

Procedures and documentation required to bid at the Spanish renewable capacity auction on 17 May 2017

Energy Area, Gómez-Acebo & Pombo

1. Auction on 17 May 2017: introduction

The Spanish government has announced an auction for the allocation of subsidy payments under the name of specific remuneration scheme (*régimen retributivo específico*) for new Spanish mainland facilities that produce electricity from renewable energy sources.

A maximum of 2,000 MW of installed power entitled to the specific remuneration scheme will be allocated at this first auction on 17 May 2017 (hereinafter, the "**Auction**"). However, under specific circumstances, this maximum could be extended up to a threshold of 3,000 MW.

The result of the Auction will be (i) the allocation of the specific remuneration scheme to the successful bidders at the Auction, and (ii) the determination of the applicable discount against the standard initial investment value of the standard facility (either wind power technology, photovoltaic technology or other technologies)¹.

2. Procedures and documentation required to bid at the Auction

According to the Decision issued by the State Secretariat of Energy on 10 April 2017 (the "**Decision**"), the procedure to bid at the Auction is largely divided into two stages, pre-qualification and qualification (deadline at 1 pm on 11 May 2017).

2.1. Pre-qualification process

Any party wishing to bid at the Auction must submit a pre-qualification application to OMEL Diversificación, S.A.U ("**OMEL**")², the entity in charge of the management of the Auction.

¹ Annex I of Order ETU/315/2017 provides the remuneration parameters applicable to each standard facility, classified according to their technology as wind, photovoltaic and other.

² OMEL is a subsidiary of OMI-Polo Español, S.A., both of which are Spanish companies that manage Spanish electricity market.

Disclaimer: This paper is provided for general information purposes only and nothing expressed herein should be construed as legal advice or recommendation.

Pre-qualification entitles potential bidders to (i) receive information on the Auction, (ii) participate in training sessions³ and (iii) subsequently apply for qualification for the Auction.

*Required documentation for pre-qualification (deadline at 1 pm on 11 May 2017)*⁴

- (a) Bidder representatives must request an access certificate for the electronic Auction system

Authorised representatives of potential bidders in the Auction must request an access certificate for the electronic Auction system or, alternatively, request reactivation of a pre-existing certificate.

In this regard, please note that each individual may only represent one bidder at the Auction, although an individual will be entitled to represent more than one bidder provided the companies belong to the same group⁵.

The representative will be responsible for (i) requesting access certificates for other individuals within the company (if applicable), (ii) signature of the non-collusion and confidentiality commitments, as described below, and (iii) adherence to the rules of the Auction, among others.

The form entitled "ANEJO A", on page 4 of the link below, must be completed in Spanish, signed and submitted electronically to OMEL:

http://www.subastasrenovables.omie.es/files/guia_precalificacion_apendice_ii.pdf

Once received, OMEL will send the access certificate to the representative⁶.

- (b) Bidder information

Once the bidder's representative has received the access certificate, the following information must be submitted electronically:

- Name of the company (bidder)
- Tax identification number (NIE or NIF)
- Address
- Location/Municipality
- Post code

³ According to the timetable published by OMEL a presentation on the Auction will take place at 9 am on 21 April 2017: http://www.subastasrenovables.omie.es/files/calendario_ifer.pdf

⁴ Pursuant to section 10 and the pre-qualification guide set out in Annex II of the Decision.

⁵ A group of companies as defined by section 42(1) of the Spanish Code of Commerce.

⁶ Please note that this access certificate is for the bidder's representative (as explained in section 2.2. (iv), further access certificates can be requested).

The following information must be submitted in connection with the bidder's representative during the bidding process:

- Name
- First surname
- Second surname
- Tax identification number (NIE or NIF)
- Address
- Location/Municipality
- Post code
- Country
- Telephone number
- Mobile phone number
- Email address
- Fax number

Please note that all the information mentioned above can be modified electronically, as required.

(c) Confidentiality commitment

The form entitled "ANEJO B", on page 6 of the link below, must be completed in Spanish, signed and submitted electronically to OMEL through the access system:

http://www.subastasrenovables.omie.es/files/guia_precalificacion_apendice_ii.pdf

Please note that this document includes a confidentiality statement that is binding upon the bidders, who shall be liable for in damages.

