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BRIEFING

THE GREEK RES TENDERS

MAY 2018

THE GREEK RENEWABLE ENERGY SECTOR MADE A SIGNIFICANT STEP CLOSER TO MEETING THE EU TARGET MODEL WITH THE ANNOUNCEMENT OF AUCTIONS VIA WHICH NEW WIND AND PHOTOVOLTAIC PROJECTS WILL OBTAIN OPERATING AID AGREEMENTS.



NOTE FROM THE EDITOR

The Greek renewable energy sector recently made another significant step closer to meeting the EU Target Model with the announcement of auctions via which new wind and photovoltaic (“PV”) projects will obtain twenty-year Operating Aid Agreements (contracts for difference). The reforms adopted so far, as well as those announced for the immediate future, are intended to bring Greece in line with market-based reforms common throughout the rest of the European Union and ensure the long-term viability and funding of the country's renewable energy sector.

Competitive tender processes (the “tenders”) were introduced by virtue of Law 4414/2016 (the “Law”)¹, but to date only a 40 MW pilot auction for PV projects in late 2016 has been held. Greece is about to launch its first Renewable Energy Sources (“RES”) tenders, auctioning an estimated total capacity of 2.6 GW between 2018 and 2020. The EU Commission confirmed in January 2018 that the tenders envisaged in Law were in line with EU State Aid rules²; thus, the announcement of the first full auctions marked the transition to the new RES regime.

¹ <http://www.wfw.com/wp-content/uploads/2016/09/WFW-Briefing-Greek-Renewables-Support-Scheme-August-2016.pdf>

² http://ec.europa.eu/competition/state_aid/cases/271780/271780_1965936_144_2.pdf

“GREECE IS ABOUT TO LAUNCH ITS FIRST RENEWABLE ENERGY SOURCES (“RES”) TENDERS, AUCTIONING AN ESTIMATED TOTAL CAPACITY OF 2.6 GW BETWEEN 2018 AND 2020.”

Following the issuance of the two ministerial decisions stipulated in Article 7 of Law³, the Regulatory Authority for Energy (“RAE”) issued its decision No.321/2018⁴, which regulates the first three Calls for Tenders in 2018.

This briefing sets out the key aspects of the auction process as provided in the Calls for Tenders, including the participation and award procedures and conditions.

Calls for Tenders

The Calls for Tenders relate to the following technology specific categories:

- Category I: PVs with an installed capacity $PPV \leq 1$ MW, and maximum tendered capacity up to 70 MW;
- Category II: PVs with an installed capacity $1 \text{ MW} < PPV \leq 20$ MW, and maximum tendered capacity equal to 230 MW; and
- Category III: W/Ps with a capacity of $3 \text{ MW} < P_{wind} \leq 50$ MW, and maximum tendered capacity equal to 300 MW⁵.

For a more detailed analysis of the capacity and the number of tenders per year, pursuant to the Ministerial Decision No.172859/22.03.2018, please refer to Annex I.

Pre-Qualification Criteria

Although in the future RES projects at an earlier stage of development might be eligible to participate in tenders, RAE has ruled that for the 2018 rounds, all project owners must have secured a Production License (if required) and a Connection Agreement or a Final Grid Connection Terms Offer⁶, both in force. In the event that a legal entity or natural person owns more than one RES plants for which it submits additional applications, it can participate in the auction by submitting an application for each station separately via the certification and subscription to the e-platform as a separate user (see Article 10 of the Calls for Tenders).

RES projects that have been included in the Fast-track Process (Article 9 of Law 3775/2009) or the Strategic Investments Procedures (Law 3894/2010) can also participate.

Applicants must also pay a participation fee and submit a Bid Bond (see further below).

Procedural Steps

The procedure contains the following stages:

- Stage A: Subscription to the e-platform and submission of the participation documents/information; and

³ The first ministerial decision no. APEEK/A/F1/oik.184573/13.12.2017 - Government Gazette B 4488/19.12.2017, as amended by the ministerial decision No. APEEK/A/F1/oik.172858/22.03.2018 – Government Gazette B’1263/10.04.2018.

