provide information from the TO's and support bidders engagement with TO's in their bid development.

Stakeholder feedback

Stakeholders provided mixed feedback on the TO liaison activity that the Procurement Body could undertake during the pre-tender period. One stakeholder suggested that it should be avoided entirely. Another noted that TO's are not funded to support market players and are bound by commercial confidentiality with their suppliers and so may be restricted in what they can share with bidders. Another suggested that site visits could be facilitated, or network mapping could be shared.

Updated preferred option

Our updated preferred position is that TO liaison is not required as a specific activity by the procurement body during the pre-tender period.

We consider that all necessary information from the TO could be shared as part of project information days referenced above will provide bidders with enough information to do any initial solution design. Project information days could include site visits. We do not believe that there is additional information required from the bidders which requires additional liaison activities.

Bidders as part of the ITT stages may have to have the TOs assess their bids in terms of network impact and we are proposing ringfencing arrangements to address any potential conflicts of interest (see Chapter 2, 6).

Feasibility assessments

Phase 2 consultation

We proposed in Phase 2 consultation that feasibility studies could be undertaken for proposed solutions. We highlighted that this may be resource consuming or create an unlevel playing field.

Stakeholder feedback

One stakeholder was very supportive of feasibility studies and others were less supportive.

Updated preferred option

Our updated preferred option is that feasibility assessments should not be part of the pre-tender activities. They will be significantly costly. They may create an unlevel playing field, providing a benefit only to the bidders which utilise them. There is also a risk that the conclusions might not align with the tender evaluation creating a liability for the party undertaking them, especially if the Procurement Body and the Network Planning body are separate entities.

Feasibility studies could be quite a costly service for the Network Planning Body or the Procurement Body to undertake for solutions which may not be submitted as bids. We would expect that bidders undertake their own feasibility assessments during solution development. Also, as set out in consortia building and innovation workshops, the purpose of early competition is not to replace innovative partnerships and we would expect all solutions to have a technology readiness of 8 or equivalent as set out in Section 5.

Due to time and resource constraints feasibility assessments may not be available to all potential bidders. There would be a risk that some bidders may be advantaged over others by this activity.

There is also a risk of projects effectively getting a form of 'pre-approval' for part of the tender assessment which considers the feasibility of projects (see Section 5 and Section 6). This may give those potential bidders an unfair advantage.

This also creates a potential liability for the party undertaking the feasibility study. If the feasibility study does not identify a risk which is later identified during the bidding process the bidder could pursue legal action.

Our view is that the conflicts and costs created by pre-tender feasibility studies is unlikely to be outweighed by the benefits of feasibility studies during the pre-tender stage. We are therefore not including these as part of the pre-tender activities for early competition.

2.2 Tender flexibility

This sub-section considers undertaking the review and adjustment of procurement and commercial models during the pre-tender period.

This is an area we considered in our Phase 2 consultation (see Section 5.2) which we have considered in more detail.

Phase 2 consultation

In our Phase 2 consultation we considered the challenge of developing a procurement process for a spectrum of potential needs that could be tendered through the early competition model whilst keeping the process as standardised as possible. We considered that there were three broad categories of project which have different requirements and types of bidders. We proposed that the tender process could be 'flexed' but that we would need to develop our thinking further on this area.

Stakeholder feedback

Stakeholders broadly agreed that a one-size-fits-all approach to procurement would be inefficient and some flexibility would be required. They also noted the importance of standardisation for all parties to learn the process and to reduce costs. There were mixed views regarding the size categories.

Updated preferred option

Our updated preferred position is that there is a need to flex the bid evaluation framework and commercial model. A standardised approach to the commercial model and bid evaluation framework which is reviewed on a case-by-case basis is more efficient than the proposed categorised approach.

In addition, as our NOA pathfinder projects progress, we will consider to what extent they should be merged with the processes being developed in the ECP. We will aim for consistency between all of the processes wherever appropriate.

Our preferred option is that the Procurement Body, Network Planning Body and counterparties work collaboratively during the pre-tender period to review and adjust the standard bid evaluation framework, weightings of the Technical Adjusted Tender Revenue Stream and commercial arrangements.

The categories proposed in our Phase 2 consultation were too broad and further separating them would lead to high levels of complexity. It is also likely that residual inefficiencies would exist as the categories are not tailored to the specific need.

We propose that the process to review and adjust the bid evaluation framework and commercial arrangements should be:

1. Network Planning Body identifies a need suitable for competition
2. Approver agrees that the project is suitable for competition
3. Procurement Body reviews the need and identifies whether any of the features of the need are unique, so that the standard commercial model and bid evaluation framework are not appropriate
4. The Procurement Body undertakes market soundings to identify appropriate debt terms for fixing the debt assumptions in the ITT (stage 2) assessment
5. The Procurement Body determines whether and what level of preliminary works revenue is appropriate
6. The Procurement Body determines the minimum level of gearing and equity oversizing
7. The Procurement Body develops adjustments to the bid evaluation framework and commercial model
8. The Procurement Body seeks market views on the proposed changes to the commercial model
9. Approver agree the proposed adjustments
10. The Procurement Body makes any adjustments to the bid evaluation framework/weightings or the commercial model itself and communicate to the market
11. The Procurement Body will also decide on the level of mark-up on the contract and/or licence it will allow from bidders and at what stages during the tender process.

We would expect the Procurement Body to determine whether the project specific elements of the contract/licence were suitable to allow bidders to propose 'mark up' contracts/licence and how this should be proposed, and the contract updated during the procurement process. It is important that bidders are all bidding into the same contract so adjustments would need to be undertaken during the process.

Any adjustments to the standard bid evaluation framework or commercial model would be developed by the Procurement Body and assessed by the Approver based on the following principles:

- Maximise consumer value
- Reduce inefficiencies
- Minimise transaction costs
- Only deviate from the standard model where necessary
- Maintain a level playing field

Questions

1. Do you agree with our preferred position on pre-tender activities? Please explain your answer.

3 Provision of information

This section focusses on the provision of network related information to bidders during the tender process. Provision of network related information after an award decision has been made is covered in Section 8.1. Provision of information before the tender starts is covered in Section 2.1 .

In our Phase 2 consultation (see Section 5.2) we set out our thinking on what information, much of which is traditionally only available to the Electricity System Operator ("ESO") and the Transmission Owner ("TO"), will need to be made available to all bidders, to support development of desktop technical proposals. We also set out the potential challenges with supplying this information and our preferred high-level approach to mitigating these issues. Finally, we also indicated two areas (pre-submission reviews and post award exchange of detailed technical information) that needed further consideration before we could form a preferred position.

Our key principle is that all qualified bidders should have access to the same information as is available to an incumbent TO taking part in the competition. Through workshops, webinars and our Phase 2 consultation we have developed our position that the network related information used today by the ESO and TOs to develop initial desktop solutions should be available to qualified bidders

This approach is also consistent with the Energy Data Task Force recommendations which Ofgem asked the ESO to consider as part of this work as set out in our Phase 1 update (see Page 5). Recommendation 2 "Maximising the value of data" sets out a principle of 'presumed open' (see Page 24) which supports our position that the current information should be made available. However, it should be noted that there is a recommended spectrum. We are working on the assumption that 'Shared' (see Page 25) is the appropriate categorisation for the purpose of network information to support early competition, and this will influence our final position.

3.1 Network related information

This sub section covers the information that we expect to be provided to bidders as part of the ITT stage 1 tender pack.

Phase 2 consultation

In our Phase 2 consultation (see Section 5.2) we set out a list of information developed with stakeholders that we believe will be needed by bidders to develop a desktop technical solution that can be fully costed. This is set out in Table 1.

Table 1: Network related information for bidders

Type	Description	Source
System Requirement Form Part A	Sets out required and expected boundary transfer capability needs over the next 10 years, indicating where reinforcement or management solutions are required.	ESO
ETYS models	Circuit information e.g. how nodes/substations are connected, electrical and physical properties and changes across ETYS study years.	ESO
Network Modelling	Software to model how proposal affects network capability.	Market
Study guidelines	Sets out assumptions to be used for network modelling.	ESO
Land	Current information is held by TOs on relevant land ownership, access rights and existing surveys.	TO
CBA tool	A tool that allows TOs to run their own indicative cost benefit analysis of options.	ESO

Stakeholder feedback

In our Phase 2 consultation we asked, "Do you agree that the proposed list of primary information relating to network information is adequate to identify and cost potential solutions for both network and non-network solutions?"

Several stakeholders confirmed that they felt the information was adequate, while some stakeholders expressed a view that depending on the solution, additional information may be required. This would be needed to assess the impact of a proposal on the network in order to develop a full desktop proposal and costs. No stakeholders identified any obvious missing data.

Updated preferred option

Our updated preferred option is that in addition to the information specified in the Phase 2 consultation, impact studies will be conducted on bidders' proposals and that these studies will be commissioned by the Procurement Body. More detail on how we have developed this position is set out in the next section New issues for consultation. Section 5 also contains more detail.

We agree that it is important to understand each proposals' impact on the network. This will highlight any changes that may be needed to the desktop design and give a greater indication of the robustness of costs and potential technical risks of the proposed solution. While the Electricity Ten Year Statement ("ETYS") models will allow bidders to do some impact assessment, some proposals will require additional studies.

It is expected that where possible, study results should be shared with bidders following ITT (stage 1) to inform the development of their plans for ITT (stage 2). See Sections 5 and 6 for more information on the stages.

Be consistent, whilst remaining flexible

When stakeholders highlighted new avenues to explore in our Phase 3 Information Provision Workshops in September, we scheduled additional workshops to explore further with all interested stakeholders

New issues for consultation

This section covers the need for network impact studies and information updates.

Network Impact Studies

In September and October, we conducted webinars and workshops which included exploration of options on network impact assessment. The following options were considered:

1. Could additional information to be supplied to bidders in advance to remove the need for impact studies, or are separate impact studies needed on bidder's proposal?
2. If impact studies are needed should bidders arrange their own impact studies directly with the TO, or should the Procurement Body commission the impact studies with the TO

3. Is there an alternative to the TO conducting the needed studies? Most of the stakeholder feedback expressed the position that the decision on which network impact studies are needed is generally only possible to establish once the nature of the proposal is understood. In some cases, they may not be needed at all. Stakeholders have indicated that it is not practical/possible to supply information in advance to bidders that would negate the need to conduct additional network impact studies.

All stakeholders expressed a preference for the Procurement Body to commission any needed network impact studies. This option is seen to support a more co-ordinated, consistent and predictable output, as the Procurement Body will be able to plan delivery of the studies with the relevant parties. Stakeholder views on whether the TOs should conduct the studies is mixed. This topic is covered in more detail in Chapter 2, Section 6.

Information updates

In response to our Phase 2 consultation individual stakeholders raised some questions that form the following themes:

- The expected frequency with which parties need to update supplied information
- Where liability for costs is expected to sit if supplied or needed information proves to be inaccurate or unavailable

Preferred option

Our preferred position is that the Procurement Body will organise for the needed network impact studies to be conducted (more detail set out in Section 5).

We recognise that the network will be evolving during the life of the tender process and expect all parties to take a due diligence approach to the use and provision of information. We would expect all relevant parties to advise the Procurement Body of material changes that affect the tender process, so that corrective action can be taken

For the detailed design process needed after the conclusion of the tender process, the winner will either hold a Competitively Appointed Transmission Owner ("CATO") Licence and have signed up to the System Operator Transmission Owner Code ("STC"), or will hold a commercial contract and have signed up to the Connection and Use of System Code ("CUSC") and Grid Code. Both will also hold the relevant agreements in respect of their interface with the existing system e.g. via the relevant connection application process. We would expect existing licence, contract and code mechanisms to manage the detailed design and data exchange process (See Section 8.1)

Questions

2. Do you agree with our preferred position on impact studies?

3.2 Sensitive information

In our Phase 2 consultation (see Section 5.2) we acknowledged that the ETYS models may contain information considered sensitive. This could mean that it is not currently possible to share the ETYS models with parties who do not hold a transmission owner licence, and/or are bound to the System Operator Transmission Owner Code ("STC").

Phase 2 consultation

In our Phase 2 consultation we set out our preferred option for supply of the ETYS models to qualified bidders who do not hold a transmission licence or are bound by the STC. Our current preferred option is that these bidders will receive the ETYS models in an encrypted format to protect the underlying data sets and will need to sign a Non-Disclosure Agreement ("NDA") before receiving the models.

