

Renewable energy: further progress in the auction for up to 3,000 MW of capacity

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Order ETU/315/2017 of 6 April, regulating the allocation procedure for the specific remuneration scheme (subsidy payment) in the call for applications open to new facilities that produce electricity from renewable energy sources, made pursuant to Royal Decree 359/2017 of 31 March, and approving the remuneration parameters was published in the Official Journal of Spain (BOE) on Saturday, 8 April.

As noted in our article "*Renewable energy: the Government takes the first step towards the eagerly awaited "auction"*"¹, this Order is the second legislative instrument required for the renewable capacity auctions to be held - the first was Royal Decree 359/2017 and the last will be one or more decisions of the State Secretariat of Energy specifying both the date of the auction and the procedure governing the same, the main guidelines for which are defined in the Order described herein.

As is already known, the purpose of the auction is to award the installation of up to 3,000 MW of renewable capacity, with the right to be included in the specific remuneration scheme. The bidders in the auction will offer percentage reductions in the standard facility's "standard initial investment value" remuneration parameters set out in Order ETU/315/2017 for the different technologies included within the scope of the same.

In this respect, although the Order describes three clearly defined groups (wind power technology, photovoltaic technology and remaining renewable technologies) and provides a standard facility for each one, in the end the procedure will be technologically neutral, i.e., no percentage or quota of the capacity will be allocated to the different technologies grouped under the renewable concept - article 2.1, category b) of Royal Decree 413/2014. Instead, power shall be allocated to

¹ <http://www.gomezacebo-pombo.com/media/k2/attachments/renewable-energy-the-government-takes-the-first-step-towards-the-eagerly-awaited-CautionC.pdf>

those bidders whose bids entail a lower cost overrun per unit for the system, regardless of the technology on which such bids are based.

In order to determine the cost overrun per unit for each bid, the first step will be to calculate the remuneration for investment resulting from application of the percentage reduction in the initial investment and the remuneration parameters set out in the Order, calculating the cost overrun per unit for the system as the quotient between such remuneration for investment and the equivalent operating hours of the appropriate standard facility.

The bids shall be ordered from lowest to highest cost overrun per unit, without taking into account the technology they are based on, awarding power capacity to those bids that entail the lowest cost overrun per unit for the electricity system up until the first bid whose estimate exceeds the cap set at the relevant auction – this bid and all those following it shall be rejected. The last bid to be awarded capacity shall be the basis for determining the marginal cost overrun per unit.

Once the capacity has been allocated, the Order describes the formalities culminating in the allocation of the specific remuneration scheme for the facilities where such allocation of capacity will materialise. Thus:

- (a) The successful bidders shall have 45 business days following publication of the award in the BOE to file an application for registration in the specific remuneration scheme register on a pre-allocation basis, providing proof that they have given security in the amount of €60/kW of power capacity to be registered.
- (b) The application referred to above need not identify the facility/facilities that will use the awarded capacity: such facility/facilities must be identified within the 6 months following publication in the BOE of the decision allowing the successful bids to be registered in the specific remuneration scheme register on a pre-allocation basis. The technology and sub-group of the projects identified in this way must be the same as those set out in the relevant successful bid.

Once the abovementioned 6-month time limit has elapsed, the Directorate-General for Energy Policy and Mines shall partially release (€12/kW) the security given for the awarded capacity. Non-identification of projects within the abovementioned 6-month time limit shall lead to enforcement of the part of the €60/kW security corresponding to any power capacity that has not been properly identified.

- (c) After 12 months from the date of publication in the BOE of the award to submit the application for registration in the specific remuneration scheme register on a pre-allocation basis, the administrative permit of construction or equivalent document of the facilities corresponding to the projects that had previously been identified must be provided.

Once proof has been provided of this administrative permit of construction or equivalent document, the Administration will proceed to cancel the security given in an amount of €18 /kW over which the permit falls. Failure to show evidence of this permit within the aforementioned 6-month time limit will entail the start of the procedure for enforcement of the security in the amount of €18/kW.

- (d) By 31 December 2019, the projects must (i) be completely finalised, (ii) be definitively registered in the administrative registry of facilities that produce electricity, and (iii) have begun to deliver electricity. They have until 31 January 2020 to apply for registration in the specific remuneration scheme register on an operational basis.

Failure to comply with this time limit shall lead to enforcement of the security existing at that time and forfeiture of the rights associated with registration in the specific remuneration scheme register on a pre-allocation basis (i.e., the right to the relevant specific remuneration).

We must point out that the Order excludes the possibility of a change in ownership of the facility once it has been registered in the specific remuneration scheme register on a pre-allocation basis (it is allowed prior to such registration). This must be taken into account by any successful bidders who intend to structure their investment through vehicles incorporated for that specific purpose, or in any case through entities other than those that bid in the auction.

In short, this is a complex procedure with truly tight time limits (if the auction is held in June of this year, only 30 months will elapse between the auction and the moment when the facility must be completed) which will surely lead a large number of bidders to submit projects that are more or less advanced (but never completed, as the auction is specifically aimed at new projects, as pointed out in our article "Renewable energy: the Government takes the first step towards the eagerly awaited "auction"").

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