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L.N. 93 of 2020

**PUBLIC FINANCE MANAGEMENT ACT
(CAP. 601)**

**REGULATOR FOR ENERGY AND WATER SERVICES ACT
(CAP. 545)**

**Competitive Bidding Rules for Renewable Sources of Energy
Installations (Capacity between 400kwp and less than 1000kwp)
Regulations, 2020**

IN EXERCISE of the powers conferred by article 4 of the Public Finance Management Act, and in exercise of the powers conferred by article 37 of the Regulator for Energy and Water Services Act, the Minister for Finance and Financial Services and the Minister for Energy and Water Management after consultation with the Regulator for Energy and Water Services, has made the following regulations: -

Citation and commencement.

1. (1) The title of these regulations is the Competitive Bidding Rules for Renewable Sources of Energy Installations (Capacity between 400kWp and less than 1000kWp) Regulations, 2020.

(2) These regulations shall come into force on the 1st January 2020.

Interpretation. Cap. 601.

2. (1) Unless otherwise stated in these regulations, the definitions in the Public Finance Management Act shall apply.

(2) In these regulations, unless the context otherwise requires:

"annual threshold" means the cap in kWh for the payment of the awarded bid price per kWh for the period of time commencing on the 1st January and ending on the 31st December of each year;

"approved renewable energy installation" means a new renewable energy installation with a capacity between 400kWp and less than 1000kWp and granted financial support pursuant to a competitive bidding process;

"awarded bid price per kWh" means the bid price per kWh offered by a successful bidder whose offer is selected pursuant to a competitive bidding process;

"bid price per kWh" means price per kWh offered by a bidder in a competitive bidding process;

"common point of connection to the grid" means the point on the electricity distribution network where the distribution system operator and customer/generator assets are connected and coincides with the location of the meter;

"commissioned" means the first time a renewable energy installation is put into operation, following the establishment of operational readiness by the warranted electrical engineer certifying the installation;

"competitive bidding process" means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of the bid submitted by the bidder. In addition, the volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid;

"Contracting Authority" means the entity issuing and administering the competitive bidding process;

"DC" means direct current;

"distribution" means the transport of electricity on high voltage, medium voltage and low voltage distribution systems with a view to its delivery to consumers, but not including supply;

"distribution system" means all the interconnected technical facilities used for conveying electricity to final customers;

"distribution system operator" shall have the same meaning as under the Electricity Market Regulations;

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"electricity from renewable energy sources" means electricity produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;

"eligible renewable energy installation" means a new renewable energy installation with a capacity between 400kWp and less than 1000kWp applying to be granted financial support

pursuant to a competitive bidding process;

"full load hours" means the equivalent number of hours in a year during which the renewable energy installation produces at its full nominal or kWp capacity;

"generation" means the production of electricity;

"guaranteed period" means the period of time indicated in the relevant competitive bidding process during which the awarded bid price per kWh for the electricity generated and sold to the distribution system operator from a qualifying renewable energy installation is guaranteed;

"kW" means kilo Watt;

"kWh" means kilo Watt hour(s);

"kWp" means the nominal capacity of the renewable energy installation, which in the case of a solar photovoltaic installation is equal to the total DC peak power at standard test conditions of a solar photovoltaic installation;

"metering equipment" means the electricity meters provided by the distribution system operator including smart meters, any voltage and current transformers and any other associated equipment and wiring required to measure the quantity of electricity supplied or exported;

"Minister" means the Minister responsible for energy;

"new renewable energy installation" means a renewable energy installation which has never been used for the generation of electricity in whole or in part and which is installed by a successful bidder after the conclusion of a competitive bidding process;

"performance bond" means the performance bond to be provided by a successful bidder to the Contracting Authority pursuant to regulation 10;

"premium" means the difference between the awarded bid price per kWh and the proxy for the market price per kWh and is payable only when the awarded bid price per kWh is higher than the proxy for the market price per kWh and the proxy for the market price per kWh is not negative;

"proxy for the market price" means the average of the

estimated variable cost of meeting the demand forecast for a given year from locally generated conventional and imported electricity, with the demand assumption excluding that portion of the forecast demand which is not expected to be met by conventional and imported electricity;

"renewable energy sources" means renewable non-fossil energy sources, that is, wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

"smart meters" shall have the same meaning as in the Electricity Supply Regulations;

S.L. 545.01.

"solar photovoltaic installation" means a solar photovoltaic system that generates electricity exclusively from solar radiation and consisting of all accessories including:

- (a) an array or arrays of photovoltaic modules that collect and absorb sunlight for conversion into electricity;
- (b) an inverter or inverters;
- (c) associated balance of system components, including wiring, conduits, switchgear, protection equipment, ancillary equipment and any other part of the installation necessary for the production and conveyance of electricity up to the metering equipment supplied by the distribution system operator;

"successful bidder" means a bidder whose offer is selected pursuant to a competitive bidding process;

"supply" means the sale or retail, including resale, of electricity to customers;

"wind energy installation" means an installation that converts wind energy into electricity and shall include the tower on which the wind turbine is mounted, a rotor and the nacelle which houses the equipment, including the generator, that converts the mechanical energy in the spinning rotor into electricity and any other ancillary equipment necessary to connect to the grid.