Stakeholder feedback

There was no specific feedback that with the proposed mitigations in place, the ETYS models could not be released to all bidders. Some stakeholders expressed concern that encryption may not offer enough protection of sensitive data in the ETYS models and that they may be disadvantaged if the they do not use a compatible analysis platform

Some stakeholders questioned whether an NDA provides enough protection against the misuse of data and propose that this should carry an equivalent sanction to Licence breach

Additional stakeholder engagement

In September and October, we conducted webinars and workshops which included starting to identify sensitive data and discussion of the use of NDAs. Further stakeholder engagement will be conducted over the coming months.

Updated preferred option

Our preferred position remains that the ETYS models used by the TOs for network planning will be made available to qualified bidders. Where bidders are not Licenced or party to the STC, encryption and non-disclosure agreements will be required.

Release of ETYS models

The ability of all bidders to have access to the same network modelling data is a key principle of our preferred option.

We are currently producing a more detailed assessment of the sources and nature of the information contained in the ETYS models to clarify how much is already publicly available and how much is sensitive based on existing codes, Licence obligations and legislation.

We will also be looking at the expected effectiveness and impact of encryption that is now available in the latest version of PowerFactory. This will include understanding how this would interface with alternative modelling software, assuming ETYS models do contain information that is genuinely sensitive and/or confidential.

If it becomes impossible to share the ETYS models in their current format because of the data they contain, we will assess the impact of producing a modified version with anonymised or generic data sets. For the avoidance of doubt a TOs bid team would be expected to use the modified models (see Chapter 2, Section 6).

Non-Disclosure Agreements

Stakeholder views have varied on what would be an appropriate sanction for breach of an NDA and produced no strong conclusion. Views ranged from financial and equivalent to that faced by TO Licence holders (up to 10% of turnover), to punitive measures such as exclusion from future events, to affected parties seeking damages. We will continue to assess whether NDA's have a genuine role to play based on the actual data in the ETYS models and will continue to work with our legal advisors to understand existing precedents.

Be transparent where possible

We've acknowledged sharing ETYS models will not be easy and have set out the ongoing work in this area.

Questions

3. Is there anything in our approach to sharing network information that you believe is unworkable?v If yes, please provide details?

3.3 Pre-submission review

In our Phase 2 consultation (see Section 5.2) we identified a pre-submission review in ITT Stage 1 as an area requiring further exploration.

Phase 2 consultation

In our Phase 2 consultation we described how during our engagement with stakeholders there has been discussion about whether the Procurement Body should offer all bidders the opportunity for a dedicated pre-submission review to discuss and refine their proposal in ITT Stage 1. As already set out in our Phase 2 consultation (see Section 5.2) stakeholder support was divided.

Stakeholder feedback

We conducted additional stakeholder engagement on this topic in two workshops held in September.

Most stakeholders agreed that any such review would have to be based primarily on the existing codes and standards (such as Security and Quality of Supply Standard) and technical expertise within the ESO or TOs. Given that qualified bidders would already have had to demonstrate a minimum level of technical competence and knowledge to pass pre-qualification, the value of such engagement appears minimal.

We believe that with a robust clarification process in place this will allow bidders to develop their bid, aligns to the principle of equal treatment and helps ensure fair competition.

Most stakeholders agreed that individual reviews create a significant risk of unintentional bias being introduced, adversely affecting the fairness of the competition. Potentially some bidders could receive more help than others and this could easily stray into coaching/consultancy.

Some stakeholders expressed a view that a pre-submission review would be beneficial for newer entrants and/or newer innovative solutions.

Our preferred option

Our preferred position is that a dedicated pre-submission review of a tender proposal will not be offered to bidders.

We are proposing that the tender process will include a formal clarification questions process. Bidders and evaluators will be able to ask clarifying questions of each other, to make sure bidders can maximise their proposal and they are fully understood during evaluation.

Unless there is a proven confidentiality requirement which will be decided by the Procurement Body, all questions and responses will be published to all bidders. This will help support transparency and avoid discrimination that might be caused by unintentionally coaching individual bidders.

Newer entrants to the market will have the opportunity as part of the pre-tender market engagement, to develop a detailed understanding of what knowledge they will need to prepare a quality tender submission.

Questions

4. Do you agree that individual pre-submission reviews should not be offered to bidders during the tender process if the clarification question process is in place?

4 Pre-qualification

Pre-qualification ("PQ") is the initial stage of a procurement process. The objective of the PQ stage is to ascertain whether bidders have the technical, financial and legal standing to become a licensee or contractual counterparty.

PQ is a backward-looking stage which considers the experience and capabilities of the bidders and consortia entering the tender process. PQ does not assess the solutions that bidders are submitting or their plans for delivery of those solutions.

Based on benchmarks of Offshore Transmission Owners ("OFTO") and Private Finance Initiative ("PFI") we estimate that the PQ stage will take approximately 2 to 4 months. This period is from the issuance of the PQ documents to the completion of the evaluation by the Procurement Body.

In our Phase 2 consultation (see Section 5.3) our preferred position was that bidders should be assessed on legal standing, financial standing, sustainability and technical capabilities. We also considered a two-stage PQ process to address small players being unduly excluded and passporting.[1] Stakeholders broadly agreed with our proposals and requested further details on the approach we would take to assessing bidders.

Our Phase 3 consultation preferred position is that legal standing and financial and technical capability should be assessed at PQ stage. We have provided greater detail about what we expect bidders to provide and how we will assess it. We have provided more detail about how the assessment will be undertaken and suggested that the implementation of passporting should only be considered once there is a clearer view of the pipeline of projects suitable for competition (see Chapter 3).

[1] Passporting is the feature of the OFTO regime which allows bidders to enter into multiple ITT stages after passing PQ once

4.1 Pre-qualification criteria

This sub-section is about how the Procurement Body will assess bidders within PQ.

This is an area we proposed in our Phase 2 consultation which we have progressed our thinking on.

Legal standing

Phase 2 consultation

In our Phase 2 consultation we proposed that legal standing would be assessed based on ownership and incorporation of the company, details of any advisors, questions to satisfy financial regulations, and, if relevant, structure of consortia.

Stakeholder feedback

Stakeholders were broadly supportive of our proposals for assessing legal standing in PQ.

Updated preferred option

Our preferred option is that bidders are still assessed on their legal standing as part of PQ. Each member of the bidder group would be expected to provide information on company specific information as set out in Table 2. For consortia the lead bidder will be asked to provide information on the consortia.

Table 2: PQ information requirements

Area	Information	Bidders
Company details	• Name of bidder • Company registration • Date of registration in country of establishment • Place of incorporation • Trading status	All
Group Details	• Immediate parent company details • Ultimate parent company details	All
Shares, advisors and licences	• Details of directors of bidding entities • Significant shareholders of bidder members • Legal, financial, technical adviser details • Other licences held by the bidder	All
Details of grounds for exclusion	• Any individuals with the bidders who have the conviction of criminal activity, corruption, fraud, terrorism, money laundering or child labour • Breach of tax obligations, environmental obligations, social obligations and labour law obligations • Bankruptcy or insolvency • Distortion of competition/role in the procurement process • Deficiencies in performance in a prior contract • Subject to UK/EU sanctions • Previous breach of a NDA by any company in the group	All
Consortia	• Bidder group organisational structure • Organisation which will hold the licence/contract • Relationship between each bidder group member • Key contractual relationships	Lead bidder

Sustainability

Phase 2 consultation

In our Phase 2 consultation we proposed that sustainability should be assessed based on environmental impact, decarbonisation and social impacts.

Stakeholder feedback

Some stakeholders noted that our sustainability criteria were unclear but also that it was an important area.

Updated preferred option

Our updated preferred position on sustainability as part of PQ is that the grounds for exclusion under the legal standing are sufficient for this stage in the procurement process. These will not provide a comprehensive assessment of bidders' environmental impact, decarbonisation commitments or total social impact. Instead they set a minimum standard of which we expect all bidders to meet.

The aim of PQ is to limit the bidders at Invitation to Tender ("ITT") (stage 1) to ones who are compliant with their legal and contractual obligations. ITT stage 1 and 2 will have project specific requirements in relation to sustainability and will go beyond the minimum standards of PQ.

In addition, corporate standard requirements will be set in the contract/licence. The Successful Bidder is expected to adhere to these standards which will go beyond legal obligations. These standards will be determined as part of implementation and the pre-tender period. Corporate standard requirements will set standards that successful bidders must adhere to as part of the contract or licence.

Financial capacity

Phase 2 consultation

In our Phase 2 consultation we proposed that financial standing should be assessed based on intended financing solution, proof of ability to raise financing for similar scale projects and audited financial accounts.

Stakeholder feedback

Stakeholders were broadly supportive of our proposals for assessing financial standing in PQ. One stakeholder noted that the assessment of financial standing should not be a barrier to market entrants.

Updated preferred option

Our updated preferred option is that sole bidders or consortia would be asked to provide evidence that they have the financial capacity to finance the reference design. Sole bidders or consortia will be asked to provide evidence of the following areas:

- Demonstrate that they have financial capacity to secure financing solutions that are equal to or more than the equity value of the concept design in the Network Options Assessment ("NOA") using the assumed level of gearing (see Section 2.2). This is in line with the requirements for the OFTO regime.
- Whether they are using corporate or project finance
- If corporate finance then demonstration of ability to raise the equity value through net assets
- If project finance then proven track record in raising equity, proven track record in investing or financial institute letter of comfort in relation to the equity value
- 3 years of audited statutory accounts (if an SPV then parent)
- Declaration of any contingent liability
- Chairman’s half-yearly statement

Technical capabilities

Phase 2 consultation

In our Phase 2 consultation we set out that bidders should be assessed on their experience of delivering similar sized projects.

Stakeholder feedback

Stakeholders were broadly supportive of our proposals for technical capabilities in PQ.

Updated preferred option

Our updated preferred option is that sole bidders or consortia would be asked to provide evidence that they have the technical capacity to deliver a solution of comparable scale and complexity to the reference design. Sole bidders or consortia will be asked to provide evidence of the following areas:

- Experience of preliminary works of projects of comparable scale and complexity to the reference design
- Experience of construction works of comparable scale and complexity to the reference design
- Experience of maintaining and operating works of comparable scale and complexity to the reference design

4.2 Assessment process

This sub-section is about how assessment process for the PQ stage would work in practice.

This is an area we included some proposals on and highlighted as an area for further development in our Phase 2 consultation which we have progressed our thinking on.

Phase 2 consultation

In our Phase 2 consultation we set out our thinking on the assessment of PQ across the following areas:

- We proposed that the 'passporting' feature of the enhanced PQ stage of OFTOs could be applied
- We suggested that an area for future exploration could be a two-stage pre-qualification process, and
- We noted that we would develop thinking on how consortia members changing over time would be managed.

Stakeholder feedback

Stakeholders were broadly supportive on the passporting feature and requested further details. There was not a lot of support for the two-stage PQ process and stakeholders also welcomed further thinking on how consortia members changing over time would be managed.

Updated preferred option

Passporting

As discussed in Chapter 3, the pipeline for early competition is not yet known. For passporting to be applied efficiently further visibility of the potential pipeline is required.

In general, we are of the view that passporting should be applied where there are tenders run for projects of similar scale and complexity within a close timeframe. This is an area that should be kept under review by the Procurement Body as early competition develops. This should also be considered during the implementation phase when there is greater visibility of the pipeline.

Two-stage PQ

This proposal aimed to reduce barriers to entry caused by PQ which some bidders flagged may stifle innovation. However, very early market engagement during the NOA process provides an avenue for smaller bidders to engage with the process and have their solutions assessed through the NOA interested persons process - albeit not to the same level of scrutiny as early competition.

Changing consortia over time

In Public Private Partnership ("PPP") style procurements if a consortia member wanted to switch a member following the PQ process this could be negotiated with the procuring authority on the grounds it is a like for like switch. This is typically done on an ad hoc basis and the burden of proof sits with the consortia.

There are some risks associated with this process in terms of other bidders disputing the process on the grounds of equal treatment and transparency. This is dependent on the dispute process and the tender regulations in place. See Section 7 for more information on the dispute process and potential tender regulations.

Our preferred position is to allow bidders to make a request to change consortia. Consortia can make the case to the Procurement Body that the switch is a like for like. The Procurement Body would assess this on a case-by-case basis and would have full discretion over the decision-making process.

Be consistent, whilst remaining flexible

We propose to utilise passporting where appropriate projects arise.

New issues for consultation

There are two new areas for consideration as part of our Phase 3 consultation. How bids will be assessed against the criteria discussed above and the alignment to the Ofgem licencing process.

Assessment of submissions against the criteria

Our preferred option for the assessment of bidders' PQ submissions is that they are done on a pass/fail threshold. Bidders are expected to provide a response or evidence, where appropriate, for each of the points set out above in the legal, financial and technical areas. If the bidder's evidence for any of the required areas is insufficient or the bidder is not able to provide evidence or an appropriate response, then they will receive a fail. A bidder must receive a pass across all assessment areas to progress to ITT (stage 1).

