

B 1566

L.N. 212 of 2021

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

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

**Competitive Bidding Rules for Renewable Sources of Energy
Installations (Capacity between 400kWp and less than 1000kWp)
(Amendment) Regulations, 2021**

IN EXERCISE of the powers conferred by article 37 of the Regulator for Energy and Water Services Act and by article 4 of the Public Finance Management Act, the Minister for Energy, Enterprise and Sustainable Development, after consultation with the Regulator for Energy and Water Services, and the Minister for Finance and Employment have made the following regulations:-

Citation.

S.L. 545. 32.

Amends
regulation 1 of
the principal
regulations.

Amends
regulation 2 of
the principal
regulations.

1. The title of these regulations is the Competitive Bidding Rules for Renewable Sources of Energy Installations (Capacity between 400kWp and less than 1000kWp) (Amendment) Regulations, 2021 and these regulations shall be read and construed as one with the Competitive Bidding Rules for Renewable Sources of Energy Installations (Capacity between 400kWp and less than 1000kWp) Regulations, hereinafter referred to as the "principal regulations".

2. In regulation 1 of the principal regulations, the words "(Capacity between 400kWp and less than 1000kWp)" shall be substituted by the words "(Capacity from 40kW up to less than 1000kW)".

3. Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "approved renewable energy installation", the words "with a capacity between 400kWp and less than 1000kWp" shall be substituted by the words "with a capacity from 40kWp up to less than 1000kWp";

(b) the definition "common point of connection to the grid" shall be deleted;

(c) the definition "competitive bidding process" shall be substituted by the following new definition:

" "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. In addition, the volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive support;"

(d) in the definition "eligible renewable energy installation", the words "with a capacity between 400kWp and less than 1000kWp" shall be substituted by the words "with a capacity from 40kW up to less than 1000kW" and immediately thereafter there shall be added the following new definition:

" *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, epidemics, landslides, earthquakes, storms, direct lightning strikes, floods, washouts, civil disorder, explosions and other similar unforeseeable events, which by the exercise of due diligence cannot be overcome and which, in the view of the Contracting Authority prevent a successful bidder from adhering to obligations due to causes beyond his reasonable control;"

(e) the definition "full load hours" shall be substituted by the following new definition:

" "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;"

(f) the definition "kW" shall be substituted by the following new definition:

" "kW" means kilo Watt and in the context of these regulations shall be taken to refer to 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 the installation;"

(g) the definition "kWp" shall be deleted; and

(h) the definition "renewable energy sources" shall be substituted by the following new definition:

" "renewable energy sources" means renewable non-

B 1568

fossil energy sources, that is, 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;"

Amends
regulation 3 of
the principal
regulations.

4. Regulation 3 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(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 capacity between 40kW and less than 1000kW and hence to promote and support the generation of electricity from renewable energy sources."; and

(b) sub-regulation (3) thereof shall be substituted by the following new sub-regulation:

"(3) These regulations shall not apply to undertakings 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 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 as may be subsequently amended.".

Amends
regulation 5 of
the principal
regulations.

5. Regulation 5 of the principal regulations shall be amended as follows:

(a) sub-regulation (4) thereof shall be substituted by the following new sub-regulation:

"(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 kW), as part of the competitive bidding process. The capacity associated with the bid price shall be deemed to be equal to:

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

(b) in sub-regulation (6) thereof, the words "as offered kWp x *Full Load Hours*:" shall be substituted by the words "as offered kW x *Full Load Hours*:".

6. Regulation 7 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 7 of the principal regulations.

"7. (1) An approved renewable energy installation shall be fully commissioned as described in the bid, including the capacity offered in the bid, and an application to connect the installation to the distribution system shall be 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 said fully commissioned approved renewable energy installation to the distribution system as indicated in sub-regulation (1) may be extended once only by six(6) months by means of a request in writing to the Contracting Authority, which request shall be made in the format required by the Contracting Authority:

Provided that if an extension is availed of, 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.

B 1570

(3) The request in writing for an extension indicated in sub-regulation (2) shall reach the Contracting Authority no later than one (1) month before the lapse of the eighteen (18) month deadline indicated in sub-regulation (1):

Provided that should an extension be requested but not availed of, the reduction in the bid price established in the proviso to sub-regulation (2) shall not be applicable.

(4) 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 established in sub-regulations (1) and (2), being the maximum time within which an approved renewable energy installation shall be fully commissioned and an application to connect the installation to the distribution system shall be submitted to the distribution system operator, for the award pursuant to the competitive bidding process to remain valid. Failure to comply with sub-regulations (1) (2), when a request for an extension has been made, shall lead to the automatic withdrawal of the award and the forfeiture of the performance bond:

Provided that a verified event of *force majeure* may be invoked by a successful bidder, in line with the provisions related thereto included in the invitation for bids of the relevant competitive bidding process, to request a suspension of the time periods established in sub-regulations (1) and (2), which request may be granted at the Contracting Authority's discretion."

Amends
regulation 8 of
the principal
regulations.

7. In regulation 8 of the principal regulations, the word "kWp" shall be substituted by the word "kW".

Amends
regulation 9 of
the principal
regulations.

8. In the proviso to sub-regulation (1) of regulation 9 of the principal regulations, the words "Regulation (EU) No 702/2014 as regards the calculation of eligible costs, and as may be subsequently amended." shall be substituted by the words "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 as may be subsequently amended."

- 9.** Sub-regulation (1) of regulation 10 of the principal regulations shall be substituted by the following new sub-regulation:
- "(1) The successful bidder shall be required to provide a performance bond to 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 relevant competitive bidding process."
- 10.** In regulation 11 of the principal regulations, the words "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." shall be substituted by the words "The bid price per kWh and the corresponding eligible renewable energy installation kW capacity shall be selected pursuant to the competitive bidding process, starting from the lowest bid offered, and provided that the kW available for allocation in the particular competitive bidding process is not exceeded."
- 11.** In paragraph (c) of regulation 12 of the principal regulations, the word "kWp" shall be substituted by the word "kW".
- 12.** In regulation 13 of the principal regulations, the word "kWp" shall be substituted by the word "kW".
- 13.** In sub-regulation (1) of regulation 15 of the principal regulations, the words "The successful bidder shall be responsible to obtain any relevant permits, authorisations and licences within the time-frames stated in regulation 7." shall be substituted by the words "Excepting any permits which may be required by the provisions of the invitation for bids of the relevant competitive bidding process, to have already been issued at the time of bidding, the successful bidder shall be responsible to obtain any relevant permits, authorisations and licences within the time-frames established in regulation 7."
- 14.** In sub-regulation (2) of regulation 16 of the principal regulations, the word "kWp" shall be substituted by the word "kW".
- 15.** In regulation 17 of the principal regulations, the words "with a capacity between 400kWp and less than 1000kWp" shall be deleted and substituted by the words "with a capacity from 40kWp up to less than 1000kWp".
- Amends regulation 10 of the principal regulations.
- Amends regulation 11 of the principal regulations.
- Amends regulation 12 of the principal regulations.
- Amends regulation 13 of the principal regulations.
- Amends regulation 15 of the principal regulations.
- Amends regulation 16 of the principal regulations.
- Amends regulation 17 of the principal regulations.

B 1572

Amends
regulation 18 of
the principal
regulations.

16. Regulation 18 of the principal regulations shall be renumbered as sub-regulation (1) and immediately thereafter there shall be added the following new sub-regulation:

"(2) The rules for determining the amount of the deposit necessary for submitting a complaint as provided for in sub-regulation (1) shall be stipulated in the rules applicable to the invitation for bids of the relevant competitive bidding process."
