

SUBSIDIARY LEGISLATION 545.39

COMPETITIVE BIDDING RULES FOR INSTALLATIONS PRODUCING ELECTRICITY FROM RENEWABLE ENERGY SOURCES REGULATIONS

3rd February, 2023

LEGAL NOTICE 21 of 2023, as amended by Legal Notices 34 of 2024, 54 of 2025 and 93 of 2026.

1. The title of these regulations is the Competitive Bidding Rules for Installations Producing Electricity from Renewable Energy Sources Regulations. Citation.

2. (1) The scope of these regulations is to govern the competitive bidding process through which the premium per kWh that shall be paid on electricity generated and sold directly to the market from approved renewable energy installations is determined, and hence to promote and support the generation of electricity from renewable energy sources. Scope and applicability. Amended by: L.N. 54 of 2025.

(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.

(3) These regulations shall apply to renewable energy installations with a capacity equal to forty kilowatts (40kW) or greater.

3. (1) Unless otherwise stated in these regulations, the definitions in the Public Finance Management Act shall apply. Interpretation. Amended by: L.N. 54 of 2025; L.N. 93 of 2026.

(2) In these regulations, unless the context otherwise requires: Cap. 601.

"annual cap" means the maximum number of kWh generated annually for the period of time commencing on the 1st January and ending on the 31st December of each year and sold directly to the market, to which the payment of the premium per kWh shall apply;

"approved renewable energy installation" means an eligible renewable energy installation which, once commissioned, produces electricity from a renewable energy source and which is granted financial support for the first time following a competitive bidding process in accordance with these regulations and in respect of which a contract for difference has been entered into between the Contracting Authority and the successful bidder;

"awarded bid price per kWh" means the bid price per kWh offered by a successful bidder during a competitive bidding process;

"balancing" means balancing as defined in point 10 of Article 2 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast);

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

"commission" 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;

"Commission Regulation (EU) No 651/2014" means 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) 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 by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, and by Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, and as may be subsequently amended;

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

"competitive bidding process administrator" means any entity delegated with the administration of the competitive bidding process. The competitive bidding process administrator

for any competitive bidding process shall be named in the documentation pertaining to that bidding process;

"contract for difference" means the contract entered into between the Contracting Authority and a successful bidder, regulating the payment of the premium per kWh of electricity up to the annual cap for each year of the guaranteed period, for electricity generated from renewable energy sources and sold directly on the market from an approved renewable energy installation;

"contracting authority" means the contracting party responsible for issuing and administering the competitive bidding process, provided that any part of the administration of the competitive bidding process may be delegated to a competitive bidding process administrator;

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

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

"distribution system operator" means the same as the meaning assigned to it in regulation 2 of the Electricity Regulations; S.L. 545.34.

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

"electricity markets" means the same as the meaning assigned to it in regulation 2 of the Electricity Regulations; S.L. 545.34.

Provided that until such time as an electricity market exists which is open for successful bidders to sell electricity directly to the market, electricity sold to the distribution system operator shall be deemed to have been sold directly to the market for the purposes of these regulations;

"eligible person" means any person, being a natural or legal person, including any body corporate, company, society or

other association of persons, and any renewable energy community;

"eligible renewable energy installation" means a new renewable energy installation having a capacity of forty kilowatts (40kW) or more which, once constructed and commissioned, produces electricity from a renewable energy source, which may be granted financial support for the first time following a competitive bidding process:

Provided that up to five (5) new renewable energy installations employing the same technology which shall be installed at separate locations and, where each has a capacity inferior to forty kilowatts (40kW), but which together have a total capacity exceeding forty kilowatts (40kW), may be offered by a bidder as a single bid at the same bid price;

"energy from renewable sources" or "renewable energy" means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;

"*force majeure*" means acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, pandemics, landslides, earthquakes, storms, direct lightning strikes, floods, washouts, civil disorder, explosions and other similar events which are unforeseeable, and which at the time of the signing of any contract between the Contracting Authority and a successful bidder, which by the exercise of all due diligence cannot be overcome and which, in the view of the Contracting Authority, prevent a successful bidder from adhering to his obligations due to causes beyond his reasonable control;