Alignment to the Ofgem licencing process

Our preferred position is that the licence application process is aligned with the tender process where most efficient and as much as possible.

The Electricity System Operator ("ESO") has been discussing the potential legislative, regulatory and licencing arrangements with the Department for Business, energy and Industrial Strategy ("BEIS") and Ofgem but these are still at a relatively early stage of development. No applicants have progressed through the TO licence process since privatisation. Although the OFTO regime has awarded licences during this period which provides a good basis from which to consider the approach for licencing for early competition. Ofgem will develop a new licencing process for Competitively Appointed Transmission Owners ("CATO") which will need to be aligned to the tender process (See Chapter 6 for more information).

We want to avoid speculative and inefficient licence applications as this will incur cost on behalf of the bidder and Ofgem side which will erode the benefits of competition. We would expect there to be elements of the licence application assessment embedded within the PQ, ITT (stage 1), ITT (stage 2) and Preferred Bidder ("PB") stages where appropriate.

Once Ofgem has developed the licencing regime for CATOs we would expect the Procurement Body to work with Ofgem in aligning and streamlining the tender and licence processes together as much as possible. In developing the requirements for PQ we have reviewed the various Procedural requirements, Application Regulation and Application guidance.

Ofgem expects the formal licence grant process including the consultation and decision to occur during the PB stage.

Questions

5. Do you agree with our preferred position on the Pre-Qualification assessment and process? Please explain your answer.

5 Invitation to Tender stage 1

Invitation to Tender ("ITT") (stage 1) is an initial tender stage for early competition. ITT (stage 1) was included in our Phase 2 consultation (see Section 5.4). ITT (stage 1) is a forward-looking assessment of the conceptual solutions which bidders have developed to meet the need set out in the tender specification.

The aim of ITT (stage 1) is to facilitate innovation in the market by minimising bid costs and to down-select the number of bidders which progress to ITT (stage 2). At ITT (stage 1) bidders will submit a conceptual design which needs to demonstrate it meets the need and is a suitable technology. Concept designs can be undertaken at a relatively low cost in comparison with what is expected as part of ITT (stage 2) (see Section 6).

We estimate that ITT (stage 1) will take approximately 3 to 6 months based on Offshore Transmission Owners (OFTO) and the low end of the range of Private Finance Initiative ("PFI") ITT stages and based on the level of detail bidders are expected to provide. This covers the period from the ITT (stage 1) tender specification being released to the completion of the evaluation.

Our Phase 2 consultation (see Section 5.4) set out five assessment areas which were equally weighted. These were how the solution met the need, technological readiness of the solution, deliverability, environmental or social impacts, and high-level cost estimates. The consultation did not set out how bidders would be down-selected and that we would consider partial solutions and lotting.

Be transparent where possible

In this consultation, we set out further details on how the stage 1 assessment would be undertaken.

Stakeholders were broadly supportive of our proposals but requested further detail about how the assessment would be undertaken and how designs would be selected as optimal for consumers at this stage. One stakeholder noted that the process was overly complex and subjective.

Our preferred option is that all areas should be assessed as part of ITT (stage 1). We provide more detail of how each of the criteria would be assessed and how the assessment would be undertaken. We clarify the level of design bidders are expected to submit and our considerations of partial bids. This section covers the evaluation criteria, bid assessment and down-selection of bidders to ITT (stage 2), partial solutions and provision of information.

5.1 Evaluation criteria

This section sets out how the Procurement Body will assess whether bidders' solutions meet the need set out in the tender specification. The high-level evaluation criteria are: meeting the need; risk to network reliability; deliverability; environmental and social impacts; and cost estimates.

Most stakeholders were broadly supportive and noted these were areas that TO's currently adhere to. Stakeholders also requested more information on our proposals. One stakeholder noted that this should be 'how well' the solution met the need. One stakeholder noted that at this stage bidders should provide a bid bond and a financial model.

Meeting the need

Phase 2 consultation

In our Phase 2 consultation we set out that we would assess whether the proposed solution met the specified need. This was based on capacity, voltage and/or stability requirements specified by the Network Planning Body. We also noted that this would require feasibility studies if required. We also noted that we were considering the acceptability of variant bids from the bidders in terms of the reference design.

Updated preferred option

Our preferred position for this criterion for ITT (stage 1) would be for bidders to submit potential capacity, Earliest In Service Date ("EISD") and output on their own service provision feasibility studies. Bidders would need to demonstrate that they could meet the need as specified in the tender documents, by the date it was required and in the correct geographical location.

To do so bidders would need to undertake their own studies and for the Electricity System Operator ("ESO") to conduct shadow studies to verify these results. The bidder's studies should establish how much capacity and/or voltage/stability support the concept designs provide. This information would be provided to the Procurement Body. The level of information we are proposing bidders provide would be equivalent to the Solutions Requirements Form ("SRF") part B returns. See Appendix B in this year's NOA methodology for a description of the SRF's A-F. The ESO would then support the Procurement Body by undertaking shadow studies which are comparable to the studies undertaken currently by the TOs.

In order to support bidders to develop their solutions and conduct their own studies, we propose to make equivalent network models available (subject to signing a Non-disclosure agreement ("NDA")).

In relation to variant bids our current position is that the Procurement Body are not placing any restrictions on the solution other than that it meets the remaining evaluation criteria."

Risk to network reliability

Phase 2 consultation

In our Phase 2 consultation we proposed assessing whether the solution posed risk to the overall network reliability. We suggested including the level of technology readiness, the interface with existing networks, additional risk due to complexity of the solution and any additional operational complexity due to frequency of unavailability.

Updated preferred option

Our preferred position is that the risk to network reliability is an area we should assess as part of ITT (stage 1). Ensuring the confidence in the security of the network is key for assessing the concept solutions at ITT (stage 1).

We would expect all solutions to have a technology readiness level of 8. If technology readiness levels are not available, then we may use a similar approach used in pathfinders for voltage or stability. For voltage we have a defined list of technologies with established definitions of that technology. For stability, bidders are required to undertake a feasibility study to demonstrate that their solution can provide the stability support required.

We would also ask bidders to submit enough information so that a TO could run a connections feasibility study (see Chapter 5, Section 6) This study would be equivalent to the connections review under pathfinders or the optional feasibility study under the connections process (i.e. STCP17-1). The scope of studies relates to connecting to and using the system and will include, for example, fault level assessments, power flows and voltage assessments including voltage step changes for each proposed solution. These assessments would be equivalent to those which would usually be conducted as part of the optional pre-application submission stage of the connections process.

We would also expect bidders with new technologies to engage with the ESO as part of the very early market engagement, interested persons process and the Network Options Assessment ("NOA") process where the ESO plays a greater role in challenging initial solutions. See Chapter 3, section 2.3 for more details.

Deliverability

Phase 2 consultation

In our Phase 2 consultation we proposed assessing whether the high-level proposals were plausible. We suggested considering precedents, construction timescales, ease of production and complexity of construction.

Updated preferred option

Our current position is that the Procurement Body will need to assess whether there are deliverability issues with the concept design which undermine the EISD, capacity or location provided by the bidder.

The Procurement Body would require some technical, design, planning and operational expertise to identify solutions which have clear and obvious failings. For example, whether the solution will not progress through the planning process in the time required for the EISD. ITT (stage 2) will explore the delivery plans of bidders in greater levels of detail. This criterion, as part of ITT (stage 1), is to identify clear and obvious areas where the solution will not deliver the requirement set out in the tender specification.

Environmental and social impacts

Phase 2 consultation

In our Phase 2 consultation we noted that there would be consideration of the environmental or social impacts of the solutions. This could be the decarbonisation or the impact on the local environment or communities.

Updated preferred option

Our preferred position is that we would expect these to be set in collaboration between the Department for Business, energy and Industrial Strategy ("BEIS"), Ofgem and the Procurement Body.

This is a key area for early competition, and we would expect the social or environmental minimum standards to be detailed in the tender specification. For example, similar to the technical requirements of the needs the Procurement Body could set the tender specifications so that bidders had to develop solutions which could demonstrate that they were below a specified level of carbon intensity or had a net zero ecological impact.

We would expect that the details of these could be set in collaboration between BEIS, Ofgem and the Procurement Body depending on the policy aims at the time of the tender development during the pre-tender stage.

Cost estimates

Phase 2 consultation

In our Phase 2 consultation we proposed that high-level estimated costs should be considered. We suggested high-level price estimates based on whole life costs, preliminary works, construction capital expenditure ("CAPEX"), repeat capex and operational expenditure ("OPEX").

Updated preferred option

Our updated position for cost estimates at ITT (stage 1) is to not ask bidders to provide costs as this would either lead to an increase in bidder costs or the tender process could be gamed.

If we were to ask bidders for cost estimates in ITT (stage 1) and did not hold them to these costs, if they won the tender then bidders would be incentivised to submit unrealistically low costs.

If we were to hold bidders to cost estimates at ITT (stage 1) then bidders would be incentivised to undertake more detailed feasibility and planning studies which would lead to significant cost.

As stated in Section 5, the purpose of ITT (stage 1) is to foster innovation and optionality of solutions by not restricting total bidder numbers and keeping bidder costs low. Holding bidders to their costs would increase bid costs and likely reduce the level of innovation in the market.

5.2 Bid assessment options

This section sets out how the Procurement Body will assess bids in ITT (stage 1) based on the criteria previously discussed.

Phase 2 consultation

We noted that designs would be assessed on a largely qualitative basis and that we were considering a panel of experts. Our Phase 2 consultation did not set out how we intended to assess bidders at ITT (stage 1).

Stakeholder feedback

Most stakeholders were broadly supportive with the two stage ITT approach. One stakeholder noted that our approach was overly complex and could be prone to error. They suggested setting the requirement, requesting costs and choosing the cheapest 5 that meet requirements.

Updated preferred option

Our preferred position is a pass / fail approach to ITT (stage 1) based on a minimum threshold score for each of the four criteria set out above. This will be based on a mixture of feasibility studies (in terms of meeting the need/ESO shadow study and a connections feasibility study), expert review and feedback and evidence provided by the bidders.

We note that the pass/fail approach does not place a limit on the number of bidders who could progress to ITT (stage 2). Based on stakeholder feedback we note that this is a concern. If there are too many bidders in ITT (stage 2) then bidders will not want to incur the costs associated with developing more detailed plans.

> We propose a pass/fail assessment based on meeting the need, risk to network reliability, deliverability and environmental and social impact.

For the reasons set out in Section 5.1, we do not consider that it is appropriate to ask bidders for cost estimates at this stage in the process. The level of uncertainty regarding the project details at this stage does not make cost alone a sufficiently robust criteria to assess bids against. Our approach takes account of a range of factors which project developers would consider at the concept design stage of the process.

The pass/fail approach ensures that all solutions which meet the tender technical requirements progress to ITT (stage 2). This mitigates the risk that a significantly cheaper solution is down-selected at ITT (stage 1) because it did not score as highly across the other criteria

We propose that the Procurement Body and the Network Planning Body take account of the market interest during the pre-tender stage and any previous early or late competitions. If there is a very high level of interest in the tender then down selection at ITT (stage 1) could be based on relative scoring of solutions. It is important that the Approver, Procurement Body and Network Planning Body have discretion over this element of the process.

5.3 Partial solutions

This section sets out how the Procurement Body will assess bids which partly meet the need in ITT (stage 1).

Phase 2 consultation

As part of our Phase 2 consultation we noted that we intended to explore whether bidders would be able to submit partial solutions. This could be either a partial duration or a solution partially meeting the need. We are also exploring whether we could separate needs into 'lots' depending on timing and other technical characteristics.

Stakeholder feedback

Stakeholders did not provide any feedback on our suggestion to explore how solutions which partially meet the need could be assessed.

Updated preferred option

Our updated preferred position is that the parameters of the tender are set as part of the project identification process.

The main rationale for this is that the entire need capacity is required so if a bidder proposed a solution which met 50% of the need another bidder would need to also propose a solution which met the other 50%. If the combined two bids were cheaper than a bidder's solution which met the entire need then this would be greater value for customers. In reality, two bidders proposing two separate and uncoordinated solutions which met exactly 100% of the need and which do not geographically overlap or negatively interact in anyway is highly unlikely.

If interested parties have proposals for more efficient ways of addressing a need through lotting or multiple-partial solutions this should be fed back by the market during the interested parties persons process. This would then be considered by the Procurement Body when defining the tender specifications. This could be spatial lotting (e.g. breaking the need up into smaller requirements) or over time (e.g. having a procurement for a short term need and a separate one for the longer-term need).

