

## 1,200 MWe Offshore Wind Project Tender in Renewable Energy Resource Areas

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On 21 June 2018, the Ministry of Energy and Natural Resources (“**MENR**”) announced the tender for a 1,200 MWe offshore wind project based on the renewable energy resource area (“**RERA**”) model.<sup>1</sup> The application deadline for the tender is 23 October 2018.

Following the successful tenders for two 1,000 MW RERA projects in 2017, one wind power project and one solar power project, MENR now announced the tender for Turkey’s first, and the world’s largest, offshore wind project with 1200 MWe capacity (the “**Project**”). The Project will also be based on the RERA model. The key features of the Project are the following:

**No Factory or R&D Investment is Required.** The previous RERA tenders included domestic component production plant as well as research and development investments in addition to the power plant investments. These additional investments are not included in the scope of the Project.

**Domestic Component Requirements.** The project company must meet the minimum domestic production ratios set out for each specific component under the Specifications. Within 30 months following the signing of the project agreement, the project company must submit a plan to MENR showing how it will facilitate the domestic component requirements.

**Purchase Guarantee.** The winning bidder will benefit from a purchase guarantee on the basis of the purchase price that it will submit as part of its bid. The ceiling price is set as USD 8 cent/kWh for this tender, and the bidders will compete on the basis of a decrease under the ceiling price.

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<sup>1</sup> The announcement was published in the Official Gazette No. 30455, and dated 21 June 2018.

**Purchase Guarantee Period.** The purchase guarantee will be in place between the first provisional acceptance of the Project and until 50 TWh is transmitted to the system. During this period, the electricity output will be sold through YEKDEM, the renewable energy support mechanism. After this, and until the expiry of the generation license (which will be issued for 30 years according to the Specifications), the project company will sell its electricity output to the market over the market price.

**Compensation for Loss of Revenue.** If the power plant becomes unable to transmit more than 2% of its energy 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 this loss is not attributable to a reason relating to the investor.

**Possible Bidder Structures.** The bidders may structure themselves as a joint venture or consortium<sup>2</sup>:

- Under the consortium structure, key member(s) will undertake the main responsibilities related to the Project, whereas other members will undertake ancillary responsibilities (such as design of the project). Once awarded with the tender, the key member(s) will form a special purpose vehicle, and this vehicle will obtain the electricity licenses. The project agreement with MENR will be signed by this vehicle and other members of the consortium, and they will be jointly and severally liable towards MENR.
- If a joint venture is awarded with the tender, its members will incorporate a special purpose vehicle, and this vehicle will sign the project agreement with MENR and obtain the electricity licenses from EMRA. All members will be jointly and severally liable towards MENR.

**Eligibility Criteria for the Bidders.** The Specifications do not include any technical eligibility criteria. The eligibility criteria are of financial nature, and require the satisfaction of **at least** one of the following<sup>3</sup>:

- The total net sales revenues in 2015, 2016, and 2017 in total must be more than TRY 1 billion; or
- The total assets as of the end of 2017 must be more than TRY 400 million.

**Capacity of the Project.** The Specifications provide that the maximum capacity of the Project is 1200 MWe, whereas its minimum capacity is 840 MWe. Other than reasons that are not attributable to the investor<sup>4</sup>, if the investor cannot facilitate the completion of this minimum capacity, MENR shall terminate the project agreement.

**Location.** The Specifications provide that the minimum capacity of the Project (i.e., 840 MWe) must be located within the Edirne, Kırklareli, and Tekirdağ connection regions. It seems that the remaining capacity (up to the maximum capacity of 1200 MWe) can be developed in other locations. As an option for the investors, the Specifications provide that

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<sup>2</sup> The participation of a sole bidder is also possible.

<sup>3</sup> In the consortium structure, the key member(s), or pro-rata to their shareholdings, its direct or indirect shareholders, must satisfy one of these thresholds. In the joint venture structure, on the other hand, all members (or their direct or indirect shareholders) must cumulatively satisfy one of these thresholds.

<sup>4</sup> The Specifications provide that if the capacity of the Project becomes less than 840 MWe due to reasons that are not attributable to the investor, the 50 TWh electricity output period set out for the purchase guarantee will be decreased in accordance with such lesser capacity.

the investors may develop the Project in certain pre-determined areas in Saros, Gelibolu or Kiyıköy (which are mainly within the boundaries of the connection regions above). But the investors are free to propose alternative locations to MENR.

**Milestones.** Under the Specifications, the main milestones for the Project are the following:

<i>Milestone</i>	<i>Timelines (starting from the signing of the project agreement)</i>
<i>Submission of the proposed project locations and other project development documents to MENR</i>	20 months
<i>Announcement of approved locations of the Project</i>	23 months
<i>Commencement of construction</i>	42 months
<i>Commencement of operation (for the minimum capacity of 840 MWe)</i>	60 months
<i>Commencement of operation (for the remaining capacity up to the maximum capacity of 1200 MWe)</i>	72 months

**Contract and Share Transfers.** Contract and share transfers are subject to MENR's approval until the operation stage. After the operation stage, these transfers can be consummated with a notification to MENR.

**Performance Bonds.** The bidders will submit a one-year provisional performance bond in the amount of USD 20 million. The winning bidder will submit a USD 100 million performance bond for a term of 10 years. This will be released two months following the provisional acceptance of the power plant.

**Issues Concerning Lenders.** The Specifications provide the following lender related issues:

- Assignment of the project receivables and establishing a pledge on the shares of the project company will be subject to MENR's prior consent.
- The lenders will have the step-in rights provided by the electricity market legislation.
- MENR can sign a direct agreement concerning the project agreement with the lenders and the project company.

**Arbitration.** The disputes under the project agreement 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. It is also envisaged that 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 Istanbul Arbitration Center.

**Employment of Turkish Citizens.** The Specifications include a chart providing the minimum Turkish citizen employment thresholds (ranging between 50 and 70 employees) for different stages of the Project. The Specifications further provide that, other than the first 12 months of the Project, 80% of the employees must be Turkish citizens.

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