

# The Second Round of Offshore Wind Tenders in Japan (Updates from the First Round)

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## 1 Introduction

On December 28, 2022, a new round of public tenders for offshore wind development opened in Japan under The Act on Promotion of Use of Marine Areas for Development of Marine Renewable Energy Generation Facilities (the “**Act**”). The current round of public tenders includes four promotion zones:

- Happo-cho and Noshiro-shi in Akita Prefecture (“**Happo-Noshiro**”)
- Oga-shi, Katagami-shi and Akita-shi in Akita Prefecture (“**Oga-Katagami-Akita**”)
- Murakami-shi and Tainai-shi in Niigata Prefecture (“**Murakami-Tainai**”)
- Saikai-shi Enoshima in Nagasaki Prefecture (“**Saikai**”)

These public tenders (the “**Second Round**”) follow the public tenders for offshore wind development zones under the Act that took place in 2021, which are generally referred to as the “**First Round**.” Tenders for the development of promotion zones under the Act continue to be evaluated on a scale of 240 points, with 120 points available based on the proposed supply price of electricity, and 120 points available based on various evaluation criteria related to the feasibility of the proposal. Thus, the 50/50 framework for evaluating bids based on the supply price and the feasibility of the proposal remains unchanged from the First Round. However, based on the results of the First Round, a revised Guidelines for the Operation of Public Tenders for Occupancy of General Waters (“**Operational Guidelines**”) was released in October 2022, which included a number revisions to the procedures for public tenders, mainly focusing on factors for evaluating feasibility. As a result of the revisions to the Operational Guidelines, the occupancy guidelines applicable to each promotion zone for the Second Round also have been significantly changed compared to the First Round.

This newsletter summarizes the key aspects of the changes in the public tender process under the Second Round of offshore wind promotion zones.

## 2 Major Changes from the First Round

### (1) Revisions to Scoring for Evaluation of Feasibility

In the Second Round, a system for modifying the points awarded for feasibility has been introduced.

Prior to the Second Round, the feasibility score of a particular bid was based on the point total that resulted from adding together the individual scores for each evaluative factor. Under the revised Operational Guidelines, the points system was changed such that the bidder with the highest overall score for feasibility for a particular promotion zone will receive a full score (120 points). These revisions also are reflected in the occupancy guidelines for each promotion zone in the Second Round. The revised formula is as follows:

Feasibility Score = (bidder's score / the highest feasibility score awarded to any bidder for the same promotion zone) × {full score (120)}

As noted above, under the public tender system for development of offshore wind under the Act, the proposed supply price and the feasibility score are evaluated independently, with a maximum score of 120 each, for a total score of 240. However, as the highest score for the supply price automatically receives the maximum score (120 points), the evaluation for the feasibility factor was adjusted so that, in the same way, the highest score awarded is always the maximum score (120 points). When viewed in light of the fact that it was difficult to obtain a perfect score for feasibility under the previous rules, and the fact that it was unlikely there would be significant differences in the evaluation results for feasibility among the participants in each public tender, the evaluation method can be said to have changed toward placing greater emphasis on the evaluation of each bid's feasibility.

## **(2) Changes in Allocation of Points for Feasibility; Introduction of Speed Factor**

As a result of the changes to the Operational Guidelines, the specific factors for evaluation of the feasibility of each proposal also were changed. While the overall framework for evaluating the feasibility of proposals (120 points possible; 80 points for project implementation and 40 points for coordination with regional stakeholders and economic knock-on effects) has not changed, the individual factors for evaluating project implementation have changed and now consist of:

1. 20 points for how quickly the plan can be implemented (the “**Speed Factor**”)
2. 20 points for the fundamental aspects of the plan (of which 10 points are awarded for project implementation system and track record, and 10 points are awarded for the funding and expenditure plan)
3. 20 points for execution aspects of the plan (of which 15 points are awarded for the business plan prior to commencement of operations, and 5 points are awarded for the business plan after commencement of operations)
4. 20 points for a stable supply of electric power

Of the above categories, the fact that 20 points were allocated to the Speed Factor as a separate category is a particularly important change.

The new framework for scoring the Speed Factor under the revised Operational Guidelines and the occupancy guidelines for each promotion zone in the Second Round consists of (i) awarding a baseline score based on the proposed date of commencement of operations, then (ii) applying a weighting to that baseline score.