The Network Planning Body and the Procurement Body will work together to ensure that the tender specifications and the parameters of the needs will result in the best value solutions for consumers. It is not for the procurement process to compare partial solutions.

Questions

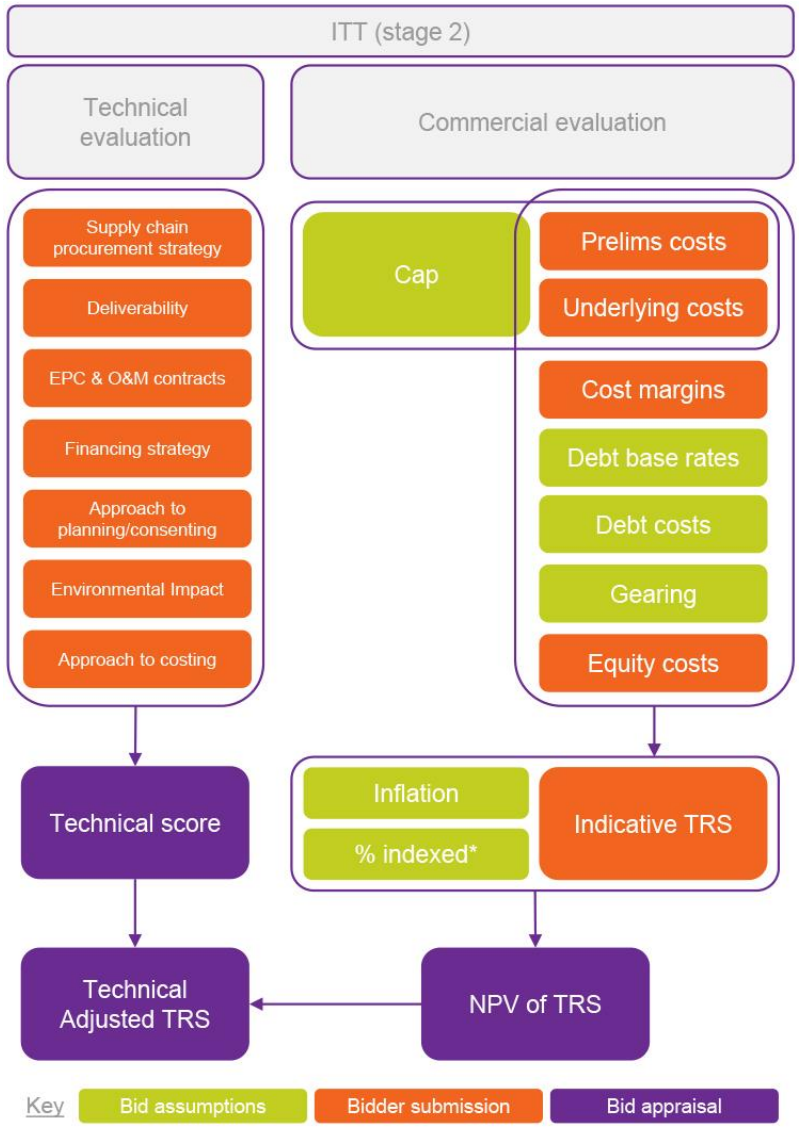
6. Do you agree with our preferred position on Invitation to Tender stage 1 assessment and process? Please explain your answer.

6 Invitation to Tender stage 2

Invitation to Tender ("ITT") (stage 2) is the final assessment stage of the tender process for early competition. It aims to select a single preferred bidder to progress to preferred bidder stage. It is a detailed forward-looking assessment of the solutions bidders have developed, their plans for implementation and their commercial proposals.

The aim of ITT (stage 2) is to maximise competitive tension, assess the quality of the plans being submitted and to drive cost and financing efficiencies. At ITT (stage 2) bidders are expected to submit initial designs, detailed cost estimates, delivery plans and supply chain strategies which will come at a significant cost to develop, as set out in Figure 4.

Figure 4: ITT (stage 2) process



We estimate that ITT (stage 2) will take approximately 6 to 9 months based on typical ITT stages for Offshore Transmission Owners ("OFTO") and Private Finance Initiative ("PFI") and based on the level of detail bidders are expected to provide at this stage.

In our Phase 2 consultation (see Section 5.5) we set out a quantitative and qualitative assessment framework. Bidders were asked to provide initial design, cost information and project delivery information. We did not provide a detailed explanation of how the preferred bidder would be selected.

Stakeholders were broadly either supportive of our proposals and/or requested further information before they could provide feedback. One stakeholder was of the view that the proposals were weighted towards the TOs.

For their ITT (stage 2) submission, bidders are expected to have developed robust implementation plans and undertaken detailed cost estimates as part of this phase. See Chapter 4 for more information on the details of the commercial model. We are aware that bidders' proposals will be at different stages of progress e.g. some bidders may have an operational asset whereas others are still in the outline design stage. Our minimum expectations are that bidders will have progressed to outline design they will have developed an approach to consenting and/or planning applications (but these may not have been submitted). In addition, whilst we expect bidders to have undertaken some level of feasibility studies at this stage there may be more detailed land and ground surveys and studies which may require changes to the design.

This means that there is a potential for the scope of the projects, and the project costs, to change materially post-award. To entirely base the selection of the preferred bidder based on the commercial offer would not be reflective of this uncertainty. In comparison with late (RIIO-2) or very late (OFTOs) competition, the technical component is of importance for early competition because of the remaining uncertainty at ITT (stage 2).

6.1 Commercial evaluation

This section sets out the approach to the commercial evaluation in ITT (stage 2).

Phase 2 consultation

In our Phase 2 consultation we noted that we would ask bidders to provide cost information. This was expected to cover whole life cost estimates for the proposed outline design, overheads, margins and the cost of equity, inflation and assurance on costs submitted.

Stakeholder feedback

Stakeholders were broadly supportive but asked for more detail on how the assessment would be undertaken.

Updated preferred option

Our current preferred option is to ask bidders to provide the same financial inputs as set out in our Phase 2 consultation. Bidders will submit a financial model they have developed calculating the indicative TRS. This will be based on two sets of inputs.

1. Bid assumptions - which will be specified in the tender by the Procurement Body.
2. Bidder submission - which are determined by each bidder for their proposed solution.

See Chapter 4, Section 3 for more explanation on the rationale as to why different inputs are set as assumptions and others are submitted by the bidder.

Post award the Tender Revenue Stream ("TRS") will be inserted into the contract or licence. Post-preliminary cost assessment the TRS can be updated for permitted changes in inputs depending on the caps and sharing rates set out in the tender specification.

Financial model

The financial model submitted by bidders to calculate the TRS, would need to meet certain criteria:

- Based on Microsoft Excel
- Clearly laid out with appropriate labelling of rows and columns
- No locked cells or hidden sheets – all calculations must be traceable to clearly sourced assumptions
- Capable of running a range of sensitivities including inflation, availability, interest rate etc, and
- The model should be accompanied by a document setting out the steps for i) solving the model; and ii) running sensitivities.

6.2 Technical evaluation

This section sets out the approach to the technical evaluation in ITT (stage 2).

Phase 2 consultation

In our Phase 2 consultation we set out our expectations for the information bidders are expected to provide. This included information on preliminary works, schedule for the Final Investment Decision ("FID"), supply chain procurement strategy, plan for delivery of the solution, comments on the contract and plans for decommissioning.

Stakeholder feedback

Stakeholders were broadly supportive but asked for more detail on how the assessment would be undertaken.

Updated preferred option

Our updated preferred option is that the technical evaluation is an integrated approach which covers a wide range of factors and supports the commercial evaluation. For each of the technical elements that bidders are asked to provide evidence, they are awarded a score between 0 and 5 depending on the level and quality of evidence provided, as set out in Table 3. The Procurement Body will require the support of specialist commercial, legal, planning and financial advisers to undertake this assessment.

Our preference for a scoring as opposed to a pass/fail threshold is based on a couple of factors. First that the commercial offer bidders submit is inherently uncertain due to the early stage of development the project is in. A higher technical score gives more confidence that the bidder will deliver a project which offers the value for money that the commercial offer proposes. Secondly it accounts for consumer value where it is not directly related to the cost. For example, a lower environmental impact or lower likelihood of delay due to a robust consenting strategy.

Bidders would be scored in the following areas. Details of expectations in each area are set out in Chapter 8.

Table 3: Technical evaluation scoring

Technical Element	Score
No evidence	0
Very poor evidence	1
Poor evidence	2
Satisfactory evidence	3
Good evidence	4
High quality evidence	5

- Deliverability and delivery plan
- Supply chain strategy
- Contract (engineering, procurement and construction ("EPC") and, operating and maintenance ("O&M"))
- Financing strategy
- Planning and consenting strategy
- Environmental impact, and
- Approach to costing.

6.3 Selection of a Preferred Bidder

This sub-section sets out how the commercial and technical evaluation will be applied to select a single Preferred Bidder.

Our Phase 2 consultation stated that the commercial offer will be evaluated based on the cost of the solution to consumers. It set out that the technical and project delivery elements will be a quantitative evaluation scoring framework. It did not provide further details on the mechanics of how a single preferred bidder should be selected.

Updated preferred option

Our updated preferred option is to integrate the technical scores bidders receive based on the plans they submit and the TRS. This will result in a single 'Technical Adjusted TRS'. The bidder with the lowest Technical Adjusted TRS is selected as the preferred bidder and will progress to the preferred bidder stage.

1. The technical evaluation will assess the plans and based on the level of evidence provided give each technical element a Technical Score between 1 and 5.
2. These scores will be weighted (Technical Element Weighting) based on pre-determined levels which the Procurement Body will set during the pre-tender process when developing the contract and evaluation framework. The total weighting of each of the technical elements will add up to 100%.
3. These weightings will be applied to the technical scores to provide a total weighted score of between 1 and 5.
4. The Procurement Body will also set what proportion of the TRS submissions can be adjusted based on the technical assessment (Technical Weighting).
5. The Technical Element Weighting and the Technical Weighting will be adjusted based on learnings from previous tenders and directions from Ofgem/government.
6. The TRS payment forecast in each year will be discounted using the Green Book discount rate to calculate a Net Present Value of the total payments to the bidder over the revenue period.
7. Max adjustment to the TRS (£) = TRS (£) x Technical Weighting (%)
8. A conversion factor is used to turn the weighted scores into a Weighted TRS Adjustment.
9. Conversion Factor = Max adjustment to the TRS (£) x maximum Technical Score (5).
10. The weighted score for each technical element is multiplied by the conversion factor to calculate a Weighted TRS Adjustment.
11. Technical Adjusted TRS = TRS - total Technical TRS Adjustment.
12. The bidder with the lowest Technical Adjusted TRS is selected as the Successful Bidder - subject to the potential Best and Final Offer ("BAFO"), see below.

The successful bidder will be selected based on the lowest Technical Adjusted TRS.

A potential risk of any bid evaluation framework is that bidders will try to game the approach. The combination of qualitative and quantitative factors which are required under the early competition model due to the high level of uncertainty of costs at this stage make it vulnerable. A bidder may try to game by submitting a low TRS but have severe deficiencies in terms of deliverability. As show by the example in the box below, if the weightings are properly calibrated by the procurement body, this bidder will not have the lowest overall TRS. Other bidders with well thought through and robust plans will benefit for larger technical adjustments to the TRS.

It is worth noting that the TRS submitted by the bidders is written into the contract and is adjusted following the post-preliminary works assessment and debt competition. The Technical Adjusted TRS is only for the purposes of the ITT bid evaluation and is not used to determine the allowed revenue under the contract.

If there are two bidders within a certain pre-defined range of the Technical Adjusted TRS the BAFO stage will be undertaken. The two lowest bidders will be asked to resubmit their bid submissions in relation to their TRS only and the evaluation.

Example of a bid submission

This section sets out the example of 2 bidders being compared at ITT (stage 2) using the framework set out above. This assumes that the technical element of the bid is weighted at 40% and commercial is 60%. The weighting of the different technical elements places planning and consenting higher than financing or contracts.

Bidder 1 Net Present Value ("NPV") TRS is 450 which is lower than bidder 2 who has submitted an NPV TRS of 500. So purely in terms of cost to consumers based on the TRS bidder 1 is preferable.

However, bidder 1's the technical scores add up to 22 which equates to a total adjustment to the TRS of 104. Bidder 2 overall has a total technical score of 33 which results in an overall TRS adjustment of 192.

The Technical Adjusted TRS for bidder 2 is 308 which is significantly better value to consumers than bidder 1 which is 346.

Questions

7. Do you agree with our preferred position on Invitation to Tender stage 2 assessment and process? Please explain your answer.

