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Draft conditions for pilot tendering procedure for a price premium for electricity generated at solar photovoltaic installations

Preliminary tender specifications
published on 22 February 2016

Danish Energy Agency

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1. The contracting authority

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2. Type of procedure and the tender material

The procurement process is an open procedure. The procedure is not subject to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, but it is covered by 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, as it has been deemed that the tendering procedure has clear cross-border implications. Furthermore, the procedure will be organised in accordance with the European Commission's Guidelines on State Aid for environmental protection and energy 2014-2020.

These preliminary tender specifications were published on 22 February 2016.

3. Contents of the pilot tendering procedure

The following is a description of the overall content of the tendering procedure. The procedure relates to access to a price premium for electricity generated at solar photovoltaic (PV) installations.

In the event of a discrepancy between these tender specifications and the contract with the successful tenderer, the latter shall prevail.

A contract on price premium after the tendering procedure provides access to a price premium for electricity generated at solar PV installations covered by the contract. *Price premium for electricity generated at solar PV installations* is referred to in the following as *price premium for solar PV installations*.

Each contract can cover price premiums for solar PV installations with a total installed capacity of up to 2.4 MW. The contract can include price premiums for one or several solar PV installations for which the total installed capacity does not exceed 2.4 MW.

The installations established under a contract cannot exceed the installed capacity specified in the contract.

A tenderer may submit several independent tenders and take part in several independent contracts for price premiums. Independent tenders cannot be conditional upon other tenders obtaining a contract for price premium. There is no requirement for the distance between installations covered by independent tenders, but the locations stated in the tenders must not overlap.

The Danish Energy Agency wants to establish contracts which together cover solar PV installations with a total installed capacity of 20 MW. Of this capacity, the Danish Energy Agency can establish contracts regarding solar PV installations located in Germany with a total installed capacity of 2.4 MW. Contracts relating to the remaining installed capacity up to 20 MW can only be established regarding solar PV installations located in Denmark, except for the Faroe Islands and Greenland.

If the full installed capacity of a final tender cannot be contained within the limits of 2.4 MW and 20 MW, respectively, the Danish Energy Agency will establish a contract for price premium regarding all of this final tender up to a maximum of 4.799 MW and 22.399 MW, respectively.

3.1 Location, licences, etc.

A tenderer must find suitable location(s) for the solar PV installation(s) covered by the tender. The tenderer is also responsible for obtaining all the relevant licences and permits to construct the installation, and the tenderer is responsible for obtaining grid connection for the installation.

There are no requirements in the tendering procedure that, on the date of submission of a tender, licences or similar have been obtained to construct the installation. However, the tenderer may not make the tender conditional upon subsequently being able to obtain a licence to construct the installation.

Grid connection will be in accordance with the relevant regulations for the area in which the installation is constructed.

3.2 Calculation and payment of price premium

Price premium for electricity production from a solar PV installation covered by a contract will be a fixed premium for each MWh generated.

The Danish Energy Agency will establish contracts for price premiums based on the price premium offered in each of the tenders accepted. Each contract will thereby include the price premium stated by the successful tenderer in the tender to construct the solar PV installation(s).

The price premium will be provided for 20 years from connection of the individual solar PV installation to the electricity supply grid. A solar PV installation will be considered as connected to the grid from the time at which the installation supplies electricity to the transmission grid or a distribution grid for the first time.

However, price premiums will not be paid after 23 years from establishment of a contract. If installations covered by a contract are connected to the grid later than three years after establishment of a contract, irrespective of the reason, the period with price premium will be reduced proportionately with the delay exceeding the three years.

Price premium will not be granted for production in hours when the spot price for electricity is not positive.

The spot price for electricity is the hourly price per MWh on the spot market for the relevant area (DK1, DK2 or DE/AT), stated by the relevant electricity exchange; NordPool or EPEX.

Payment will be monthly on the basis of production for the previous month.

The successful tenderer must ensure the sale of the production in the electricity market itself and cover the related costs.