The second ministerial decision No. APEEK/A/F1/oik.172859/22.03.2018 – Government Gazette B 1267/10.04.2018.

⁴ Government Gazette B’ 1466/27.04.2018.

⁵ The thresholds are amended for projects owned by Energy Communities. Accordingly, the threshold for W/Ps is set to 6 MW and for PVs to 1 MW - without however blocking smaller PVs from participating in the tenders.

⁶ In accordance with the Greek legislation, the prior completion of the environmental licensing process, as such is provided for RES projects is a prerequisite for the granting of the final Connection Terms Offer.

“EACH CANDIDATE MUST SIGN UP ON THE E-PLATFORM BEFORE SUBMITTING ITS APPLICATION REQUEST AND SUPPORTING DOCUMENTS.”

- Stage B: Participation in the auction, followed by the results and awards.

Each candidate must sign up on the e-platform before submitting its application request and supporting documents (see Article 10 of the Calls for Tenders). After completion and assessment of the material submitted, RAE will issue the ‘Final List of Participants’ fulfilling the required criteria⁷.

For the purposes of ensuring satisfactory levels of competition, the 75% Competition Surplus will apply. More specifically, the sum of the capacity of all participants included in the ‘Final List of Participants’ must exceed by 75% the tendered capacity of each category. This means that if the maximum tendered capacity is 70 MW, a minimum of 122.5 MW capacity of projects must have qualified to participate in the tender (70×1.75). If the total capacity of the ‘Final List of Participants’ is only 50 MW, RAE will set the maximum capacity to be tendered at 29 MW, so that the participating capacity is at least 75% more than the available capacity ($50/1.75 = 28.6$ MW).

Those included in the ‘Final List of Participants’ will be invited by RAE to bid pursuant to the provisions of Article 14 of the Calls for Tenders, and RAE will announce the successful bidders.

With respect to the timeline, the following two key dates must be noted:

- 5 June 2018 – expiry of the application submission period; and
- 2 July 2018 – auction.

The submission of applications runs from the date the Calls for Tenders were published in the Government Gazette, until 5 June 2018. RAE reviews the applications and publishes the lists of successful and rejected participants by 25 June 2018. The auctions take place on 2 July 2018, and the announcement of the successful bidders as well as the issuance of the ‘Final List of Successful Participants’ will take place by 4 July 2018.

However, these timeframes are not binding and RAE can extend the assessment period or even reschedule the auction if there are large volumes of applications.

Bid Cap Prices

The maximum allowed bid prices (for 2018) are defined by virtue of the Ministerial Decision as⁸:

- € 85/MW for PVs with a capacity equal to or less than 1 MW;
- € 80/MW for PVs with a capacity higher than 1 MW and up to 20 MW; and
- € 90/MW for wind farms with a capacity higher than 3 MW and up to 50 MW.

With respect to future tenders (i.e. those of 2019 and 2020), the bid cap will be set at the highest bid price awarded in previous tender rounds (i.e. those of 2018 and 2019) for the same category but reduced by 1%.

⁷ A Temporary List of Participants & Temporary List of Rejected Participants will be also issued, enabling individuals with legal interest to raise objections against RAE’s decision within the deadlines stipulated in the Calls for Tenders.

⁸ Ministerial Decision No.172859/22.03.2018.

As regards the joint (wind and PV combined) tenders in 2018, the cap bid price will be the lowest of (i) the highest bid prices awarded in the previous conducted tender for wind projects with capacity between 3 – 50 MW; and (ii) PVs with capacity between 1 – 20 MW, and then reduced by 1%.

Participation Fees, Bid Bonds and Performance Bonds

The participation fees are:

- €500 for PVs up to 1 MW; ii) €1,000 for PVs from 1 MW and up to 20 MW and wind farms from 3 MW and up to 50 MW.