7 Preferred Bidder stage

The Preferred Bidder ("PB") stage is the final stage of the tender process. It is the stage when a bidder is informed that they have become the PB. Other bidders are able to challenge the tender process, checks undertaken by the approver, stage gate 3, standstill/judicial review period, performance bond, accede to codes, licence/contract award and submit formal connection agreement. Following this the PB becomes the Successful Bidder ("SB") and moves into the preliminary works stage. This section focuses on the process steps at PB stage, for more discussion on the licence, contract and codes refer to Chapter 4, Section 4.1.

Phase 2 consultation

In our Phase 2 consultation we set out a number of steps which must be undertaken to finalise the contract/licence. We noted that the scope of these activities will be driven by the relevant procurement rules.

We also set out the differences between the commercial contract and the licence and areas for further exploration including the type of licence, ascension to and applicability of the network codes, comparable obligations under the contract and how we work towards a level playing field between network and non-network solutions in this instance. The stakeholder feedback and updated preferred positions on licence/contract and codes is presented in Chapter 4, Section 4.1.

We also discussed that this is the point of the process bidders would be expected to post a bid bond. Bid bonds (now referred to as performance bonds) are discussed in more detailed in Chapter 4, Section 3.1.

Stakeholder feedback

Feedback on our proposals for the PB stage was generally supportive of our proposals but stakeholders also noted some concerns and that generally there was too little information to comment.

One stakeholder noted that it was critical to ensure equal treatment of network and non-network solutions at this stage.

Another stakeholder noted that there needs to be a full licence award or contract award at the PB stage for the SB to begin the preliminary works.

Another stakeholder asked how we were ensuring that the tender and licence processes were aligned. They noted that licence drafting is time consuming and should be factored in.

Updated preferred option

Our updated preferred position is still that during PB stage the SB would be awarded a transmission licence or contract, that they would post a performance bond and would accede to the relevant codes.

As set out in section 2.2, the Procurement Body may deem it appropriate during the pre-tender period to decide to allow some further contract negotiation during the PB stage.

As set out in Section 2 the adjustments to the licence for the project begin during the pre-tender phase. The licence counterparty works with the procurement body in drafting the amendments. As set out in Section 4.2 the tender process is being designed to align with the licence award process so that bidders are assessed on areas relevant to the licence during the tender process. Both of these activities minimise the amount of time a Preferred Bidder will have to spend entering the licence process as part of the Preferred Bidder stage.

New issues for consultation

There are five new areas for consideration as part of our Phase 3 consultation. These are the tender challenge process, checks undertaken by the Approver, Approval of the Preferred Bidder, period following the approval and the submission of a connection agreement application.

Keep our stakeholders in the know

In this consultation, we set out our views on further elements of the tender process.

Tender challenge process

The early competition tender process will need to be run in a manner compliant with the tender regulations governing early competition. This may be Utilities Contract Regulations ("UCR") or specific Competitively Appointed Transmission Owner ("CATO") regulations developed by the Department for Business, energy and Industrial Strategy ("BEIS"). This sub-section focusses on a proposed process where a bidder believes that the Procurement Body is not, or has not, run the event in a compliant way.

The advantage of having a defined challenge process is that is should help to resolve the potential issue as soon as possible, minimising the risk of disruption and additional cost being incurred.

This process is not intended to cover disputes between the successful bidder and Contract or Licence Counterparty - this can be found in the Heads of Terms proposals in Chapter 8. Neither is this process intended to cover a challenge of an Ofgem decision, to award a CATO Licence. In this later scenario we would expect the challenger to use the existing route of challenging an Ofgem decision through judicial review.

Our current preferred option is a three-stage escalation process with defined timescales. We propose that Bidders would agree to follow the escalation process as part of the PB stage.

Stages

- Stage 1 Procurement Body Senior Management review
- Stage 2 Review by independent expert
- Stage 3 Legal challenge brought by party making the challenge

Timescales

Timescales for raising a challenge will be stipulated in the tender documents. There will be a focus on ensuring that a challenge is formally communicated to the Procurement Body very soon after a challenger could reasonably be expected to have identified grounds for a challenge. This will prevent missing opportunities to take corrective action as early as possible to mitigate the impact of any potential non-compliance. Timescales for conducting Invitation to Tender ("ITT") (stage 1) and ITT (stage 2) will also be clearly defined to ensure that the tender is not unnecessarily delayed or continued at increasing risk.

Other options considered

- *Two-stage process:* We considered not having the Procurement Body senior management review and having an independent expert review as a first stage. However, we felt that this missed the opportunity for the Procurement Body to listen to and respond to a challenge. The use of experts will also inevitably add additional costs which may prove unnecessary.
- *Arbitration service:* We considered the use of an arbitration service rather than independent expert. Often arbitration services bring in independent experts for their opinion, so on balance we believe that the use of an independent expert gives greater opportunity for the Procurement Body and Challenger to agree on the right expert and minimise costs.
- *Ofgem as point of escalation:* We considered whether Ofgem could form part of the escalation process. However, given Ofgem's potential role as Approver, they may have had an active role on the decision that has led to the challenge and may not be independent enough to act as an escalation point.

Checks undertaken by the Approver

The PB stage is when we would expect the Approver to undertake checks that the implementation of the tender process has been fair and transparent. See Chapter 2, Section 2 for more details on the role of the Approver.

The Approver would undertake checks throughout the procurement process. We are still working on the detail of what these checks would look like and involve.

Approval of Preferred Bidder - Stage Gate 3

The PB stage is when we would expect the Approver to approve the Preferred Bidder. This would allow the Preferred Bidder to be awarded a licence and contract following the standstill period. This step would follow on the from the checks undertaken by the Approver which would be for the Approver to determine. See Chapter 2, Section 2 for more information on the role of the Approver and stage gate 3.

Period following the approval

Following the approval of the Preferred Bidder by the Approver the Procurement Body would notify all bidders of who the Preferred Bidder is and also would provide feedback to all unsuccessful bidders on their scores and their bids. Depending on advice from legal advisers the Procurement Body would intend to share as much information to bidders as possible. Stakeholders informed us during the development of the Phase 3 consultation that transparency and sharing of information and feedback plays a key part in minimising and mitigating the risk of legal challenge by unsuccessful bidders. It also supports bidders in the development of bids in the future and can lead to a reduction in bid costs.

The standstill period for the award of a contract for the award of a licence is the period of time where bidders are able to challenge the outcome of a tender before the Preferred Bidder enters into a contract.

For a licence Ofgem would consult for a minimum of 28 days where respondents can raise objections and make representations to the licence grant and proposed modifications. There is a standstill period of at least 10 days before a licence is granted. Up to three months following a licence award a when a party could raise a judicial review. For a CATO licence award, we would expect this to be set out in legislation but that it would align with the current judicial review period which is three months following the decision.

For the award of a contract our preferred option would be that there is a standstill period set in line with industry standard to give unsuccessful bidders a reasonable period to challenge the process before a contract is awarded. Unsuccessful bidders may challenge the process following contract award, but reversal of contract award is more complex and costly.

Submission of a connection agreement application

As set out in Section 5, bidders are expected to provide enough information for Transmission Owners ("TO") to undertake connections feasibility studies during ITT stage 1. Once a Preferred Bidder has been notified and approved by the Approver it is then obliged to submit a formal connection agreement application alongside the standstill period. This is only required if they do not already have a connection agreement in place.

Connection feasibility will be assessed during ITT stage 1. Formal connection agreement applications will be submitted by the Preferred Bidder.

This is the formal process which is set out in the licence and Connection and Use of System Code ("CUSC") and the System Operator Transmission Owner Code ("STC") by which someone applies to connect to and use the network. The ESO has 3 months to provide a formal response to this application and this relies on the TO first providing an offer to the Electricity System Operator ("ESO") in proscribed timescales. This is a compulsory process for all assets that wish to connect to and use the network. This process is a joint process between the ESO and TOs but the majority of assessment work is undertaken by TOs based on information from the ESO and applicant to allow them to undertake their studies. The TOs sometimes utilised external consultancy support for their studies.

We would expect the connection application to be undertaken concurrently with the licence award process with Ofgem or contract award with the counter party.

If the preferred bidder instead needs to apply for a distribution connection, they will instead need to go through the distribution connection application process at this stage, if they have not already done so.

If the preferred bidder is a network solution they will need to go through the party entry process in the STC, which will include the relevant connection process.

If, following the three months, a significant issue has been raised by the connection agreement process the Procurement Body and Approver could decide that the Preferred Bidder is no longer suitable. They could then approach the bidder with the second lowest Technical Adjusted TRS to become the Preferred Bidder. Bidders would be notified of this at the point the original Preferred Bidder is selected. The overall end-to-end early competition process is set out in Figure 1.

Figure 1: End-to-end process

8 Preliminary works

In our Phase 2 consultation we provided an overview of the preliminary works stage of the end-to-end process.

Phase 2 consultation

We set out that bidders would be responsible for taking the successful solution through the preliminary works stage and that this stage could vary depending on the successful solution. We noted that preliminary works requirements could involve consents, site surveys, land rights, detailed design, supply chain engagement and procurement and incumbent Transmission Owner ("TO") engagement.

Updated preferred option

Our views on the preliminary works stage remain unchanged so once the tender process concludes the successful bidder will start and conclude the preliminary works associated with their successful solution.

As is further detailed in Chapter 4 on the Commercial Model there will be revenue associated with this process stage.

8.1 Post award data exchange

In our Phase 2 consultation we identified this as an area requiring further exploration.

Phase 2 consultation

We set out that the mechanisms for sharing detailed information once an award decision has been made requires further exploration.

The successful bidder will need to move from a desktop proposal into detailed design and delivery and this will require the sharing of more detailed information.

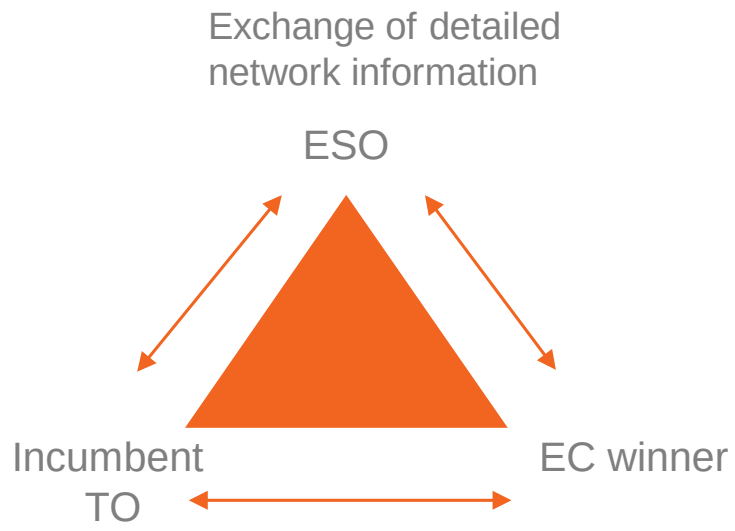
Stakeholder feedback

Two workshops on network information were held in September 2020 where we presented our views on the relationships, outcomes and existing mechanisms that we believe can be utilised.

All stakeholders agreed with our views on the main relationships and the appropriate mechanisms that set out obligations.

Some stakeholders believe that any modifications will be minor or may already have been made to accommodate the Offshore Transmission Owner ("OFTO") process. Other stakeholders were unsure.

Figure 5: Exchange of detailed network information



Updated preferred option

Our preferred option is that existing mechanisms already in place to manage these relationships will be utilised. However, it is likely modifications to the existing industry codes may be needed.

Work to develop a high-level understanding of the nature of these changes will be completed when developing the Early Competition Plan, with the more detailed review forming part of any future implementation period.

Figure 5 above sets out the key relationships and Table 4 sets out the competition outcome options and relevant mechanisms.

Table 4: Competition outcome options and relevant mechanisms

EC outcome	Mechanism setting out obligations		
	ESO to TO	ESO to EC winner	EC winner to TO
Incumbent TO wins	STC	N/A	N/A
Bidder (not incumbent TO) wins with a network solution, receives a TO Licence and signs up to STC (CATO LICENCE)	STC	STC	STC
Bidder (not incumbent TO) wins with a non-network solution and enters into a service contract with the ESO	STC	Licence Grid Code CUSC	Via ESO through Connection Agreement

8.2 Post-preliminary works cost assessment

In our Phase 2 consultation we provided an overview of the proposed Post-Preliminary Works Cost Assessment ("PPWCA") stage of the end-to-end process.

Phase 2 consultation

We set out that some form of PPWCA would be undertaken towards the end of the preliminary works stage. We stated that this process would seek to fix the underlying costs prior to the start of the solution delivery/construction stage.

We also stated that following this process it might be necessary to revisit the previous cost-benefit analysis to make sure that the network need remains as expected and the successful solution remains value for money for consumers. It was suggested that this process would be undertaken by the Procurement Body and Ofgem.

