

Development Opportunity – Hydro Power in Scotland Commercial Negotiation Process

Background

1. Forestry Commission Scotland (FCS) is committed to helping reduce Scotland's carbon emissions and achieve the Scottish Government's renewable energy targets. The National Forest Estate (NFE) – land owned by the Scottish Ministers and managed by FCS – extends to 665,000 hectares and has the potential to make a significant contribution to Scotland's renewable energy targets through wind and hydro power generation. The Climate Change (Scotland) Bill will allow Scottish Ministers to modify, by order, the functions of FCS so that it can play a greater role in tackling climate change and form corporate bodies and joint ventures with third parties, including developers and local communities in order to accelerate renewable energy development.

2. Hydro power is a valuable element of the potential of the NFE. FCS have assessed that there remains about 50MW of small-scale run-of-river hydro power opportunities distributed throughout the NFE, with a range of potential sizes. In order to increase Scotland's portfolio of decentralised hydro power generation, generate returns from the NFE and benefit local communities (see sections 14-16), FCS would like to see as much of this potential as possible assessed in detail and, where feasible, taken forward to construction and operation through arrangements with development partners ("the Developers"). To optimise power output and efficiency, FCS is prepared to consider part-schemes where they are not confined wholly to the NFE.

The process

Initial expressions of interest/pre-qualification

3. FCS is asking for initial expressions of interest from potential Developers wishing to be considered for developing hydro-power schemes on the NFE. Responses are invited from organisations with experience in hydro development and/or operation that are interested in assessing and developing the potential in one or more of the following parts of the NFE ("the Lots"). Joint responses from more

than one company will be welcome, as it is important for Developers to have the capacity to take forward the full range and number of available sites. The Lots are:-

Lot 1 South Scotland - Galloway, Scottish Lowlands, Dumfries and Borders Forest Districts;

Lot 2 Central Scotland - West Argyll, Cowal & Trossachs, Tay, Moray & Aberdeenshire Forest Districts;

Lot 3 North-west Scotland - Lochaber, Inverness, Ross & Skye, North Highland Forest Districts.

See attached map.

4. Potential Developers are required to submit a Pre-Qualification Questionnaire (PQQ) provided by FCS. This stage is to enable FCS to assess Developers so that only those which meet or exceed minimum requirements are taken forward to the negotiation stage. The PQQ aims to elicit sufficient information for this purpose. A PQQ stage in the process is considered necessary and appropriate for the proposed hydro-power schemes given the significant level of interest this is likely to generate. When Developers register their interest (see paragraph 12), FCS will provide a basic set of information including the PQQ and scoring matrix. They should not seek additional information from FCS at this stage as it will not be taken into account in the evaluation. FCS will assess these PQQ submissions according to published pre-defined criteria. The PQQ will be used to evaluate Developers according to (i) their economic and financial standing, (ii) their proven technical and professional ability, (iii) indicative terms, including their approach to Joint Ventures, and establish whether they are suitable to proceed to the negotiation stage of the process. By the end of August, FCS will set up a central source of information on the website, containing Common Definitions, FAQs and any other information considered relevant. It will be the duty of the potential Developers to check this site for updated information.

Shortlist and Proposals

5. Following evaluation, FCS will draw up a shortlist of suitable potential Partners who will be invited to submit proposals based on more detailed information

provided by FCS including information appropriate to each Lot. This will include any excluded sites. Reasons for excluding sites from any of the Lots include biodiversity, FCS retention for self-developed hydro-power, non run-of-river schemes and community projects (this is not an exclusive list). Potential Partners' proposals will include details of the basis upon which they will assess hydro-power sites, the indicative Commercial Heads of Terms they propose for engagement with FCS following this assessment and presentation of options for lease and/or joint venture arrangements, including community benefits. FCS does not wish to be too prescriptive about the terms to be proposed and leaves it open to potential Partners to present their own proposals as a basis for negotiation. FCS will discuss and negotiate with the potential Partners, aiming to refine proposals. Decisions will be made on the basis of the 'Most Economically Advantageous' terms to FCS. The potential Partners will then be asked to submit a proposal on the basis of the outcome of negotiations. This proposal will decide the Successful Partner ('the Partner') for each Lot.

Negotiating exclusivity arrangements for the assessment and identification of potential development sites by Lot

6. FCS and the Partner will then negotiate fixed-term exclusivity arrangements for each Lot, on the basis of the successful proposal. These will allow the Partners to undertake detailed feasibility studies within the designated area. During this study period, FCS will make available to the Partners, at places to be agreed, such documentation, title deeds etc, as FCS may consider relevant. However, it will be for the Partners to verify all information on which their decisions are based and the information FCS provides in this process must not be relied on in this regard. Arrangements between FCS and Partners will be made subject to certain overriding legal, regulatory and policy considerations that will be defined by FCS. Any negotiation undertaken by FCS in this regard will be subject to the timescales and general procedures set out in paragraphs 12 and 13 of this document and the overriding discretion of FCS to discontinue or vary the whole or any part of any of the proposed arrangements set out in this document.