(d) Non-collusion commitment

The form entitled "ANEJO C", on page 9 of the link below, must be completed in Spanish, signed and submitted electronically to OMEL through the access system:

http://www.subastasrenovables.omie.es/files/guia_precalificacion_apendice_ii.pdf

Please note that this document includes a non-collusion statement that is binding upon the bidders, who shall be liable in damages and/or supervision of their conduct by the competition authorities.

2.2. Qualification process

Once the bidders are pre-qualified, they will gain access to confidential information regarding the Auction qualification process. Below is a list of the documentation required to obtain such qualification.

Please note that bidders will have electronic access to the status of the qualification process through the electronic Auction system.

Required documentation for qualification (deadline at 1 pm on 11 May 2017)⁷

(a) Declaration of maximum volume for qualification

The maximum volume for qualification is the limit on the volume that can be offered at the Auction for each of the standard facilities (either for wind power technology, photovoltaic technology or other technologies).

This declaration must be submitted electronically by the bidder to OMEL, and its main requirements are as follows:

- (i) Bidders requesting qualification must declare a volume equal to or above 100 kW (minimum threshold).
- (ii) In any case, the maximum volume for which a bidder can be qualified will always be below 2,000 MW (maximum legal limit).
- (iii) The volume for qualification will be expressed in full blocks, meaning that each block equals one (1) kW of product.
- (iv) The volume declared by each bidder in this qualification procedure operates as its maximum limit, although offers below that threshold are allowed in the Auction.

(b) Acceptance of and adherence to the Auction rules

The form entitled "ANEJO A", on page 8 of the link below, must be completed in Spanish, signed and submitted electronically to OMEL through the access system (only representatives with an access certificate, explained under section 2.1.(i) above on pre-qualification, can fulfil this requirement):

http://www.subastasrenovables.omie.es/files/guia_calificacion_apendice_iii.pdf

(c) Document that proves the signatory's capacity as the bidder's representative

A power of attorney ("**PoA**") granting the bidder's representative valid and sufficient powers to participate in the Auction.

The form entitled "ANEJO D", on page 14 of the link below contains, in this regard, a template of a power of attorney (in Spanish):

http://www.subastasrenovables.omie.es/files/guia_calificacion_apendice_iii.pdf

⁷ Pursuant to section 11 and the qualification guide set out in Annex III of the Decision.

(d) Request for other access certificates to the Auction system

Bidders in the Auction can request a maximum of six (6) access certificates to the Auction system. These access certificates can be classified as follows:

- (i) Representative profile: only this profile is authorized to (i) request access certificates, and (ii) sign and accept the rules of adherence to the Auction. It is also authorized to update the bidder's profile (as is the update access profile below).
- (ii) Updater profile: authorized to modify the bidder's information of the bidder and submit bids at the Auction.
- (iii) Consultation profile: authorized to access the bidder's information (no modification is allowed).

Access certificates must be requested, modified and/or removed by the bidder's representative (using the representative access certificate) by way of the relevant electronic form. OMEL will send the access certificates to the indicated address and/or will arrange the modification/cancellation of these certificates.

Please note that these access certificates will be required in order to participate in the trial Auction to take place at 9am on 12 May 2017.

The bidder must electronically sign the declaration of initial use of the access certificates (otherwise the authorized person will not be able to bid at the Auction).

(e) Granting of the required security

Pre-qualified bidders must give security to OMEL (OMEL Diversificación, S.A.U.), which will be responsible for its safekeeping.

The security to be given by the bidders in order to gain qualification is as follows:

- (i) Validity: the security shall be valid until at least the last day of the sixth month following the date of the Auction, that is, until 30 November 2017 (provided the date of the Auction is 17 May 2017).

In any case, the security shall cease to be enforceable:

- If the pre-qualified bidder is not qualified by the deadline for the qualification process (11 May 2017)
- If the bidder is not successful at the Auction (no capacity is awarded), by the date that the results of the Auction are made public.