Further information on the PPWCA can be found in Chapter 4 on the Commercial Model

Updated preferred option

Our views on the PPWCA stage remain mostly unchanged. We continue to think that this process step would occur towards of the end of the preliminary works stage with the aim of fixing underlying costs prior to solution delivery/construction i.e. when preliminary works are substantially complete but so that the process can be undertaken without impacting the delivery programme. We continue to think that the output of this process should feed into a review of the needs case as is further considered in Chapter 2, Roles and Responsibilities.

Based on further thinking our views on roles and responsibilities have changed slightly and we now think that the relevant counterparty should lead the PPWCA process with the support of the Procurement Body and the Network Planning Body. This ensures continuity and co-ordination between the tender process and the PPWCA process whilst making sure the lead party is the party holding the contract or licence.

8.3 Debt competition

In our Phase 2 consultation we provided an overview of the debt competition stage of the end-to-end process.

Phase 2 consultation

We set out that some form of debt competition would be undertaken towards the end of the preliminary works stage. It was suggested that this process would be undertaken by the bidder and it would occur towards the end of the preliminary works stage but that it would slightly lag behind the PPWCA process. This would allow the PPWCA outcome to be known prior to conclusion of the debt competition and so prior to Financial Close.

Updated preferred option

Our views on the debt competition stage remain mostly unchanged. We continue to think that this process step would occur towards of the end of the preliminary works stage (see Chapter 4 on the Commercial Model).

We think that the output of this process should also feed into a review of the needs case alongside the outcome of the PPWCA process as is also further considered in Chapter 4, Commercial Model.

We continue to think that the successful bidder should undertake the debt competition but with oversight from the Procurement Body. To ensure an effective process is run by the bidder we also expect the licence/contract to include suitable provisions setting out bidder obligations in respect of the debt competition.

9 Solution delivery and commissioning

In our Phase 2 consultation we provided an overview of the solution delivery and commissioning stage of the end-to-end process.

Phase 2 consultation

We set out that the successful bidder would be responsible for solution delivery/construction and commissioning of the successful solution. We noted that this would require interfacing with third parties such as the Electricity System Operator ("ESO") and incumbent Transmission Owners ("TOs"). We also noted that some aspects of this stage would be governed by industry codes which would need to be amended e.g. in respect of compliance and the commissioning programme.

Updated preferred option

We continue to believe that once the preliminary works concludes the successful bidder will deliver and commission their solution.

Further information in respect of our thinking on commissioning can be found in the following sub-section.

9.1 Commissioning

In our Phase 2 consultation we set out our view that the commissioning process for network solutions and non-network solutions should be aligned with and underpinned by the provisions outlined within existing industry codes. We stated that code modifications may be needed to account for Competitively Appointed Transmission Owners ("CATO") as a new type of transmission licensee.

Phase 2 consultation

In our Phase 2 consultation we set out that our preferred option is to align commissioning arrangements with the provisions within the existing industry codes. We noted that under certain circumstances additional or alternative compliance activities may be needed e.g. if an innovative solution is not comprehensively covered by existing code processes.

Stakeholder feedback

There was general agreement that current industry commissioning arrangements would be appropriate for early competition.

One stakeholder noted that current commissioning arrangements have been developed over years to ensure best practice. They believe the current arrangements should be maintained and any bespoke or project specific adaptations should only be used following the agreement of all relevant stakeholders.

One stakeholder stated that all parties involved in operating the onshore transmission system must be held to an identical standard either via codes or licences. Another stakeholder believes that there could be exceptions to consider when a non-network solution is being commissioned.

Another supportive stakeholder expects the CATO to have commissioning obligations with the CATO developing a commissioning plan for the ESO. They stated that, except in special circumstances, only the ESO should witness the commissioning activities.

Updated preferred option

As stakeholders support our view that with minor adaptations the existing industry commissioning arrangements will be suitable for early competition our views on commissioning remain unchanged.

9.2 Late delivery

In our Phase 2 consultation we provided options for late project delivery in respect of a delayed Tender Revenue Stream ("TRS") commencement as follows.

1. An explicit penalty for delayed completion e.g. linked to additional constraint costs
2. A reduced tender revenue period i.e. to match the remaining need duration and revenue period, or
3. A reprofiled TRS across the remaining need duration and revenue period.

Phase 2 consultation

We stated that we believe the third option is the most appropriate for a delay due to an unacceptable reason, but all three options need further consideration. With the third option, we stated we would need to make sure that the incentive for timely completion is not eroded so any reprofiling would need to be addressed in a way that has appropriate incentives and risk sharing for the successful bidder.

For example, if there is a delay in commissioning for reasons which are not allowed under the commercial arrangements, the TRS reprofiling might also involve some re-sculpting which could exclude operating costs and return on equity for the period of delay.

We also stated that where there is a delay to the commissioning for an acceptable reason (e.g. a relief or a compensation event) then further consideration of the treatment of the revenue duration will be needed.

Stakeholder feedback

We asked stakeholders whether they had any views on the impact of commissioning delays on the TRS and/or revenue period.

Stakeholders generally thought a re-profiled TRS would be sensible and that any delays caused by the incumbent TO or the ESO should not result in a lower revenue. They also thought having the TRS start at successful commissioning would be a strong incentive on delivery and also for good quality stakeholder engagement.

Stakeholders thought that the successful bidder will require protection where delays are outside of their control (e.g. via a reprofiled TRS) but they noted that it will be difficult to apportion blame for a delay. It was noted that a delayed TRS commencement and a late delivery penalty could potentially result in a double-hit for successful bidders which could potentially not be fully passed through to contractors. Stakeholders also do not think an incentive to complete early is appropriate.

Some stakeholders suggested that for consistency the proposals in relation to early competition should closely align with Ofgem's RIIO-2 proposals i.e. a suite of three Large Project Delivery mechanisms to incentivise timely delivery of large transmission projects.

Updated preferred option

Based on stakeholder feedback we feel there is general support for our proposal to start the TRS upon successful commissioning and where there is a delay to commissioning to then apply some form of reprofiling of the TRS across the remaining revenue period.

However, as our thinking has developed on late project delivery and as we have been asked to consider alignment with the corresponding arrangements expected for RIIO-2 we have set out further thinking in the following section.

New issues for consultation

As above, we are considering the appropriate mechanism for late delivery in early competition as follows.

Alignment with RIIO-2

In the RIIO-2 Draft Determinations Ofgem provided three options for late project delivery for large projects as follows.

'We propose to introduce a suite of three LPD ("Large Project Delivery") mechanisms that should be available for application to large (£100m+) transmission projects in RIIO-2 in order to incentivise their timely delivery, and to minimise consumer detriment if delivered late. The three mechanisms are: re-profiling of allowances, milestone-based approach to recovery of allowances and project delay charge.'

Ofgem also stated that the above would be set on a project-by-project basis with re-profiling of allowance being the default option and where there could be a particularly large consumer detriment from late delivery that the 'project delay charge' could be applied in addition to the other two mutually exclusive options.

Further information on the above proposals can be found here.

There are potentially similarities between our preferred position presented in our Phase 2 consultation and the 'reprofiling of allowance' option presented within the Draft Determinations.

However, a key difference is that the Large Project Delivery mechanisms are only proposed to apply to projects over £100m. Another key difference is that early competition is looking to encourage solutions from a wide range of bidders including single asset owners who cannot spread risk across multiple assets as assumed under RIIO-2 arrangements.

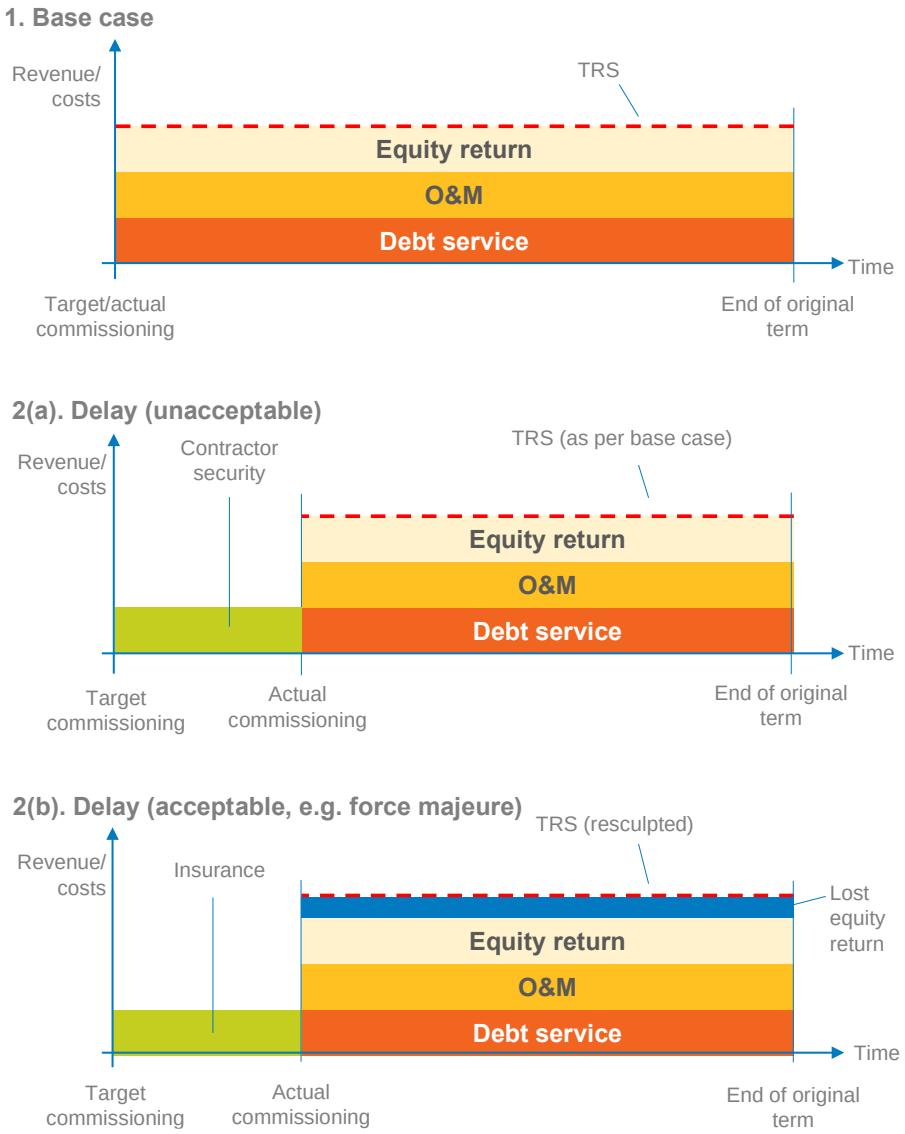
Therefore, on this basis we feel it remains appropriate to develop an early competition specific approach to late project delivery whilst continuing to be mindful of the corresponding RIIO-2 proposals leading up to and at RIIO-2 Final Determinations.

Late delivery in early competition

As such, in respect of reprofiling and re-sculpting the TRS for all projects which are delivered under early competition we have provided an illustration at Figure 6. This shows the base case (1) where the revenue starts on the planned date and runs for the full revenue period.

Where there is a delay for an unacceptable reason (2a) the TRS adjustment would make sure the successful bidder is not held whole for their lost equity return and that they do not benefit from the delay as per the above example. We considered whether the debt service costs could be held whole in this situation, but we felt it may be more appropriate for bidders to take this risk and to mitigate via their arrangements with relevant contractors i.e. where the cause of the delay is likely to reside.

Figure 6 Tender Revenue Stream Resculpting Approaches



We think this approach is fair as in the event of delay bidders would be no worse (or better) off than they would have been assuming the cause of the delay is suitably outside of their control

Where there is a delay for an acceptable reason (2b) the TRS adjustment would make sure the successful bidder is held whole for their lost equity return but that they do not benefit from the delay. For example, through receiving revenue in relation to operation and maintenance costs which would not have been incurred and would not be incurred in future.

Again, we considered whether the debt service costs could also be held whole in this situation, but we feel it may be more appropriate for bidders to take this risk and mitigate via insurance. In the event that insurance is not available at an efficient cost then we will consider whether debt service costs could instead be covered by the financial counterparty via some form of pre-commissioning payment arrangements.

The concept of an acceptable reason and an unacceptable reason would be determined in accordance with the contract or licence, as appropriate.

This approach to late delivery ensures a strong incentive for timely delivery remains as there is a proportionate financial impact on bidders where the cause of the delay is suitably within their control i.e. there is a reduction in the Internal Rate of Return ("IRR") as a result of an adjusted TRS.