Detailed feasibility studies and agreement of Commercial Heads of Terms

7. Partners will undertake detailed feasibility studies. They will then provide FCS with their assessment of the hydro potential of specific sites to be taken through the

development process. They will provide monthly updates and allow access to all accumulating data and other information relating to the sites to FCS. It will be up to the Partners to undertake all assessment, evaluation and other investigations to satisfy themselves as to the viability of schemes making the shortlist for development. Likewise all costs and risk will remain with the Partners.

8. Within 8 months from the agreement of exclusivity arrangements, the Partners will consult with FCS as to the site shortlist drawn up and an agreed final list of sites to be taken through the development process will be established. In finalising this list, FCS will have the ultimate decision as to which, if any, sites will be taken forward to the next stage. Ownership of information gathered on sites which FCS decides will not proceed will remain with the Partner. Ownership of information on sites which the Partner does not wish to proceed with will pass to FCS. If any Partner fails to meet FCS's timeline or quality requirements (as assessed from the monthly submissions to FCS) in terms of this detailed assessment phase, their exclusivity agreement will cease and all information obtained will pass to and remain the property of FCS as described above.

9. When the list of sites is agreed, the Commercial Heads of Terms (including the lease and/or JV options, and Option Period) will be firmed up by negotiation between the Partners and FCS, given that site-specific characteristics will then be known. FCS will retain the ability to withdraw any or all of the sites if the commercial arrangements are significantly different from those proposed in the exclusivity agreements.

Granting of option and securing planning permission

10. Once the site shortlist is established and Commercial Heads of Terms agreed, FCS will grant the Partners an option on agreed terms for specific sites and the Partners will take them through the stages required to obtain planning consent. These consents will be obtained within a period to be agreed from shortlist approval date (see para 9). Performance towards obtaining consents will be monitored by FCS according to a set of Key Performance Indicators (KPIs), to be agreed. Failure to attain these may result in FCS taking sites out of the contract. All information and documentation relating to sites that do not proceed will pass to and remain the property of FCS.

On achieving planning permission

11. Once the shortlisted sites have obtained planning permission, the agreed Commercial Heads of Terms as set out in the option will be clarified into a Commercial Agreement between FCS and the Partner to:-

- a. grant the development partner a lease of the site(s); or
- b. create a Joint Venture between FCS and the Partner for the construction of the site(s), to be operated by the Partner; or
- c. agree an alternative arrangement.

It will be for FCS to determine whether to grant a lease or enter into a joint venture. Any agreement between FCS and any Partner in respect of the creation of a joint venture shall be conditional upon an enabling order having been made by Scottish Ministers which allows FCS to enter into any such joint venture arrangements; FCS may wish to offer the local community an opportunity to participate in a joint venture. The Construction period, including the grid connection, will be agreed between all parties and, once successfully commissioned, the Operation stage will run for the period agreed in the lease or joint venture.

Overall indicative timescale and general procedures

12. Overall indicative timescale

The Development Opportunity will be launched on 5th August 2009. Interested developers should notify FCS by email to contactREBU@forestry.gsi.gov.uk of their interest. They will be sent the PQQ, which includes the scoring matrices and instructions on how to complete it .

Although the terms of the Public Contracts (Scotland) Regulations 2006 (the "Regulations") do not directly apply to the negotiation procedures contained in this document, FCS will, as a matter of best practice, advertise this Opportunity for at least the minimum period required by the Regulations. FCS should receive all PQQ submissions by 13.00hrs on 18th September 2009 and FCS proposes to notify all potential Partners of the outcome of the evaluation of the PQQ submissions by 30th

October 2009. Shortlisted companies will be invited to enter into the negotiation procedure, whilst unsuccessful companies will be notified at the same time, with an opportunity to discuss reasons for their exclusion.

13. General procedures

An initial meeting will be held on Wednesday, 11th November 2009 to explain procedures and allow potential Partners to ask further questions before they have completed their submissions. All who are successful at the PQQ stage will be expected to send a representative to this meeting. FCS reserves the right to go through as many phases of negotiations as it requires to get the most economically advantageous settlement for FCS and this may require several meetings and refinement of proposals at different stages of the process.

FCS also reserves the right to remove any Partners at any time through the process if in FCS's opinion there is little chance of their proposal being successful.

FCS also reserves the right to change or refine their requirement in the light of information gathered during this process.

Community benefits and community-based schemes

14. While this process is targeted at commercial developments, FCS encourages potential Partners to consider how best to ensure that such developments benefit local communities.

15. In addition, FCS welcomes separate approaches from communities with an interest in developing local hydro schemes; these will be considered under existing arrangements, which include the possibility of acquiring or leasing suitable sites under the National Forest Land Scheme.

16. Further information on community engagement and community empowerment is available at <http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/engage/standards> and <http://www.scotland.gov.uk/Resource/Doc/264771/0079288.pdf>