- A. The Bid Bond secures the participation of the interested candidate in the Tender Process contributing concurrently to its normal and efficient conduct. It is submitted to RAE together with the folder of the first phase (Stage A) pursuant to Article 11 of the Calls for Tenders.

The amount of the Bid Bond shall be 1% of the total investment, taking as a calculation base the cost of a typical RES project of the same category; this is estimated at €1,000 per kW, so the Bid Bond is set at €10 per kW of installed capacity⁹.

The Bid Bond must be drafted in accordance with Annex 8 of the Calls for Tenders, and remains valid at least until 5 October 2018. It is issued by credit institutions lawfully operating in Greece or in the countries of origin of the participants where there are such issuance rights pursuant to their legislation, the Deposits and Loans Fund or other bodies being competent for such issuance pursuant to the legislation. Bid Bonds issued in a country other than Greece must be accompanied by an official translation in the Greek language or they will be disregarded.

A Bid Bond may be forfeited in the event where the selected participant does not present its Performance Bond and, if it constitutes part of the 4% Bond Value (see below), it can be forfeited whenever a subsequent bond is forfeited.

If a participant is not successful in the auction, the Bid Bond shall be returned to them upon issuance of RAE's decision on the final results of the Tender Process. Participants selected for inclusion under the Operating Aid scheme may require that their Bid Bonds are returned to them if they are not used in order to satisfy the 4% Bond Value relating to the good performance of the project. If the Bid Bond is used as part of the 4% Bond Value, then it is returned by RAE upon request, provided that the project is electrified within the envisaged deadline (as may be extended).

- B. The Performance Bond is intended to ensure that the project is installed and starts operation within the deadlines stipulated in Table 1 of the Calls for Tenders once it has been selected via the Tender Process for inclusion under the Operating Aid scheme. It must be submitted to RAE within three months

⁹ The amount is differentiated for the WPs of Category III where the cost of a typical project is estimated at EURO 1,250/kW, thus EURO 12,5/kW.

“FOR THE PURPOSES OF SECURING THE REALISATION OF EACH PROJECT, THE SUM OF THE BONDS SUBMITTED TO RAE BY THE PARTICIPANT FOR THE SPECIFIC PROJECT IN THE CONTEXT OF THE TENDER PROCESS MUST BE EQUAL TO 4% OF THE TOTAL INVESTMENT.”

of the announcement of the final results of the Tender, under penalty of cancellation of the Operating Aid Agreement.

The 4% Bond Value: For the purposes of securing the realisation of each project, the sum of the bonds submitted to RAE by the participant for the specific project in the context of the Tender Process must be equal to 4% of the total investment, taking as a calculation base an estimated installation cost of €1,000/kW¹⁰. Each participant, under penalty of exclusion, must maintain bonds equal to this amount for the whole duration of materialisation of the project and until it is connected to the grid, within the timelines envisaged in the Calls for Tenders. More specifically:

- If the installed capacity is decreased by 10%, then both Bid Bonds and Performance Bonds remain the same, on the basis of the initial capacity of the project;
- If the capacity is decreased between 10% and up to 50%, then both Bonds are forfeited pro rata to the installed capacity decrease;
- If the capacity decrease exceeds 50% (and up to 70%), then the Bonds are forfeited in full; and
- If the station loses more than 70% of the capacity with which it participated in the bidding process, then both Bonds are forfeited, while the station also loses the reference price it secured via the auction; it is not however, barred from participating in later tenders.

No increase of the Selected Participant’s installed capacity with which it participated in the tender process is permitted.