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

"generation" means the production of electricity;

"guaranteed period" means the period of time indicated in the applicable competitive bidding process documentation for which the renewable energy installation which was awarded financial support under a competitive bidding process shall remain operational, and for which the premium per kWh for the electricity generated and sold directly to the market from an

approved renewable energy installation is guaranteed;

"kW" means kilowatt, which in the context of these regulations shall be taken to refer to the nominal capacity of the renewable energy installation, and specifically to the nominal direct current (kWp) rating in the case of solar photovoltaic installations;

"kWh" means one (1) kilo Watt per one (1) hour;

"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 and water services;

"new renewable energy installation" means a renewable energy installation which has never, in whole or in part, been used for the generation of electricity;

"performance bond" means the performance bond which shall be provided by a successful bidder to the Contracting Authority in accordance with regulation 11;

"premium" means the difference between the awarded bid price per kWh and the proxy for the market price per kWh, which shall apply when the awarded bid price per kWh is different from the proxy for the market price per kWh:

Provided that the premium shall be negative when the proxy for the market price exceeds the awarded bid price per kWh, and that the premium shall be zero when the market price per kWh is negative;

"proxy for the market price" means the same as the meaning assigned to it in regulation 2 of the Electricity Regulations; S.L. 545.34.

"renewable energy community" means the same as the meaning assigned to it in regulation 2 of the Promotion of Energy from Renewable Sources Regulations; S.L. 545.43.

"renewable energy installation" means a renewable energy installation which produces electricity from a renewable energy source.

"smart meter" means the same as the meaning assigned to it in regulation 2 of the Electricity Supply Regulations; S.L. 545.01.

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

S.L. 545.34.

"supply" means the same as the meaning assigned to it in regulation 2 of the Electricity Regulations.";

undertaking in difficulty" means an undertaking in difficulty as defined in Article 2 of Commission Regulation (EU) No 651/2014.

Competitive
bidding process.
Amended by:
L.N. 54 of 2025.

4. (1) The awarded bid price shall be determined through a competitive bidding process.

(2) Any eligible person may participate in the competitive bidding process:

Provided that no participant in the competitive bidding process, irrespective of whether such participation is individual or joint as part of a consortium or joint venture, shall be an undertaking in difficulty.

(3) 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 the relative provisions of Commission Regulation (EU) No 651/2014.

(4) The documentation pertaining to the competitive bidding process shall also include terms and conditions which shall constitute an integral part of the contract to be entered into between the Contracting Authority and each successful bidder. The form of the contract to be entered into shall be specified in the invitation for bids.

Frequency,
publication of
launch and
maximum kW
capacity of bidding
processes.

5. The frequency of competitive bidding processes and the maximum capacity in kW associated with each one shall be at the Minister's discretion, and the launch of competitive bidding processes shall be made public by means of a notice published in the Gazette.

Cap on the prices
per kWh submitted
by the bidders.

6. Bids submitted in the competitive bidding process shall be subject to an administratively established cap on the maximum bid price per kWh, which cap may consist of one (1) maximum bid price per kWh applicable to all offers or different caps for different categories of installations.

Determination of
the awarded bid
price per kWh.
Amended by:
L.N. 34 of 2024;
L.N. 54 of 2025.

7. (1) The premium per kWh shall be paid in each calendar year up to a capped amount of units of electricity generated and sold directly to the market and shall be payable for the guaranteed period:

Provided that in the first and last year of the guaranteed period, the annual cap shall be applied on a pro rata basis for the payment of the premium per kWh.

(2) The awarded bid price per kWh shall be determined by "pay-as-bid" such that each successful bidder shall receive an offer of award of the bid price per kWh as submitted in said successful bidder's actual bid.

