

First tender process under new offshore wind law underway

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Introduction

On 24 June 2020 the government commenced the first tender process under Japan's new offshore wind law. Prospective developers have until 24 December 2020 to submit bids to construct, operate and decommission a floating wind project off the coast of Goto City, Nagasaki (the Goto project). Bids must comply with the Occupancy Guidelines for the Goto Offshore Area, which were also published by the government on 24 June 2020.

This article summarises the key elements of the guidelines. Although specific to the Goto project, the guidelines provide insight as to the Japanese authorities' general approach towards the implementation of the offshore wind law and how the tender processes for the other identified sites will proceed.

Background

On 30 November 2018 the Diet passed the Act on Promotion of Use of Marine Areas for Development of Marine Renewable Energy Generation Facilities, which aims to promote the development of offshore wind projects. The act came into effect on 1 April 2019.

The act established a nationwide regime for the occupancy of 'general waters' (ie, sea areas other than ports and harbours) for the development of offshore renewable projects, which includes:

- the designation of specific zones for the promotion of offshore renewable projects (promotion zones); and
- a public tender system to identify and appoint developers.

In July 2019 the Ministry of Economy, Trade and Industry (METI) and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) announced the selection of 11 potential promotion zones. These included four 'promising' offshore areas that were permitted to move to the next step in the promotion zone designation process, which includes a formal consultation with local representatives, academic experts and local stakeholders (eg, fishery associations) via the establishment of a council.

METI and MLIT formally announced that Goto had been selected as the first promotion zone under the act on 27 December 2019 and on 17 April 2020 they published the draft guidelines. These were finalised on 24 June 2020 and the tender process for Goto commenced on the same date.

Summary of guidelines

Developer qualifications

Under the guidelines, bidders must meet the following minimum qualifications:

- The bidder must be a 'Japanese legal entity', meaning that it must be headquartered or have its main office in Japan. Shareholders of the bidder may be foreign entities, subject to compliance with the other eligibility requirements. In the case of a consortium, each member of the consortium must be a Japanese legal entity.
- The bidder must have experience in offshore construction. This experience need not be in wind power projects and this requirement can be met by the experience of a shareholder, consortium member or

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contractor, provided that such partner is proposed to carry out the construction.

- If the bidder plans to use project financing, it must submit a letter of intent from a financial institution with domestic project finance experience. The financial institution need not be a Japanese financial institution, but must be eligible to provide finance in Japan.

Evaluation criteria

The guidelines provide detailed guidance on the evaluation criteria for occupancy plans, which will be scored based on the following criteria.

Supply price for electricity

Because the Goto promotion zone is a floating wind development, the supply price is set under the feed-in-tariff (FIT) regime at 36 JPY/kWh. This is expected to be different for future promotion zones with bottom-fixed wind turbines, for which occupancy plans will be evaluated based on their proposed supply price of electricity.

Experience

Occupancy plans will be evaluated based on the experience of the bidder and related parties in construction, maintenance and project management. Domestic civil work experience will be preferred, although overseas experience will be taken into account.

Risk analysis

Occupancy plans will be evaluated on their analysis of the various risks involved in the project's lifespan and how they will mitigate these risks.

Steady supply and future cost reductions

Occupancy plans will be evaluated from the perspective of their ability to produce a stable supply of electricity and reduce future production costs. Regulators will also evaluate proposals to reduce the cost of production over time.

Implement latest technology

Plans that promote the use of the best available technology will be preferred.

Collaboration with local officials and local stakeholders

Bidders will be evaluated on their experience collaborating with local municipalities, with a particular emphasis on their experience collaborating on domestic offshore wind projects. Bidders which demonstrate an ability to cooperate with local stakeholders will be evaluated highly.

Economic impact

Ancillary benefits for the local and national economy – such as hiring locally and including domestic producers in the supply chain – is another evaluation factor.

Other issues

Three-tiered guarantee deposit

Three successively larger guarantee deposits (ie, bid bonds) are required under the guidelines. The first is a 500 JPY/kW bid bond (calculated by the lesser of the output capacity of the Goto promotion zone and the maximum electricity input capacity) due on submission of the plan. The second is a 5,000 JPY/kW bid bond due within eight weeks from the selection of the winning bidder (the first guarantee deposit will be applied to the second). The third is a 13,000 JPY/kW bid bond due within 12 months from the date on which the developer is publicly announced as the winner (the first and second guarantee deposits will be applied to the third).

30-year occupancy

The occupancy licence for the Goto promotion zone will be valid for 30 years. This period assumes:

- four to five years for the environmental impact analysis;
- two to three years for construction;
- 20 years of operation under the FIT; and
- two years for decommissioning.

Bidders may propose to start operation early and enjoy a longer operation period; however, delays beyond the scheduled start date may reduce the FIT period for the project.

Decommissioning costs

The guidelines require occupancy plans to:

- specify anticipated decommissioning costs; and

- provide credit support instruments in advance of the operation date.

Amendments to occupancy plans

Amendments to occupancy plans will require the prior approval of METI and the MLIT, which will evaluate whether the proposed changes:

- will contribute to the public interest; or
- are unavoidable.

Transfers of interest in project company

Transfers of ownership interests in the project company will be deemed an amendment to the occupancy plan and will require the prior approval of METI and the MLIT. However, to promote the liquidity and flexibility of transfers of equity interests in the project company, the guidelines establish a presumption of approval for transfers:

- of up to one-third of the total voting rights prior to the commercial operation date of the offshore wind project; and
- of less than half of the total voting rights on or after the commercial operation date.

Outlook for offshore wind

On 21 July 2020 the government designated four other offshore areas as promotion zones under the act, the tender processes for which are expected to start within the year. Further, on 3 July 2020 the government selected four additional promising offshore areas, which are expected to be designated as promotion zones in 2021.

While the government will publish occupancy guidelines specific to each promotion zone, the guidelines and the tender process for the Goto promotion zone are expected to inform the guidelines and tender processes for future offshore areas.

For further information on this topic please contact [Maya Ito](#), [Peter G Armstrong](#), [Amane Kawamoto](#) or [Hudson Hamilton](#) at Nishimura & Asahi by telephone (+81 3 6250 6200) or email (m_ito@jurists.co.jp, p_armstrong@jurists.co.jp, a_kawamoto@jurists.co.jp or h_hamilton@jurists.co.jp). The Nishimura & Asahi website can be accessed at www.jurists.co.jp.

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