The Performance Bond must be drafted in accordance with Annex 9 of the Calls for Tenders, and remains valid for the following time periods following RAE’s decision on the final results of the tenders:

- 15 months for PVs with a capacity $PPV \leq 1$;
- 21 months for PVs with a capacity $1 \text{ MW} < PPV \leq 5 \text{ MW}$; and 24 months for PVs with a capacity $5 \text{ MW} < PPV \leq 20 \text{ MW}$. A six month additional extension to each of these deadlines is provided for those projects connected to the Hellenic power distribution system via a substation; and
- 27 months for wind farms with a capacity between $3 \text{ MW} < P_{\text{wind}} \leq 10 \text{ MW}$; and 39 months for wind farms with a capacity $P_{\text{wind}} > 10 \text{ MW}$. A six month additional extension to each of these deadlines is provided for those projects connected to the Hellenic power distribution system via a substation.

It is issued in accordance with the same provisions of the Bid Bond, while with respect to forfeiture, if the electrification of the selected participants’ stations is not realised within the deadlines provided under Table 1, then both Bid and Performance Bonds are forfeited.

In addition, the Performance Bond that the selected participant has submitted will be forfeited for breach of its obligations mentioned under Article 11, as well as paragraphs 16.3 and 16.4 of Article 16 of the Calls for Tenders.

¹⁰ Ibid.

The Performance Bond shall be returned by RAE upon request, if the electrification of the stations takes place within the deadlines stipulated in Table 1 of the Calls for Tenders, as may be extended.

In case of suspension of the Tender Process, the Bonds remain in force for a maximum period of three months in order to repeat the Tender Process; after this period the Bonds shall be returned at the Participants' request, in which case those projects will be dropped from any continuation of the tender process.

Electrification of the Projects

From the announcement date of RAE's decision on the final results of the e-bidding process, the electrification of the projects must be realised within the exclusive deadlines hereunder analysed:

- Category I: 12 months;
- Category II: 15 months for PVs with a capacity $1 \text{ MW} < \text{PPV} \leq 5 \text{ MW}$; and 18 months for PVs with a capacity $\text{PPV} > 5 \text{ MW}$, plus a further six months extension for projects connecting to the Hellenic power distribution system via a substation; and
- Category III: 24 months for wind farms with a capacity between $3 \text{ MW} < P_{\text{wind}} \leq 10 \text{ MW}$; and 36 months for wind farms with a capacity $P_{\text{wind}} > 10 \text{ MW}$, plus a further six months extension for projects connecting to the Hellenic power distribution system via a substation.

"IN CASE OF SUSPENSION OF THE TENDER PROCESS, THE BONDS REMAIN IN FORCE FOR A MAXIMUM PERIOD OF THREE MONTHS IN ORDER TO REPEAT THE TENDER PROCESS."

Failure to comply with these deadlines will trigger the following consequences in accordance with Article 17 of the Calls for Tenders:

- Removal from the Operating Aid scheme;
- Forfeiture of the bonds that have been submitted for the good performance of the project in favour of the Special Account¹¹; and
- Depending on the reasons for delay, revocation of the Production Licenses pursuant to the provisions of Article 42 of the Production Licenses Regulation (Government Gazette B' 2373/25.10.2011).

Cancellation of the Tender Process

RAE is entitled to cancel the Tender Process by providing a reasoned decision, on the following basis:

- For public interest special reasons or force majeure events;
- For omissions or errors during the bidding process that render its continuation risky;
- In case the whole procedure becomes unfeasible, either due to insufficient applications or disqualification of participants at Stage A.

¹¹ Operating Aid Sub-Account of the Special Account for RES and CHP of the Interconnected System and Network of the Special Account of article 143 of Law 4001/2011 (Government Gazette A' 179/22.08.2011).

“THE 2018 AUCTIONS ARE EXPECTED TO BE OVERSUBSCRIBED, ALTHOUGH TIME BETWEEN THE ANNOUNCEMENT OF THE AUCTION PROCESS AND THE DEADLINE FOR SUBMITTING APPLICATIONS IS NOW VERY TIGHT.”

If there is a cancellation, the participation fee together with the Bid Bonds are returned to the Participants.