Balancing costs for the electricity from solar PV installations will not be reimbursed.

A condition for receiving the price premium is that the electricity from the solar PV installation must be supplied to the transmission grid or a distribution grid in Denmark, or to an electricity grid in Germany which is connected to the transmission grid in Denmark.

The successful tenderer must bear the full commercial risk of the tendered price per MWh, and the solar PV installation will be at the successful tenderer's own cost and risk. Therefore, the successful tenderer is not entitled to bring claims against the Danish Energy Agency in this respect.

The price premium will be paid in Danish kroner (DKK).

3.3. Administration

Energinet.dk will pay out price premiums on the basis of contracts established between a successful tenderer and the Danish Energy Agency.

Price premiums for electricity generated at installations in Denmark are paid by Energinet.dk on the basis of information on the amount of electricity generated reported by grid companies to the Energinet.dk DataHub. Calculations and reports on production must follow the relevant guidelines and instructions issued by Energinet.dk.

Solar PV installations established in Denmark must be registered in the Danish registry of master data (stamdataregistret) for electricity producing installations.¹

Price premium for electricity generated at installations in Germany are paid correspondingly by Energinet.dk on the basis of information on the amount of electricity generated reported by the relevant grid company in Germany responsible for metering.

Solar PV installations in Germany must be registered in the German “Anlagenregister”².

3.4 Obligation to construct solar PV installations and connect them to the grid

A successful tenderer is obligated to construct and obtain grid connection of the solar PV installation(s) covered by the contract.

A successful tenderer is obligated to connect the solar PV installation(s) covered by the contract to the grid within two years from the date of establishment of the contract. This obligation is considered fulfilled when 95% of the agreed installed capacity has been connected to the grid within the locations stated in the contract.

3.5 Retention penalty and guarantees

If, after a contract has been established, and irrespective of the reason, the successful tenderer states that it will not construct the installation covered by the contract and connect it to the grid, or if circumstances show that this is so, a retention penalty (an agreed penalty) will be immediately payable to the Danish Energy Agency upon demand.

Furthermore, access to a price premium will lapse and the retention penalty will fall due for immediate payment to the Danish Energy Agency on demand if the installation is not connected to the grid by no later than two years after establishment of the contract.

If one of the above mentioned conditions exclusively relates to part of the installed capacity, the retention penalty will be calculated proportionally.

The retention penalty will be calculated as DKK 180 per kW installed capacity covered by the contract. Therefore, for a contract for price premium for solar PV installations with an installed capacity of 2 MW (2000 kW), the retention penalty will amount to DKK 360,000.

The tenderer must submit with the tender a declaration from a financial institution, an insurance company or similar that it will provide a guarantee for the Danish Energy

¹Executive Order no. 1208 of 14 November 2014.

²Anlagenregisterverordnung vom 1. August 2014 (BGBl. I S. 1320), zuletzt geändert durch Artikel 3 der Verordnung vom 17. Februar 2015 (BGBl. I S. 146)

Agency corresponding to the amount of the retention penalty, if the tender wins the competition for a price premium..

Before the contract for price premium is established, the tenderer must provide a guarantee for an amount corresponding to DKK 180 per kW installed capacity of the contract from a financial institution, an insurance company, or similar. The guarantee must be provided on the terms stated in Appendix 2 (model demand guarantee).

The guarantee obligation will lapse when 95% of the installed capacity covered by the contract has been connected to the grid.

3.6 Extension of the time limit

A successful tenderer is entitled to an extension of the time limit for grid connection of the solar PV installation in the event of a delay caused by one or more of the following circumstances:

- a) Circumstances relating to the Danish Energy Agency.
- b) Circumstances arising for which the successful tenderer is without fault and over which the successful tenderer has no control, for example war, extraordinary natural events, fire, strikes, lockout or malicious damage.
- c) Public orders or bans which are not caused by circumstances attributable to the successful tenderer.
- d) Decisions by a board of appeal to stay proceedings on account of an appeal regarding regulations about planning of land use.