- Once the results of the Auction are made public, for the excess capacity that has not been allocated.
- After publication in the Official Journal of Spain of the decision ordering registration on a pre-allocation basis in the specific remuneration scheme register of the power allocated to the bidders at the Auction. If part of the allocated power is not registered on a pre-allocation basis, the part of the security that corresponds to that part of the capacity shall remain enforceable.

As a general rule, the security will be refunded no later than the third business day after it ceases to be enforceable.

- (ii) Amount: 60 euros/Kw of the maximum volume for qualification (pursuant to the bidder's declaration in section 2.1.2. (i) above).
- (iii) Form: the security shall be sufficient, firm and payable on first demand. The following three (3) forms of security are acceptable:
 - a. Cash deposit in favour of OMEL into the following bank account:

Holder: OMEL Diversificación, .S.A.U.

IBAN: ES35 0182 2000 25 0201509142

The bidder shall notify OMEL of such transfer as well as the bank account for the refund, if applicable, after its enforceability period.

- b. Bank bond, to be issued by a bank or savings bank in Spain or with a branch in Spain and not related with the bidder. The bank must acknowledge that the bank bond is payable on first demand and that there will be no valid reason to oppose its payment.

The form entitled "ANEJO B", on page 10 of the link below, contains a template in Spanish to be completed, signed and submitted to OMEL:

http://www.subastasrenovables.omie.es/files/guia_calificacion_apendice_iii.pdf

- c. Insurance bond, to be issued by an insurance company registered in Spain or with offices in Spain, authorized by the Directorate-General of Insurance, and not related with the bidder or with OMEL (as the insured). The insurance company must acknowledge that the insurance bond is payable on first demand and that there will be no valid reason to oppose its payment.

The form entitled "ANEJO B", on page 12 of the link below, contains a template in Spanish to be completed, signed and submitted to OMEL:

http://www.subastasrenovables.omie.es/files/guia_calificacion_apendice_iii.pdf

Under (b) and (c) above, i.e., bonds issued by banks or insurance companies, the issuers must have a minimum credit rating of "Investment Grade" assigned by S&P, Moody's or Fitch. The minimum acceptable rating is BBB- if assigned by S&P or Fitch and Baa3 if assigned by Moody's.

If the issuer of the bond becomes the subject of insolvency proceedings, has its payment obligations suspended, is no longer authorized to carry out its business and/or its credit rating drops below the above-described thresholds, the bidder must substitute the bond with another one that fulfils all the above-mentioned requirements, within the seven (7) banking days following the issuer's change of circumstances.

The bonds issued under (b) and (c) will be returned to the address indicated by the bidders once the Auction has passed and the enforcement requirements are fulfilled.

- (iv) Enforceability: the security will be enforced by OMEL after a prior request to the Directorate-General on Energy Policy and Mining ("DGEPM"). The DGEPM will determine the terms for deposit the amounts enforced, which will take place no later than three days after OMEL receives these amounts.

Once all the above requirements have been fulfilled and the documents have been provided, the bidder will be considered qualified for the Auction.

3. Next steps and timetable for the Auction

Once the bidders are qualified they are allowed to bid at the Auction at 9 am on 17 May 2017.

In advance to the Auction date, OMEL announced (i) a trial auction for qualified bidders (9 am on 12 May 2017) and (ii) trial access to the Auction and the electronic signature system (9 am on 16 May 2017).

For any questions please contact:

Verónica Romani Sancho

Partner, Madrid

Tel.: (34) 91 582 91 00

vromani@gomezacebo-pombo.com

Carlos Vázquez Cobos

Partner, Madrid

Tel.: (34) 91 582 91 00

cvazquez@gomezacebo-pombo.com

Luis Gil Bueno

Partner, Madrid

Tel.: (34) 91 582 91 00

lgil@gomezacebo-pombo.com

Fermín Garbayo Renouard

Partner, Madrid

Tel.: (34) 91 582 91 00

fgarbayo@gomezacebo-pombo.com

For further information please visit our website at www.gomezacebo-pombo.com or send us an e-mail to info@gomezacebo-pombo.com.

Barcelona | Bilbao | Madrid | Valencia | Vigo | Brussels | Lisbon | London | New York