(3) The bidder shall submit a separate bid price per kWh for each separate eligible renewable energy installation proposed, 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 proposed renewable energy installation as described in the bid, including the capacity in kW as offered in the bid, only as part of a specific competitive bidding process call. The capacity associated with the bid price shall be deemed to be equal to:

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

(5) Without prejudice to sub-regulation (4), where an approved renewable energy installation selected pursuant to a competitive bidding process is transferred to a third party, the validity of the awarded bid price for every kWh may remain applicable to the said approved renewable energy installation through an agreement entered into between the successful bidder, the third party purchaser and the Contracting Authority, subject to the third party obtaining any necessary permits, authorisation and licences, as may be applicable:

Provided that the provisions of sub-regulations (2) and (3) of regulation 4 shall be applicable to such third party purchaser.

(6) The premium 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 directly to the market, up to the annual cap calculated as following:

$$\text{Offered kW} \times \text{Full Load Hours:}$$

Provided that the number of full load hours which shall determine the annual cap for the payment of the premium per kWh shall be dependent on the particular technology or technologies being supported in the relevant competitive bidding process and specified in the documentation applicable thereto.

(7) Any units generated by the installation in excess of the annual cap in any calendar year shall not be subject to the provisions

of the contract for difference.

(8) *Repealed by Legal Notice 34 of 2024.*

(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 documents:

Provided that this sub-regulation shall also be applicable to each of the multiple installations having a capacity inferior to forty kilowatts (40kW) and which have been presented as a single installation having a capacity equal to forty kilowatts (40kW) or greater.

Method of award
of bids.

8. (1) Bids which are administratively compliant shall be ranked according to the bid price per kWh where the lowest bid price per kWh is ranked the highest.

(2) Bidders whose bids have been ranked in line with the provisions of sub-regulation (1) shall be offered an award of financial support starting from the highest ranking bid and the corresponding eligible renewable energy installation kW capacity as proposed, and the order of ranking shall continue to be followed until all ranked bids which may be fully accommodated in the remaining unallocated capacity for that competitive bidding process have been offered an award of financial support.

(3) Where the next ranking offer is for a proposed installation the capacity of which cannot be fully accommodated in the remaining unallocated capacity associated with that competitive bidding process, the Contracting Authority shall not make an offer to award support.

Publication of the
results.

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

Letter of award and
the contract.
*Amended by:
L.N. 54 of 2025.*

10. (1) A letter of award shall be issued to each successful bidder and shall include, but not be limited to, the following:

- (a) the details of the bidder;
- (b) the awarded bid price per kWh;

(c) the capacity in kW of the approved renewable energy installation;

(d) the capping on the units of electricity for which the premium per kWh may be paid in each calendar year for the guaranteed period; and

(e) the applicable deadlines.

(2) The award offered shall be formalised by means of a contract for difference entered into between the Contracting Authority and the successful bidder, which contract shall be signed within the time limit stipulated in the invitation for bids of the relevant competitive bidding process.

(3) The letter of award issued to a successful bidder following a competitive bidding process, or any contract entered into as a result thereof, shall not be, nor shall it be deemed to grant or constitute, an automatic authorisation to construct an approved renewable energy installation, or to give any right for the issue of any authorisation, licence or permit which may be required, nor shall it be deemed to grant the successful bidder any right to damages or compensation if any required permits, authorisations and licences required are not issued for any reason whatsoever.

11. (1) A successful bidder shall be required to provide a performance bond issued in favour of the Contracting Authority. The value of the performance bond and the deadline for its submission shall be included in the invitation for bids of the relative competitive bidding process documentation.

Performance Bond.
Amended by:
L.N. 54 of 2025.

(2) In the case when the capacity of an approved renewable energy installation as installed, commissioned, and in respect of which an application has been submitted for connection to the grid, is lower than the capacity allocated to the successful bidder on the basis of the said bidder's proposal during the bidding process, the complete or partial forfeiture of the performance bond shall apply in accordance with the terms and conditions established for such purpose in the relative competitive bidding process documentation.

12. (1) Each successful bidder in a competitive bidding process shall be issued with a letter of award as provided for in regulation 10.