3. (1) The purpose of these regulations is to introduce the competitive bidding process as the method to determine the fixed price per kWh to be paid for electricity generated and sold to the distribution system operator from approved renewable energy installations with a

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capacity between 400kWp and less than 1000kWp and hence to promote and support the generation of electricity from renewable energy sources. The method and amount of support for renewable photovoltaic installations with a kWp capacity lower than 400kWp shall continue to be determined administratively. For the purpose of calculating the capacity of a renewable energy installation, renewable energy installations with a common point of connection to the electricity grid shall be considered as one installation.

(2) These regulations shall apply only to renewable energy produced from renewable energy installations installed in Malta, Gozo and other islands of the Maltese Archipelago, including the territorial waters thereof.

(3) These regulations shall not apply to firms in difficulty as defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended by Commission Regulation (EU) No 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, and as may be subsequently amended.

(4) Any investment aid previously received towards the same renewable energy installation must be deducted from the premium awarded under this measure.

Competitive bidding process.

4. The price per kWh to be paid for electricity generated and sold to the distribution system operator from eligible renewable energy installations shall be determined through a competitive bidding process:

Provided that the payment of any price per kWh to an undertaking that has benefited from earlier unlawful aid granted by Malta and declared incompatible by a Decision of the European Commission shall be suspended until such time as that undertaking has reimbursed the total amount of unlawful and incompatible aid and the corresponding recovery interest.

Determination of the price per kWh.

5. (1) The awarded bid price per kWh resulting pursuant to a competitive bidding process shall be paid in each calendar year up to a capped amount of units of electricity generated and sold to the distribution system operator and payable for the guaranteed period.

(2) The awarded bid price per kWh shall be determined by

"pay-as-bid" such that the successful bidders shall be paid, for the electricity generated and sold to the distribution system operator from an approved renewable energy installation, the awarded bid price per kWh based on their actual bid.

(3) The bidder shall submit the bid price per kWh for each eligible renewable energy installation as required in the competitive bidding process.

(4) The awarded bid price per kWh shall only be applicable to a successful bidder and only in respect of the renewable energy installation as described in the bid including the capacity offered in the bid (in kWp), as part of the competitive bidding process. The capacity associated with the bid price shall be deemed to be equal to:

$$\frac{\text{Offered kWp} \times \text{Full Load Hours}}{1600}$$

(5) Without prejudice to sub-regulation (4), the ownership of an approved renewable energy installation selected pursuant to a competitive bidding process may be transferred to a third party and subject to the third party obtaining the necessary permits, authorisation and licences, as may be applicable.

(6) The awarded bid price per kWh with respect to an approved renewable energy installation shall be payable for the actual number of units of electricity generated by such installation and sold to the distribution system operator, up to the annual threshold calculated as offered kWp x *Full Load Hours*:

Provided that the number of assumed full load hours in the case of a solar photovoltaic installation shall be equal to 1600 hours:

Provided further that in the case of other types of renewable energy installations, such as wind energy, the number of full load hours which shall determine the annual threshold for the payment of the awarded price per kWh, shall be specified in the terms and conditions applicable in the relevant competitive bidding process.

(7) Any units generated above the amount calculated in sub-regulation (6) of this regulation in any calendar year shall be purchased by the distribution system operator and paid at the proxy for the market price per kWh only, without the payment of the premium.

(8) The successful bidders shall not be entitled to tradeable guarantees of origin or other tradeable certificates for the electricity sold to the distribution system operator.

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(9) Without prejudice to sub-regulations (4) and (5), an approved renewable energy installation may be relocated to an alternative site subject to obtaining the necessary permits, authorisations and licenses as may be applicable, and subject to the conditions laid down in the competitive bidding procedure.

Cap on the prices per kWh submitted by bidders.

6. The competitive bidding process shall include an administratively established cap on the maximum bid price per kWh that bidders may offer. The cap may consist of one maximum bid price per kWh applicable to all offers or different caps for different categories as may be defined by the Contracting Authority in the competitive bidding process.

Validity of bid price per kWh.

7. (1) An approved renewable energy installation shall be commissioned and an application to connect the installation to the distribution system has been submitted to the distribution system operator within eighteen (18) months to be reckoned as from the date of the letter of award issued by the Contracting Authority to the successful bidder to secure the eligibility of the awarded bid price per kWh.

(2) If the successful bidder fails to comply with sub-regulation (1), the time to commission and apply to connect the approved renewable energy installation to the distribution system as indicated in sub-regulation (1) may be extended once only by six months by means of a request in writing to the Contracting Authority and made in the format required by the Contracting Authority:

Provided that the price payable to the successful bidder for electricity generated and sold to the distribution system operator for the particular approved renewable energy installation shall be equivalent to the awarded bid price per kWh, less €0.005/kWh for all electricity generated and sold to the distribution system operator up to the amount indicated in regulation 5(6), for the guaranteed period.