(1) First, a baseline score is determined based on the proposed operations commencement date under the occupancy plan that is submitted pursuant to a public tender, on a scale of 0 to 20. If the proposed operations commencement date is prior to June 30, 2027 (for Happo-Noshiro and Oga-Katagami-Akita), prior to June 30, 2029 (for Murakami-Tainai), or prior to August 31, 2028 (for Saikai), the baseline score will be the full 20 points. For each year the proposed operations commencement date for an occupancy plan is delayed beyond the dates above, the baseline score will be gradually reduced. If the proposed operations commencement date is on or after April 1, 2031, no baseline score will be awarded.

(2) Next, the baseline score set forth in (1) above is “weighted” by multiplying it by a ratio that consists of (i) the sum of the total “fundamental aspects of the plan” points and “execution aspects of the plan” points awarded to that bidder, divided by (ii) the maximum points available under those two categories (i.e., 20

points available under each category for a maximum of 40 points). For example, if a bidder receives a baseline score of 15 points due to their proposed operations commencement date being slightly later than that of the highest-scoring bidder, and the total points awarded for the “fundamental aspects of the plan” and the “execution aspects of the plan” of that bidder are 28 out of 40 points maximum, then the final points awarded for the Speed Factor would be 10.5 (i.e., 15 multiplied by 28/40).

Otherwise, the content and scores of individual evaluation factors for the feasibility assessments are unchanged from the First Round.

In addition, while the evaluation method for feasibility in the First Round was separated into five levels including disqualification, in the revised Operational Guidelines, a sixth level was added. Each item is now scored on a more narrow set of levels as a top runner (100%), excellent (75%), middle runner (50%), good (25%), minimum required level (0%), and disqualification.

### **(3) Application of the FIP Program**

A key change in the Second Round of public tenders is the application of the FIP (Feed-in Premium) program in place of the FIT program.

While a comprehensive explanation of the FIP program is beyond the scope of this newsletter, under the FIP program, the burden on the bid participants has been significantly changed because they are required to arrange for their own electric power sales through market transactions or bilateral agreements.

In addition, with respect to the renewable energy attributes of electric power, while under the FIT program the power plant owners cannot participate in transactions involving non-fossil certificates (FIT non-fossil certificates are sold by the Organization for Cross-regional Coordination of Transmission Operators (OCCTO)), under the FIP program, power plant owners can sell non-fossil certificates, either separately or together with sales of electric power. For this reason, in order for bidders participating in the Second Round to prepare competitive bidding prices, bidders need to arrange deals for selling not only the electricity generated by offshore wind farms, but also the renewable energy attributes associated with it (such arrangements may include, for example, corporate power purchase agreements (“PPAs”) that provide electricity generated from offshore wind farms to specific users, and virtual PPAs that only deal with the renewable energy attributes of the power without actually supplying electricity).

We note that for tenders based on the FIP program, bidders will propose a FIP price (base price). However, if the proposed FIP price is at a level below market price at all times, there would be no premiums generated for purposes of the FIP program (other than an amount equivalent to the balancing cost). For that reason, in the revised Operating Guidelines, when the proposed FIP price is below a certain price sufficiently below the market price (the “zero premium” level), the supply price point assessment is uniformly set to a full score (120 points). In the Second Round, the zero-premium level is set at 3 yen/kWh. In principle, the FIP period is 20 years. However, the date of commencement of operations that a bidder proposes in their submission will serve as the deadline for commencing operations, and if the actual start date is delayed beyond this date, the FIP term will be shortened by the delayed period.

However, there is a possibility of overlap during periods when different promotion zones winning bidders plan to use certain port areas, and in cases where the Ministry of Economy, Trade and Industry (METI) and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) determine that it is necessary to coordinate such use. As a result, if the operations commencement date must be delayed beyond the date proposed by

the bidder, the delayed start of the FIP period will be permitted without shortening the FIP period. This is similar to how potential shortening of the FIT period was addressed in the First Round.

The upper limit of FIP prices (supply prices) that may be proposed by bidders is 29 yen/kWh for Saikai, and 19 yen/kWh for the remaining areas. Saikai sits upon solid bedrock and it is expected that a jacket-type installation and construction method will be necessary. This is why the upper limit of the supply price for Saikai was set differently from that of the other three areas where monopile type installation is expected.

#### **(4) Security Deposits (additional forfeiture requirements in relation to Speed Factor)**

Similar to the First Round, in the Second Round bid participants are required to submit security deposits based on the power output of the offshore wind farm: a first security deposit of 500 yen/kW at the time of bid submission, a second security deposit of 5,000 yen/kW by the winning bidder within 8 weeks of selection, and a third security deposit of 13,000 yen/kW within 24 months of selection.

