



JONES DAY
COMMENTARY

FRANCE CONFIRMS THE TENDER OF 3,000 MW OF OFFSHORE WIND ENERGY PROJECTS IN 2011

On January 26, 2011, France's President Sarkozy announced the first step of a call for tender for offshore wind projects, confirming France's objective of increasing the overall capacity of its wind power sector to 20,000 MW by 2020.

The first phase of the tender process, consisting of 3,000 MW, should be open for bids during the second quarter of 2011, although it is anticipated that the tender program should increase overall capacity by 6,000 MW by 2020, accounting for 3.5 percent of French electricity consumption by then. This initial phase includes five projects with an individual capacity between 500 and 750 MW, all of which are located along France's Atlantic and Channel shorelines. They are expected to generate €10 billion in investment expenditure.

The draft tender specifications applicable to this first phase were released earlier this month by the French Directorate-General for Energy and Climate (*Direction Générale de l'Énergie et du Climat*) and are open

for public discussion until February 28, 2011; however, the call for tender is not expected to be launched until sometime during the second quarter of 2011.

The main terms of the draft tender specifications, which may be commented upon by any interested party during the public discussion period ending February 28, 2011, are summarized in this *Commentary*.

The project's return on investment will be generated through preferential feed-in tariffs, which will be determined on the basis of a reference price submitted as part of each bid and indexed to take into account the inflation. The reference price should account for 40 percent of the selection criteria applicable to bidders and should eliminate a bidder if it exceeds either (i) a maximum price ranging from €150 to €160 per MWh, depending on the project, or (ii) a floating price threshold determined on the basis of 120 percent of the average reference price submitted by all bidders for each project.

In line with the French government's policy of promoting large-scale projects to foster new business sectors in France, the industrial and economic framework of each project will be a significant element of selection. Indeed, the industrial makeup of each project, including the creation of local industrial facilities, the bidders' ties with local industries and subcontractors, the carbon footprint of the projects, the bidders' technical knowledge of the project implementation area, and the bidders' research and development initiatives should also account for 40 percent of the selection criteria.

Finally, the degree of environmental and social integration of the project, especially its compatibility with existing activities—in particular those of local fisheries, as well as navigation and air-traffic constraints—should account for the remaining 20 percent of the selection criteria.

The scale of the projects, the bidders' expected financial commitments—which should include the financing of the wind farms, as well as all grid connection works—and the level of detail required in the offers should also act as *de facto* selection criteria, disqualifying medium and small players, as well as last-minute bidders. In practice, large industrial groups, including global energy companies, turbine manufacturers, and civil engineering companies, will have to team up to participate in the tender. Moreover, the call for tender procedure is structured in such a way that strategic partnerships between the main project actors may already need to be in place before the submission of an offer can be made.

In spite of the level of detail of the bidding process, the selected bidders will have to confirm the terms and conditions of their offer during a compulsory "risk removal period" of 18 months, following the award of each project. During this period, the selected bidders will be required to carry out detailed studies and surveys of the site in order to confirm the feasibility of the project on the terms and conditions of their offer, in particular in the light of their proposed feed-in tariff.

It is expected that all phases of each project will be closely monitored by the French authorities, from its financing (a minimum of 20 percent equity should be required from the project companies) to its construction (the bidders will be required to provide their construction and payment milestones in a forward schedule included in their offer) and its return on investment (the rate of return should not exceed 12 percent net of taxes and debt repayments).

It is expected that bidders will have until November 30, 2011 to submit their offers, and selected projects are expected to start commercial production from 2015.

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