(3) The time necessary for the successful bidders to obtain the necessary authorisations, licences and permits as applicable, shall not suspend the running of the time periods stated in sub-regulations (1) and (2), being the maximum time within which an approved renewable energy installation must be commissioned and an application to connect the installation to the distribution system has been submitted to the distribution system operator, for the award pursuant to the competitive bidding process to remain valid. Failure to comply with sub-regulation (1) and sub-regulation (2) (when an application for an extension has been made), shall lead to the automatic withdrawal of the award and the forfeiture of the performance bond.

8. The launch of each competitive bidding process, as well as the maximum capacity in kWp as determined by the Minister for each competitive bidding process, shall be made public by means of a Government Notice published in the Gazette.

Publication of launch of bidding process and maximum kWp capacity.

9. (1) The process shall be carried out through a competitive bidding process which shall be open to all generators producing electricity from renewable energy sources on a non-discriminatory basis:

Process.

Provided that the competitive bidding process shall be compliant with the fundamental rules and principles of the Treaty on the Functioning of the European Union regarding equality, transparency, proportionality and prohibiting discrimination on grounds of nationality and with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended by Commission Regulation (EU) No 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, and as may be subsequently amended.

(2) The invitation for bids shall also include terms and conditions which shall constitute an integral part of the contract with the successful bidder. The form of contract to be entered into shall also be specified in the invitation for bids.

10. (1) The successful bidder shall be required to provide a performance bond to the Contracting Authority within one week from the date of the Letter of Award. The value of the performance bond shall be included in the invitation for bids of the relevant competitive bidding process.

Performance bond.

(2) Without prejudice to the terms and conditions applicable to the relevant competitive bidding process, the performance bond shall be forfeited by a bidder, *inter alia*, if the bidder fails to satisfy the conditions in regulation 7.

(3) Where the capacity of an approved renewable energy installation as installed and connected to the grid is lower than the capacity allocated during the bidding process, the forfeiture of the performance bond shall be in accordance with the terms and conditions established for such purpose by the relevant competitive bidding process.

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Method of award of the bids.

11. Bids which are deemed as being administratively compliant shall be ranked according to the bid price per kWh with the lowest bid price per kWh being given the first preference. The bid price per kWh and the corresponding eligible renewable energy installation kWp capacity shall be selected pursuant to the competitive bidding process, starting from the lowest bid offered, and provided that the kWp available for allocation in the particular competitive bidding process is not exceeded.

Issue of letter of award.

12. The letter of award to the successful bidder shall include, but not be limited to, the following:

(a) details of the bidder;

(b) awarded bid price per kWh;

(c) capacity in kWp and threshold on the units of electricity for which the bid price per kWh may be paid in each calendar year for the guaranteed period.

Publication of results.

13. The Contracting Authority shall publish on its website the results of each competitive bidding process, including the awarded bid price per kWh for each successful bidder for each approved renewable energy installation and the corresponding capacity in kWp, as established in the competitive bidding process.

Connection of, and safety requirements for, renewable energy installations. S.L. 545.01.

14. The successful bidder shall bear the costs of connection of the approved renewable energy installation to the nearest suitable point of connection to the distribution system. The costs for connection to the distribution system shall be determined by the distribution system operator in accordance with the Electricity Supply Regulations.

Permits.

15. (1) The letter of award issued to a successful bidder pursuant to a competitive bidding process shall only grant to that successful bidder the right to be paid the price per kWh and shall not be, nor shall it be deemed to grant or constitute, an automatic authorisation to construct an approved renewable energy installation or give any right for the issue of any authorisation, licence or permit which may be required. The successful bidder shall be responsible to obtain any relevant permits, authorisations and licences within the time-frames stated in regulation 7. The successful bidder shall submit applications for permits, authorisations and licences in accordance with the applicable laws and procedures with a view to obtaining such permits, authorisations and licences. Any cost related to obtaining the required permits, authorisations, license shall be borne by the successful bidder.

(2) The issue of the letter of award shall not grant the

successful bidder any right to damages or compensation if any of the permits, authorisations and licences required are not issued for any reason whatsoever. The performance bond shall be forfeited in favour of the Contracting Authority in any such cases.

16. (1) The awarded bid price per kWh shall become applicable as from the date of installation of the metering equipment by the distribution system operator and shall continue to be applicable for the duration of the guaranteed period.

Payment of bid price per kWh awarded.

(2) Payment of the awarded bid price per kWh shall be based on actual meter readings obtained from the metering equipment referred to in sub-regulation (1) and capped to a maximum kWp and units of electricity according to the letter of award.

17. A competitive bidding process for the award of support for eligible renewable energy installations with a capacity between 400kWp and less than 1000kWp may be launched as may be decided by the Minister, and for such capacity as stated in the relevant competitive bidding process.

Frequency of competitive bidding process.

18. The Public Contracts Review Board established by regulation 80 of the Public Procurement Regulations shall have jurisdiction to hear and determine complaints submitted by any person having or having had an interest in competitive bidding process made under these regulations and in accordance with the procedures laid down in those regulations.

Appeals.
S.L. 601.03.
