

New Wind Power Project Tenders in Renewable Energy Resource Areas

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On 7 November 2018, the Ministry of Energy and Natural Resources (“**MENR**”) announced¹ tenders (the “**Tenders**”) for four wind power projects in Balıkesir, Çanakkale, Aydın, and Muğla regions, each with a capacity of 250 MWe (the “**Projects**”) based on the renewable energy resource area (“**RERA**”) model. The Tenders came shortly after the 1 GW offshore RERA wind project tender which failed to receive the desired level of interest from investors. The ceiling price for the Projects is set as USD 5.5 cent/kWh, and the bidders will compete on the basis of dutch auction. The application deadline for the Tenders is 7 March 2019.

Based on the specifications (the “**Specifications**”) and the draft project agreement (the “**Project Agreement**”) for the Tenders, key aspects of the Projects are as follows:

- **Eligibility.** The MENR will launch a separate Tender for each Project. The bidders may submit their bids for more than one Project. To be eligible, the bidders must satisfy the following financial criteria for each Project²:
 - The total net sales revenues in 2016, 2017, and 2018 in total must be more than TRY 150 million (or its equivalent in foreign currency); or
 - The total assets as of the end of 2018 must be more than TRY 45 million (or its equivalent in foreign currency).
- **Performance Bonds.** The bidders will submit a one-year performance bond in the amount of USD 2.5 million. The winning bidder will then submit a ten-year performance bond in the amount of USD 12.5 million. This will entirely be released within 2 months following the provisional acceptance of the last unit in the Project.
- **Domestic Component Requirements.** The project companies must satisfy the minimum domestic production ratios for certain components set out under the Specifications. On the other hand, they will not be obliged to invest in domestic component production plants as well as research and development studies.
- **Licenses.** Energy Market Regulatory Authority will grant preliminary licenses for 24 months. During the preliminary license, the project companies must complete the development of the project. The generation licenses will be granted for 49 years. Within the first 36 months of the generation licenses, construction of the Projects must be completed.

¹ The announcement was published in the Official Gazette No. 30588, dated 7 November 2018.

² There are no requirements in the Specifications relating to the involvement of Turkish citizens or technology providers in the bidder structure.

- **Minimum Capacity.** The winning bidders must install at least 70% of the tendered capacity (i.e., 175 MWe). Failure to do so may result in termination of the project agreement and cashing of the performance bonds.
- **Purchase Guarantee.** The winning bidders will benefit from a purchase guarantee on the basis of the winning purchase price bids. The purchase guarantee will be available for 15 years starting from the signing of the project agreement. Considering the development and construction phases after the signing of the project agreement, the actual purchase guarantee period will be shorter than 15 years. During the purchase guarantee period, the electricity generated will be sold through YEKDEM, the renewable energy support mechanism.
- **MENR's Guarantees.** MENR guarantees the purchase of the electricity generated during the purchase guarantee period. This guarantee covers the scenarios relating to the changes in the YEKDEM mechanism (which, under the current legislation, will not apply to the renewable power projects that become operational after 31 December 2020).
- **Changes in Operational Expenses.** If the changes in legislation or incentive mechanisms after the conclusion of the Project Agreements have an impact on the purchase guarantee price, and if such changes further result in more than 3% increase or decrease in the operational expenses in one calendar year, then such increase or decrease shall be paid to the relevant party (i.e., MENR or the project companies).
- **Compensation for Loss of Revenue.** If the power plants become unable to transmit more than 2% of its electricity output during an invoice period as a result of the instructions of TEİAŞ, the state-owned transmission system operator, this loss of revenue will be compensated provided that it is not attributable to the investors.
- **Reinstatement Test.** The Project Agreement provides an economic reinstatement test where the project companies will not be obliged to complete the Projects if it is established that it is no longer feasible to do so. However, the Project Agreement does not address lenders' involvement in and insurance aspects of the reinstatement process.
- **Transfer of Contract and Shares.** Transfer of contract and shares are subject to MENR's approval until the operation stage. During the operation stage, these transfers can be completed with a notification to MENR.
- **Arbitration.** The disputes under the Project Agreements will be resolved by three arbitrators appointed in accordance with the ICC Rules. The seat of arbitration will be Geneva, and the arbitration proceedings will be conducted in English. The parties may agree to deviate from the ICC dispute resolution mechanism and decide to resolve disputes by an arbitral tribunal to be formed in accordance with rules of the Istanbul Arbitration Center (ISTAC).

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