Our updated preferred option

On the above basis, we confirm that our preferred option is for the TRS to start upon the later of the contracted commissioning date or the successful commissioning date i.e. so there is no reward for earlier commissioning of the successful solution. We also confirm that our preferred option in the event of commissioning delay is for the TRS to be reprofiled over the remaining revenue period with some re-sculpting of the revenue based on the cause of the delay as per Figure . In relation to what circumstances constitute an 'acceptable reason' for delay (e.g. Force Majeure) this will need to be further considered when developing the standard contract and licence terms during implementation. This will also need to further consider the insurance market and whether the foreseen role of insurance in relation to delay is efficient and practicable.

Questions

8. Do you agree with our updated views in respect of late project delivery? Why?

9.3 Preliminary works/solution delivery incentives

In our Phase 2 consultation we set out our view that explicit incentives would not be needed for the preliminary works and solution delivery stages of the process for early competition.

Phase 2 consultation

We considered whether explicit preliminary works and solution delivery incentives would be needed in relation to timely and quality delivery, incumbent TO engagement and wider stakeholder engagement. We stated that we did not believe explicit preliminary works and solution delivery incentives would be needed. This is because the TRS, which does not start until successful commissioning, would in its own right be a strong enough incentive for timely and quality delivery undertaken in a manner which suitably engages key stakeholders.

Furthermore, we stated that we felt that existing industry code processes would be sufficient in relation to interfaces. We also stated that code and licence obligations would also contribute to the mitigation of risks in relation to timely and quality delivery, and interfaces with third parties such as the incumbent TOs.

Stakeholder feedback

A stakeholder noted that any penalties and incentives that are set should ensure minimal disruption to consumers and be aligned where possible to existing incentives.

A stakeholder questioned whether incentives and current processes would work as effectively as we implied where there are competing priorities between different licensees.

Some stakeholders are of the view that the successful bidder should be held to the same standards that the incumbent TOs are e.g. in respect of technical and environmental performance.

Some stakeholders agreed that explicit incentives are not needed in relation to timely and quality delivery of the preliminary works and solution delivery works.

A stakeholder raised concerns regarding the proposal to replicate code requirements across contracts for non-licensee bidders and commented that there were limited proposals around how the ESO would make sure contractual requirements mirror the code and licence requirements.

One stakeholder believes that there is a risk of creating a strong incentive for a successful bidder to focus solely on their own work without due regard for the wider position or ongoing development of the transmission system. They also noted the regime will need to ensure a similar level of community trust and engagement is created for early competition.

One stakeholder agreed that there is no need for specific incentives or obligations related to engagement with the incumbent TOs. They would welcome regulatory environment monitoring to make sure it can sufficiently manage the risk related to the performance of one party adversely affecting the performance of others. This would include any impacts on established TO practices and relationships with wider stakeholders.

Updated preferred option

Based on the stakeholder feedback we have amended our views slightly. We still feel that for the most part explicit preliminary works and solution delivery incentives are not needed for early competition. However, due to stakeholder concerns raised about the potential impacts on the quality of stakeholder engagement we have proposed a stakeholder engagement incentive which is set out in the following sub-section.

In forming this view, we noted we had some support for our proposals and we considered stakeholder concerns in relation to competing priorities, potential for different standards and potential different enforcement of those standards e.g. in respect of certain obligations being contracted rather than via licence or code.

In respect of these stakeholder concerns, we continue to feel that suitable adaptations can be made to the industry codes and that suitable contracts and licences can be developed which will mitigate risks which are foreseen. See Chapter 8, Appendix 3 and Appendix 4 for further details.

Stakeholder engagement report

Based on some of the stakeholder engagement concerns raised we are proposing that a reputational stakeholder engagement incentive is introduced. The successful bidder will be obligated in licence or contract (as appropriate) to publish a proportionate stakeholder engagement report within three months of the conclusion of the preliminary works stage.

The purpose of this report will be for the successful bidder to set out best practice and lessons learned in respect of the preliminary works stage. This information could then be considered in future tender processes and will support the identification of potential deficiencies in the stakeholder engagement process.

Questions

9. Do you agree with our updated views on the preliminary works / solution delivery incentive regime being proposed for early competition? Why?

10 Operations

In our Phase 2 consultation we provided an overview of the operations and maintenance stage of the end-to-end process.

Phase 2 consultation

We set out that the successful bidder would be responsible for operations and maintenance of the successful solution for the agreed revenue period.

Updated preferred option

We continue to believe that once the solution is commissioned the successful bidder will be responsible for operating and maintaining their successful solution for the agreed revenue period.

10.1 Network charging

In our Phase 2 consultation we stated that for any network solutions the Competitively Appointed Transmission Owner ("CATO") will follow the relevant charge setting and revenue processes detailed within the System Operator Transmission Owner Code ("STC") and the costs would be recovered via Transmission Network Use of System ("TNUoS") charges.

We also stated that for non-network solutions (if the costs are recovered via Balancing Services Use of System ("BSUoS") charges) we expect the processes related to charge setting and revenue recovery will be based upon the existing processes for balancing services. We also noted that we expect minor charging process amendments would first be needed to both STC and the Connection and Use of System Code.

Phase 2 consultation

In our Phase 2 consultation we stated that we would keep the above under review and as we develop our thinking we would further consider if it might be more appropriate for costs to be recovered for both network solutions and non-network solutions via TNUoS charges.

Stakeholder feedback

We received limited feedback with one stakeholder stating that the 'recovery of cost of the CATO through the existing TNUoS and BSUoS charging regimes as modified by the Ofgem's review seems reasonable' and another stating (in one of our engagement events) that it is important the regime makes sure that parties are charged the correct amounts in accordance with the methodologies depending upon the classification of their solutions.

Updated preferred option

Our preferred option continues to be that network solution providers follow the charging processes within the STC and non-network solution providers follow our self-billing processes. This relates to allowed costs being recovered via TNUoS and BSUoS as above. This remains subject to there being no separate wider changes to the charging regime.

In addition, the recent Ofgem decision in relation to TNUoS cash-flow risk notes that 'any allocation to CATOs will be considered as and when the CATO policy develops further'. As such, in future we think Ofgem will need to further consider the impact of early competition on TNUoS cash-flow risk policy in respect of network solutions procured via early competition.

10.2 New investment

In our Phase 2 consultation we set out our view that the successful bidder will be responsible for all relevant new capital investment except where the criteria for competition on that new investment is met.

Our reason for this is to be broadly comparable to the existing onshore regime whereby incumbent Transmission Owners ("TOs") are responsible for all new relevant transmission investment. We also stated we would continue to explore options which impose some form of cap on new investment over the revenue period as this could provide more certainty to both the successful bidder and consumers in relation to any additional revenue being allocated throughout the revenue term.

Phase 2 consultation

In our Phase 2 consultation we provided five options for new investment and selected a preferred option as detailed above.

Stakeholder feedback

Whilst we didn't ask stakeholders a specific question on the approach to new investment we did receive some feedback on the initial proposals.

One stakeholder supported our current preferred option for new investment throughout the revenue period but noted it would need further thought and definition. They said this is especially true for new investment that could affect more than one asset and in relation to the flexibility needed in respect to the underlying financial arrangements.

One stakeholder thought that the only scenario under which new investment should default to a successful bidder would be where a transmission licence has been granted with identical obligations to that of an incumbent TO in respect of connections, etc. Where this is not the case, the need for new investment on the network should default to the incumbent TO to develop through their existing processes. This would then be subject to competition if the new network need met the relevant criteria and thresholds.

One stakeholder noted that they are unclear when new network investment would ever be needed for a non-network solution and other stakeholders also raised this point in our recent workshops.

Updated preferred option

We believe that CATOs should be responsible for relevant new investment on their own network to help facilitate any relevant new connections

As we have some support for our proposals and we did not receive any objections, we have decided to reiterate our preferred option is for successful network solution providers (i.e. CATOs) to be responsible for all relevant new capital investment on their network. The exception would be where the criteria for competition on that new investment is met and where there is then another competition for that new network need. We expect CATOs will generally have the same obligations in respect of connections as incumbent TOs.

We acknowledge further thought and definition will be needed as part of licence drafting in respect of how this obligation is enacted and on what basis additional allowed revenue would be set. We note that the offshore regime arrangements are likely to be suitable albeit with a need to disapply (for a CATO) the cap of 20% which exists in that regime.

If there is an uncapped obligation (as proposed) on certain new investment, we acknowledge that this could be a concern in relation to future financing. Therefore, in the event new competitively priced finance is unavailable at the time new investment is needed then fall-back arrangements might be needed. These could involve some flexibility in relation to the means of funding the new investment and would require further consideration at that time.

Regarding non-network solutions, we agree with stakeholders that new investment obligations are less likely needed for non-network solutions, especially where related to the facilitation of new connections. Therefore, we are no longer proposing that non-network solution providers have comparable obligations to network solution providers in respect of facilitating new investment, but we will keep this under review.

In addition, we note that the contract change mechanism could potentially also facilitate such new investment on a case-by-case basis.

For example, if it becomes apparent that a contracted non-network solution provider could adapt their solution to facilitate a new connection to the Transmission System.

With regard to the above preferred option one of the related areas which will require further consideration in any future implementation period will be in respect of boundaries of influence in relation to network planning, including in relation to new connections.

10.3 Operational incentives

In our Phase 2 consultation we set out our view that three explicit operational incentives would be needed for early competition i.e. an availability-based incentive, environmental incentives and a timely new connections incentive. We started to consider what such operational incentives could look like in relation to their structure and value, including whether financial security would be needed in respect of availability incentive performance. We set out our proposals in respect of the incentive regime in this section.

Phase 2 consultation

We considered whether operational incentives would be needed in relation to availability, asset health, innovation, environmental performance, timely connections and stakeholder satisfaction. We stated that we felt availability, environmental performance and timely connections incentives would be needed.

In addition, we thought that there could also be potential for some form of innovation gain share or access to additional innovation revenue streams. We stated that an availability incentive similar to that which exists in the offshore regime would be more suitable than that which exists in the onshore regime i.e. in relation to energy not supplied.

Stakeholder feedback

Some stakeholders believe the operational incentive regime should be limited but they also asked for more analysis and information. Some alternative operational incentive regimes were suggested by stakeholders. A range of further views were expressed by individual stakeholders:

- The Mersey reactive power tender contract is a suitable structure where bidders receive full payment if they hit a pre-defined availability level and are penalised if they do not meet this level
- That the potential operational incentive regime is likely to depend on the solution being tendered i.e. energy not supplied might be more suitable for integrated solutions than for radial solutions
- Agreement that the incumbent TOs should not be penalised under the energy not supplied incentive due to failure of CATO assets
- Planned outages should be agreed bilaterally and only charged insofar as they directly affect network performance and unplanned outages should be charged against the availability payments
- That environmental incentives should be encouraged and evaluated in line with broader policy aims
- That environmental management should be the responsibility of the consenting authority and not imposed by the ESO
- Supportive of alignment to RIIO-2 incentive arrangements but thought incentives might not be appropriate for non-network solutions, and
- That an availability incentive could be 'profiled' to reflect the impact of unavailability on the system.

Two stakeholders confirmed that they broadly agree with the proposed incentive regime with one noting asset health is covered by the availability incentive and that an innovation gain share would not be appropriate.

Stakeholders generally felt that the availability incentive within the offshore regime is a good starting point when considering an availability incentive.

Stakeholders generally felt that it is important the structure of the incentive scheme and the potential exposure through that scheme are clear prior to the tender process so bidders can consider as part of their bid strategies.

Stakeholders generally agreed the arrangements should be the same for network solutions and non-networks solutions and there should be some flexibility to amend the parameters of the incentive scheme to reflect the underlying transmission needs.

Stakeholders generally acknowledged that there will be more complexity in relation to more integrated network solutions in respect of design and calculation of incentive performance.

One stakeholder suggested some potential improvements to the offshore arrangements for consideration in respect of early competition as follows.

- Further clarity up front in respect of what would be classified as an exceptional event and not adversely impact incentive performance
- Further clarity up front on the impact of action or inaction of third parties on incentive performance, such as if outage cancellation results in an outage being moved to a higher weighted period, and
- Potential for shorter term incentives within the design, for example, considering there is no short-term incentive to avoid a windy day.

Be transparent where possible

In September 2020, we held webinars to discuss our views on operational incentives to gain insights prior to our Phase 3 consultation.

Updated preferred option

Based on stakeholder feedback we have amended our views slightly. We still feel that an availability incentive is the primary operational incentive and that it will be supported by an environmental incentive and a timely new connections incentive.

However, we agree with some of the stakeholder feedback that some form of innovation gain share mechanism is likely to be challenging in practice in the context of the wider model proposals. We are therefore discounting this incentive option for early competition.