The forfeiture triggers with respect to each security deposit are basically the same as those of the First Round. However, as mentioned in (2) above, in connection with the introduction of the Speed Factor, failure to commence operations (more specifically, failure to commence the supply of renewable energy electricity through market transactions, etc.) by the date on which the Speed Factor score would be lowered due to the delay has been added to the grounds for forfeiture of the second and third security deposits. That said, the above does not apply in the event of direct damage due to severe disasters, the use of force, or any other events that cannot be controlled or avoided by the parties concerned. Delays due to direct damages caused by severe disasters and the use of force were exemptions from the forfeiture triggers for the second deposit and the third deposit in the First Round as well. However, in connection with the introduction of the new forfeiture trigger due to operations being commenced beyond the date on which the Speed Factor points would be reduced, grounds for exclusion were added due to events that are out of the control of the parties and cannot be avoided. Under the basic principle that this exception should be applied narrowly, however, it also will be necessary to establish that such events are not caused by the negligence of the winning bidder, and that the winning bidder has the intention and the economic and technical capability to proceed with operations without delay as soon as the obstacle caused by the applicable event is removed.

#### **(5) Selection and Adjustment due to Overlapping Use of Ports and Harbors**

Because the promotion zones of Happo-Noshiro and Oga-Katagami-Akita are near in proximity to each other and Akita Port and Noshiro Port can be used for both promotion zones, there is a possibility that the winning bids contain overlapping plans for use of the same port areas, and as a result, a selection and coordination mechanism was incorporated in Round 2.

In the event a winning bidder's proposed use of a certain port area (Akita Port or Noshiro Port) overlaps with that of the winning bidder for the other promotion zone for a certain period of time, the bidder with the biggest gap between the highest point-winner and the "next-highest point-winner" for the applicable tender for the same promotion zone ("**Area A**") will be selected to occupy the area during the overlapping period. However, in this context, the "next-highest point-winner" refers to the highest point-winner whose plan does not include use of port areas that overlap with the winning bidder for the other promotion zone ("**Area B**").

The winning bidder with the smaller score gap from the "next-highest point-winner" for the development zone (Area B) is given the opportunity to revise their bid to reflect the changed occupancy period for use of the port and resubmit. If, after resubmission, the score of the occupancy plan of "Area B" is equal to or higher than the

next-highest point-winner, then that resubmitted occupancy plan will be selected, but on the other hand, if the score is less than the next-highest point-winner (or if they decline to resubmit), then the next-highest point-winner will be selected.

As described in (6) below, the Second Round introduces bid award restrictions, but the order of application is such that those restrictions do not apply until after selection due to any overlapping use of port areas from between the winners of the Happo-Noshiro and Oga-Katagami-Akita promotion zones. Therefore, in the event of resubmission and reevaluation of any occupancy plans for the tenders for Happo-Noshiro or Oga-Katagami-Akita due to overlapping use of port areas, the timing of selection for Murakami-Tainai and Saikai may also be affected due to the bid award restrictions.

## **(6) Bid Award Restrictions**

The revised Operating Guidelines stipulate that when selecting winning bidders in multiple zones through the same tender, restrictions may be imposed on the number of tenders awarded per bidder from the perspective of providing opportunities to entry to a larger number of participants. Based on this, in the Second Round, all four promotion areas are subject to the bid award restrictions.

More specifically, if two or more promotion zones are awarded to “the same bidder,” the promotion zones will be allocated in the order of bids with the largest gap compared to the next-highest point-winner, and the capacity (either grid capacity or output capacity, whichever is smaller) will be allocated until the limit of 1GW is exceeded, after which any remaining bids will be voided.

Whether bidders are the “same” is determined based on whether the total voting rights of the members of the consortium or SPC exceeds 50%.

As described in (5) above, for the promotion zones of Happo-Noshiro and Oga-Katagami-Akita, for which Akita Port and Noshiro Port can be used for the base port, there is a mechanism for selection and adjustment in accordance with any overlapping use of port areas. In the context of bid restrictions as well, the promotion zones would be allocated in the order of zones for which the point difference is greatest compared to the next-highest point-winner for which there is no overlap in occupancy period of the port area.

In relation to the introduction of the bid award restrictions, it is necessary to avoid exchanging information with other bidders during the tender period not only for bidders for a particular promotion zone, but to all bidders for all promotion zones in a particular round.

## **3 Concluding Remarks**

In this newsletter, we have summarized the changes in the Second Round of offshore wind tenders, but there are complex and frequent changes in this area, such as the introduction of the FIP program, and transactions for renewable energy attributes such as non-fossil certificates. Especially in the area of offshore wind projects, it is important to stay up-to-date and have an accurate understanding of relevant regulations, including procedures for public tenders. We hope that this newsletter will help deepen the understanding of those involved in offshore wind power generation.

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