Validity of bid
price per kWh.
Amended by:
L.N. 54 of 2025.

(2) In order to secure the validity of the awarded bid price per kWh, a successful bidder shall, within the applicable time limit from the date of the letter of award referred to in sub-regulation (1), comply with the following obligations :

(a) fully commission the approved renewable energy

installation in accordance with the terms of the competitive bidding process; and

(b) submit the necessary applications to the distribution system operator to connect the approved renewable energy installation to the distribution system.

(3) *Deleted by Legal Notice 54 of 2025.*

(4) *Deleted by Legal Notice 54 of 2025.*

(5) Failure to comply with the obligations established in sub-regulation (2) within the time limit established in sub-regulation (7) including where such failure results from a failure to obtain the necessary permits required as described in regulation 13, shall lead to the automatic withdrawal of the award, the termination of the contract and the forfeiture of the performance bond.

(6) A verified event of *force majeure* may be invoked by a successful bidder, in accordance with the related provisions included in the invitation for bids of the relative competitive bidding process, to request a suspension of the time periods established in sub-regulation (7), which request may be granted at the Contracting Authority's discretion.

(7) The applicable time limits referred to in sub-regulation (2) shall be as follows:

(a) for installations having a capacity less than one thousand kilowatts (1000 kW), the applicable time limit shall be twenty-four (24) months from the date of the letter of award; and

(b) for installations having a capacity of one thousand kilowatts (1000 kW) or larger, the applicable time limit shall be thirty-six (36) months from the date of the letter of award.

Permits.
Amended by:
L.N. 54 of 2025.

13. (1) The successful bidder shall be responsible for obtaining all necessary applicable or relevant permits, authorisations and licences and shall bear the costs thereof.

(2) Applications for permits, authorisations and licences shall be submitted to the relevant entities or authorities in accordance with the applicable laws and procedures:

Provided that where such submissions are made following the receipt of a letter of award, the time required for their issuing shall not suspend the running of the time periods established in regulation 12(7).

(3) Renewable energy installations which require a planning permit shall be covered by an approved planning permit as a pre-requisite to their being proposed in any competitive bidding process:

Provided that, subject to the relevant alternative documents as established in the relative competitive bidding process documentation being submitted instead, an approved planning permit shall not be a pre-requisite for the proposal in a competitive bidding process of a renewable energy installation which meets all three (3) of the following conditions:

(a) the proposed installation shall be a solar photovoltaic installation; and

(b) the proposed installation shall have a capacity of one thousand (1000) kW or greater; and

(c) the proposed installation shall not be installed on one (1) or more greenhouses.

14. (1) The successful bidder shall bear the costs of connection of the approved renewable energy installation to the nearest suitable point of connection of the distribution system.

Connection of the approved renewable energy installations.

(2) The costs for connection to the distribution system referred to in sub-regulation (1) shall be determined by the distribution system operator in accordance with the Electricity Supply Regulations.

S.L. 545.01.

15. (1) The premium per kWh shall become payable as from the date of the installation of the metering equipment by the distribution system operator and shall continue to be so for the duration of the guaranteed period as reckoned from that date.

Payment of the awarded bid price per kWh.
Amended by:
L.N. 34 of 2024;
L.N. 54 of 2025.

(2) Payment of the premium per kWh shall be based on actual meter readings obtained from the metering equipment referred to in sub-regulation (1) and capped in accordance with the provisions of regulation 7(6) as indicated in the letter of award.

(3) The payment of the premium referred to in sub-regulation (1) shall be without prejudice to the exclusion of the payment of aid to any undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the Maltese authorities to the same undertaking illegal and incompatible with the internal market, in compliance with Article 1(4)(a) of Commission Regulation (EU) No 651/2014.

16. Standard balancing responsibilities as established in Article 5 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) shall apply to the operation of renewable energy installations having an installed capacity equal to or larger than two hundred (200)

Balancing responsibility.

kW:

Provided that this obligation shall be deemed to be in abeyance until a liquid intra-day electricity market is developed.

Appeals.
S.L. 601.03.

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