In forming this view, we noted we had some support for a limited operational incentive regime and for our operational incentive proposals.

This includes using the structure of the offshore availability incentive as a start point to develop an early competition availability incentive.

We however note that some stakeholders felt that alternative proposals could be suitable e.g. a stronger alignment with the RIIO-2 incentive proposals or our pathfinder model being a suitable start point to develop an availability incentive.

We do not agree that the full suite of RIIO-2 incentives (e.g. asset health) is needed for early competition due to inherent differences between the RIIO-2 arrangements and our early competition model proposals.

We further set out our more detailed views on the proposed operational incentive regime below.

Timely New Connections

We continue to believe such an incentive is appropriate and can replicate the RIIO-2 proposals. That is a discretionary penalty of up to 0.5% annual base revenue for relevant process failures in relation to the facilitation of new connections on a comparable basis to incumbent TOs. Any relevant process failures being linked to expected obligations under licence and code for network solutions in relation to making competent connection offers in designated timescales. This incentive would only apply to network solutions as new connection obligations are not to apply to non-network solutions.

Category	Narrative
Timely New Connections (Financial)	A penalty of up to 0.5% of annual base revenue for relevant process failures i.e. related to facilitation of new connections. This applies solely to network solutions as per Section 10.2 above.

Environmental

We continue to believe such an incentive is appropriate and can mostly replicate the RIIO-2 proposals but in a proportionate manner i.e. an obligation to provide an Environmental Action Plan as part of the tender process and an obligation to produce an Annual Environmental Report.

Therefore, we expect that bidders will set out their environmental plans and commitments in their Environmental Action Plan and then report progress against this plan (and other relevant environmental areas) on an annual basis. For example, in relation to losses, carbon footprint, energy efficiency, biodiversity, etc.

We are considering whether this concept should be extended to cover other elements of corporate social responsibility as well as environmental performance. We would welcome your views on this and what other areas bidders could be expected to set out plans and commitments in relation to and then subsequently report progress against on an annual basis. We would expect these plans/commitments to be licence/contract obligations.

Whilst not being proposed at this time we note that there is also potential to introduce a financial element to this incentive e.g. a discretionary penalty in the event that plans and commitments are not met as per the Environmental Action Plan, for example.

There would likely be a stronger case for such amendment in the event that plans and commitments have costs which are included within the Tender Revenue Stream i.e. if being paid for by consumers it is important that the successful bidder delivers on those plans and commitments.

In addition, for successful solutions that include relevant gases (e.g. SF6) we continue to believe an incentive is appropriate and that this can mostly replicate the RIIO-2 proposals once incentive parameters have been set for early competition e.g. in respect of a baseline and targets.

We propose that the specific parameters associated with this incentive (including maximum reward and penalty) would be further developed in any implementation period.

Category	Narrative
Environmental (Reputational)	An obligation to provide an Environmental Action Plan and publish an Annual Environmental Report. There is potential to extend the scope of this incentive and/or change from a reputational incentive to a financial incentive. This applies to network solutions and non-network solutions.
Environmental (Financial)	An obligation to minimise leakage of relevant gases e.g. SF6. The structure and value of this incentive remains to be confirmed. This applies solely to solutions which include relevant gases.

Availability

We continue to believe such an incentive is appropriate and that it should be based upon the current offshore availability incentive. However, adaptations are likely to be needed for early competition. This is both to reflect the fact that (unlike in the offshore regime) there is potential for non-network solutions and integrated solutions, as well as there being potential differences in the underlying network needs and the reason for the procurement process.

Category	Narrative
Availability (Financial)	A reward or penalty based on solution availability over a given time period. The value of this incentive remains to be confirmed. This applies to network solutions and non-network solutions.

Table 4 we have set out some of the core components of an availability incentive, provide a high-level overview of the offshore regime arrangements and set out our thinking where adaptations may be needed when designing an availability incentive for early competition.

We propose that specific parameters associated with this incentive (including maximum reward and penalty) would be further developed in any implementation period and we would note that certain elements of the incentive structure might need to be further adapted on a case-by-case in advance of (or as a result of) each tender depending on the underlying network need and/or the successful solution.

For example, not all network needs require MWs so a MWh calculation might not be appropriate in all cases, or an integrated network solution might require an amended calculation if it is not electrically contiguous.

It is worth drawing attention to a particular element of

Table 4 where our updated view is different to the position within the Phase 2 consultation and not something which was discussed on our recent webinars. This relates to our proposal for there to be security associated with the availability incentive towards the end of the initial revenue period. We have introduced this into our emerging thinking on the proposed availability incentive to make sure that there are sufficient performance assurance measures in relation to availability (and so asset health) towards the end of the initial revenue period.

Table 4: Building an availability incentive for early competition

Topic	Offshore Tender Round 6 Position	Early Competition Narrative
Structure	98% Target Performance	We believe the concept of target performance should be retained for early competition. The target performance needs further consideration and may need to be set on a case-by-case basis.
Range	90-105% revenue potential per annum	We believe the concept of an asymmetric range should be retained for early competition. The range needs further consideration and may need to be set on a case-by-case basis.

Topic	Offshore Tender Round 6 Position	Early Competition Narrative
	(The annual revenue reduction can be as low as 50% but if this occurs the revenue impact is rolled into up to 5 future years with the cumulative exposure over the total revenue period being no more than 10%.)	
Weighting	Seasonal and Capacity	We believe the concept of seasonal and capacity weighting should be retained for early competition. Each will likely need to be set on a case-by-case basis.
Exclusions	Exceptional Events	We believe that the concept of an Exceptional Event should be retained for early competition.
Timing	Annual adjustment applies to future year(s)	We believe a suitable future period adjustment should be retained for early competition. This adjustment should be aligned with appropriate charge setting processes.
Data Provision and Reporting	Periodic data provision and performance reporting plus ad-hoc reporting for extended service reductions and/or for significant underperformance	We believe similar data provision and reporting requirements should be in place for early competition.
Termination	Underperformance would be non-compliance and could result in Enforcement Action with the ultimate sanction potentially being licence revocation if issues cannot be resolved	We believe similar contract termination and (where necessary) licence revocation provisions should exist for early competition.
Security	No less than 50% of annual base revenue to be secured each year for the final five years of the revenue period – security to be called in respect of incentive underperformance	We believe similar security requirements should be in place for early competition. Further consideration is needed on this security in the event the initial revenue period is extended.
Potential Enhancements	N/A	We believe there is merit in further exploring whether i) exclusions can and should be extended to cover circumstances where underperformance is as a result of outage co-ordination and ii) whether any other factors could and should be weighted.

Questions

10. Do you agree with our updated views on the operational incentive regime being proposed for early competition? Why?

11 End of revenue period review

In our Phase 2 consultation we provided an overview of the end of revenue period options stage of the end-to-end process.

Phase 2 consultation

We set out that at the end of the initial revenue period if there was still a network need and there was still technical asset life available then some form of revenue period extension would be beneficial for consumers. We also set out that it would be the responsibility of the successful bidder to decommission their solution at the appropriate point in time.

Updated preferred option

Our views on the end of revenue period options stage have evolved. As per Chapter 2 on Roles and Responsibilities, we now envisage a process step towards the end of the initial revenue period to assess and decide upon which options should be progressed from a suite of options.

Further information in respect of our thinking on end of revenue period options can be found Chapter 4 on the Commercial Model and further information on decommissioning can be found in the following sub-section.

11.1 Decommissioning

In our Phase 2 consultation we set out our view that clearly defined decommissioning arrangements are necessary to inform potential bidders on how decommissioning costs would feed into the tender evaluation process. It would also need to inform bidders on what their future obligations would be once the decision has been taken to decommission their solution. We also set out that it is important that consumers are protected from cost uncertainties associated with decommissioning. This includes successful bidders not adequately fulfilling their eventual decommissioning obligations to the required standards.

Phase 2 consultation

In our Phase 2 consultation we set out that our preferred option is to develop a framework which evaluates bidder decommissioning plans and costs as part of the tender process. We stated that this framework would then require bidders to maintain such plans and hold decommissioning security once operational. We also noted that further consideration would be needed in relation to whether any decommissioning arrangements would need to be underpinned by legislation.

Stakeholder feedback

We asked stakeholders whether they agreed that decommissioning costs should be considered as part of the tender evaluation. We asked whether there should be an obligation to develop a proportionate decommissioning plan and place a form of decommissioning security at an appropriate time.

Several stakeholders supported a requirement for a decommissioning plan and for this plan and any assumed decommissioning costs to be considered within the tender evaluation process.

One stakeholder noted decommissioning should not be assumed at any point to be the default option as there may be other revenue opportunities available at the end of the initial revenue period. However, they also noted there must be provision for decommissioning if the solution is no longer needed and is at the end of its technical asset life.

One stakeholder argued that as there is no legislative or licence obligation to decommission on the incumbent Transmission Owners ("TOs") or for the onshore portion of Offshore Transmission Owners ("OFTOs") then this should not be part of early competition. They argued providers should simply be subject to the decommissioning requirements of relevant land owners and consenting authorities.

Two stakeholders were in favour of decommissioning security and two were against decommissioning security. One noted it is not clear why it would be needed as there is no equivalent for interconnectors or OFTOs. The other noted it would add cost to consumers.

The remaining stakeholders did not comment specifically on the security elements of the proposals.

Updated preferred option

Stakeholders generally support our view that a decommissioning plan should be provided and maintained and that decommissioning costs should be considered within the tender evaluation process.

Therefore, our views on decommissioning plans and decommissioning costs remain unchanged.

In addition, based on the feedback that decommissioning should not be assumed (but that there should be provisions related to decommissioning) we therefore expect that decommissioning plans should include information on end of revenue period decommissioning assumptions.

For example, whether the bidder has assumed a residual commercial or regulatory asset value and not included the full estimated costs for future decommissioning within the bid Tender Revenue Stream.

After further considering whether decommissioning obligations should be underpinned by legislation and whether there should be an obligation to decommission we have reflected on stakeholder feedback and do not believe this would be proportionate.

Therefore, whilst bidders will still be responsible for decommissioning we think existing provisions and processes will remain suitable e.g. with land owners, consenting authorities and under the codes.

Regarding decommissioning securities, we received some support for our proposal that they would be appropriate but also some challenge. This included a challenge to our understanding of the offshore arrangements upon which our initial views were based in our Phase 2 consultation.

New issues for consultation

After reflecting on stakeholder feedback on decommissioning we have amended our position and set out our views as follows.

We continue to feel that a new risk potentially exists for early competition. This risk is less of a concern in relation to the incumbent TOs. Specifically, that decommissioning activities for incumbent TOs are considered as part of the wider regulated portfolio and so there would potentially be a greater impact on them (whether financial or reputational) of not fulfilling any onshore decommissioning obligations as and when they occur in future. Therefore, we continue to see merit in some form of security related to decommissioning in the early competition regime to make sure that decommissioning obligations are fulfilled at the appropriate time. We also however acknowledge that any requirement for decommissioning security is likely to increase costs for bidders which will need to be factored into the TRS and this could increase costs to consumers.

Therefore, as well as there being options on whether or not to require decommissioning security, there is an option available where the scope of the decommissioning security is reduced. This reduced decommissioning security could be to solely cover decommissioning obligations in respect of the industry codes. Any decommissioning security related to land owner agreements and planning conditions would not then be a requirement for early competition as was previously being considered.

Furthermore, in light of our proposals on some form of security being needed towards the end of the initial review period in relation to availability and incentive performance (see Section 10.3) we expect that the scope of this financial security could be extended to also cover decommissioning obligations (however broadly or narrowly they are defined). The reason being that this potentially avoids the need for additional security and so additional cost to consumers over and above what would exist as a result of there being financial security related to incentive performance.

Based on the above our amended preference in relation to decommissioning security is to seek to narrowly define the scope of the decommissioning security requirements to cover the decommissioning processes and obligations set out in industry codes i.e. to provide assurance that decommissioning activities and disconnection is sufficient to not adversely impact the Transmission System.

Based on stakeholder feedback we have updated our views on what decommissioning security would likely be needed for early competition

We expect that the security requirement foreseen within Section 10.3 could be utilised for this dual purpose so whilst the scope of this security would be slightly extended the value and duration of such security could remain the same as would otherwise be the case. However, we expect the exact scope and value of the decommissioning security requirement would be discussed and set in any future implementation period.

Questions

11. Do you agree with our revised views and amended preference in respect of decommissioning securities? Why?

Next Steps

Thank you for taking the time to read this chapter of our Phase 3 consultation. We look forward to receiving your feedback which will help inform the final version of the Early Competition Plan. For full details on the range of options on how to respond, please refer to the Consultation Summary, Section 8.