If a successful tenderer considers that it is entitled to an extension of a time limit, the Danish Energy Agency must be notified thereof in writing as soon as possible. Upon request, the successful tenderer must document that the delay was caused by the circumstances claimed, and that the delay could not reasonably be avoided or mitigated.

3.7 Timetable and notification

By no later than three months after establishing a contract, a successful tenderer must submit a timetable for construction of the installation(s) to the Danish Energy Agency. As a minimum, the timetable must contain information for each installation covered by the contract on when the successful tenderer expects to have obtained all the necessary licences and permits, commence construction work and connect the installation to the grid.

After this, and until all the installations covered by the contract have been connected to the grid, a successful tenderer must submit to the Danish Energy Agency every six months an updated timetable with the same information as mentioned above.

4. Award criterion

The Danish Energy Agency will establish contracts for price premiums on the basis of the award criterion “lowest price”, assessed on the following basis:

Amount of the price premium in DKK/MWh for electricity production for 20 years from grid connection.

The tenderer must submit tenders for a fixed price premium for electricity production for 20 years from grid connection.

The price tendered is to be a fixed amount (constant in current prices) and will not be indexed. The amount of the price premium must be stated as an amount in DKK without decimal places.

The Danish Energy Agency will enter into contracts on the basis of the tenders containing the lowest price premium up to a total installed capacity of 20 MW. If part, but not the full installed capacity of a final tender can be kept within the limit of 20 MW, the Danish Energy Agency will establish a contract on price premium regarding all of this final tender.

Within the 20 MW framework, the Danish Energy Agency will enter into contracts regarding the minimum of 2.4 MW installed capacity in Germany to the extent tenders regarding installations in Germany are competitive. If the lowest price premiums tendered up to a total of 20 MW installed capacity do not include tenders regarding the minimum of 2.4 MW located in Germany, the remaining amount of the 2.4 MW will go to Danish tenderers with lower bids. The Danish Energy Agency will only enter into contracts on the basis of tenders regarding installations in Germany which are among the lowest tendered price premiums up to a total of 20 MW installed capacity. If the lowest price premiums up to a total of 20 MW installed capacity include tenders regarding more than 2.4 MW in Germany, the Danish Energy Agency will only enter into contracts on the basis of the tenders regarding installations in Germany which contain the lowest price premium up to 2.4 MW installed capacity in Germany. If a final German tender cannot be kept within the 2.4 MW limit with its full installed capacity, the Danish Energy Agency will enter into a contract for price premium regarding all of this final tender. This means that contracts can potentially be established regarding installations in Germany up to a maximum of 4.799 MW, depending on the size of the final tender.

If a tenderer submits several tenders with the same price, the tenderer must provide a ranking of these tenders. The Danish Energy Agency will apply this ranking if it becomes relevant to establish contracts on the basis of one or more, but not all, of these tenders.

If several tenders from different tenderers contain the same price premium, and it becomes relevant for the Danish Energy Agency to establish contracts on the basis of

one or more, but not all, of these tenders, the Danish Energy Agency will invite the relevant tenderers to submit new and lower tenders no later than five calendar days after the invitation. Contracts will then be awarded in accordance with the above rules.

If, following the option to submit new and lower tenders, it is still not possible to settle the tendering procedure solely on the basis of the price premium tendered, the Danish Energy Agency will rank the tenders in question by drawing lots.

Tenders for which the tenderer has not been invited to submit a new tender will not be affected by the new tenders or the drawing of lots. The new tenders will therefore only determine which of the tenders originally containing the same price premium are to form the basis for establishing contracts.

5. Summary of the tendering procedure

4:00 pm on [date] is the deadline for submission of tenders.

- When the tenders have been received by the Danish Energy Agency, the Agency will assess whether the tenders are compliant and which tenders have the lowest prices.
- The Danish Energy Agency will then select the successful tenders on the basis of the award criterion and inform all the tenderers of the result of the tendering procedure.
- The Danish Energy Agency will establish contracts on the basis of the award criterion.