Joint tenders

Following this initial group of auctions, the 2018 joint tenders will be held in the end of the year, where the protagonists shall be the largest RES projects in terms of capacity, as well as clusters¹² (including mixed clusters).

Conclusion

The first Greek RES auctions organised under a solid legal framework have now been launched and 2 July 2018 marks a new stage for the domestic renewable energy market. Taking into consideration the results of the pilot tenders of 2016, the expectation is that the 2018 auctions will have broad appeal both domestically and internationally. The deficit in the Special Account has been resolved, and national and international investors are already moving to buy shares or share options in project companies. Expected bid prices, the relatively low cost of land in Greece and the current availability of project finance, combined with encouraging wind and solar resources, mean that the 2018 auctions are expected to be oversubscribed, although the time between the announcement of the auction process and the deadline for submitting applications is now very tight.

¹² Cluster is defined as a group of at least two (2) RES Stations with a common connection point to the Grid or Network.

| ANNEX I | | | | |
|--|---|--|---|---|
| CAPACITY AND TENDERS FOR THE YEARS 2018 - 2020 | | | | |
| Year | Tender Category | Technologies | Stations Categories | Auctioned Capacity (MWs) |
| 2018 | Technology specific | W/Ps | 3 MW < Capacity ≤ 50 MW ¹³ | 300 |
| | Technology specific | PVs | Capacity ≤ 1 MW | 70 |
| | | | 1 MW < Capacity ≤ 20 MW | 230 |
| | Joint technologies | W/Ps and PVs | <ul style="list-style-type: none"> W/Ps with a capacity > 50 MW PVs with a capacity > 20 MW W/P Clusters with total capacity > 50 MW PV Clusters with total capacity > 20 MW Mixed W/P + PV Clusters with total capacity > 50 MW¹⁴ | 400 |
| | Special zone (projects connecting to the N. Makri-Polipotamos and HV Evia interconnection) | W/Ps and PVs | <ul style="list-style-type: none"> W/Ps with a capacity > 3 MW PVs with an installed capacity > 500 kW W/P Clusters with total capacity > 50 MW PV Clusters with total capacity > 20 MW Mixed W/P + PV Clusters with total capacity > 50 MW | The capacity margin which shall arise upon expiry or revocation of the production licenses of the Project's Users, in implementation of Article 42 of the Production Licenses Regulation. |
| 2019 | Technology specific | W/Ps | 3 MW < Capacity ≤ 50 MW | 300 + Remaining capacity of the year 2018 (of the specific technology) |
| | Technology specific | PVs | 500 kW ≤ Capacity ≤ 1 MW | 300 + Remaining capacity of the year 2018 (of the specific technology) |
| | | | 1 MW < Capacity ≤ 20 MW | |
| Joint technologies | W/Ps and PVs | <ul style="list-style-type: none"> W/Ps with a capacity > 50 MW PVs with a capacity > 20 MW W/P Clusters with total capacity > 50 MW PV Clusters with total capacity > 20 MW Mixed W/P + PV Clusters with total capacity > 50 MW | 400 + Remaining capacity of the year 2018 (of the specific technology) | |
| 2020 | Technology specific | W/Ps | 3 MW < Capacity ≤ 50 MW | 300 + Remaining capacity of the year 2019 (of the specific technology) |
| | Technology specific | PVs | 500 kW ≤ Capacity ≤ 1 MW 1 MW < Capacity ≤ 20 MW | 300 + Remaining capacity of the year 2019 (of the specific technology) |

¹³ For the years 2018-2020, see note 5 with respect to the differentiation of the capacity of Energy Communities' projects.

¹⁴ For the years 2018-2019, said category concerns also PV projects included in the Fast-track Process (Article 9 of Law 3775/2009) or the Strategic Investments Procedures (Law 3894/2010) (with or without a common connection point) of a total installed capacity greater than 20 MW.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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