6. Tenders and declarations

A tender must contain only one tender price, which is to be binding for the tenderer.

The tender must contain a description of the tenderer. This description must contain the following elements:

- Name of the tenderer
- CPR no. (personal registration no.)/CVR no. (central business registration no.)
- Telephone no.
- Email
- Ranking of the tender, if the tenderer submits several tenders with the same price premium

The tender should also contain a description of the solar PV installation(s) covered by the tender. This description must contain the following elements:

- Address of each installation
- Name of each installation

- The installed capacity of each installation and all the installations together. The installed capacity should be stated in whole kW describing the largest active capacity the solar PV installation has been constructed to supply continuously.
- The coordinates at the corners of the area in which it is planned to locate each installation. Coordinates should be stated in the WGS84 format.

With the submission of the tender, the tenderer must declare that it undertakes to construct the electricity producing installation(s) and connect it/them to the grid.

A template tender letter which the tenderer must use when submitting a tender and the undertaking to construct the electricity producing installation and connect it to the grid is attached as Appendix 3.

The tenderer bears full commercial risk for the price premium per MWh quoted in the tender.

6.1 Solemn declaration

In connection with submission of a tender, the tenderer must issue a solemn declaration stating:

- i. whether the tenderer has unpaid debt due to public authorities in Denmark exceeding DKK 100,000. Reference is made to Consolidating Act no. 336 of 13 May 1997 on Limitation of Debtors' Possibilities of Participation in Public Tender Procedures.
- ii. that the tenderer has complied with each and every requirement to repay aid which the tenderer has received and which, in a previous decision, the European Commission has declared illegal and incompatible with the internal market.
- iii. that the tenderer has not received and will not apply for other state aid or aid under the German Erneuerbare-Energien-Gesetz for solar PV installations covered by the tender.

7. Tender deadline and formal requirements

Tenders shall be submitted electronically to the Danish Energy Agency **no later than 4:00 pm on [date]**.

Tenders received after this date and time will not be considered.

Tenders should contain the completed and signed tender letter template. The tender letter should be submitted electronically as scanned-in electronic copy of the signed original.

Tenders should be submitted to solarpv@ens.dk.

The subject field should state "OFFER – Solar PV 2016".

8. Language

The tenders must be drafted in English or Danish, cf. Appendix 4.

The Danish Energy Agency has prepared the tender material in Danish. The tender material will also be published in an English translation, although the Danish version still takes precedence. Therefore, in the event of any discrepancy between the Danish version and the English translation, the Danish version prevails.

9. Changes in the tender material, queries regarding the documents

9.1 Changes to the tender material

The Danish Energy Agency reserves the right to carry out changes to the final tender material by publishing an addendum to the tender material on its website. Changes will be published on the Danish Energy Agency's website well in advance of, and at least 6 days prior to, the expiry of the deadline for submission of tenders. After this it is not possible to make changes.

The tenderers must submit their tenders on the basis of the amended tender material issued by the Danish Energy Agency. Tenders should be submitted in accordance with section 7.

9.2 Questions before submission of tenders

The tenderer may submit written questions regarding the tender material.

It is important to the Danish Energy Agency that all tenderers be given the opportunity to submit relevant tenders within the framework of the tender specifications, i.e. without reservations on elements in the final tender material. All potential tenderers are therefore encouraged to use the opportunity to submit written questions on the tender material pointing out conditions which the tenderers find less appropriate.

Questions are to be submitted by e-mail to solarpv@ens.dk.

Questions and replies will be published on the Danish Energy Agency's website anonymised.

Questions that are received **no later than [date]** will be answered at all events by no later than six days before the time limit for submitting tenders. Tenderers are encouraged to submit questions well before this date.

Questions that are received after this date will also be answered, unless, due to the nature of the questions, it would be an exorbitant burden to supply an answer no later than six days before the expiry of the time limit for submitting tenders.

Questions that are received later than six days before expiry of the time limit for submitting tenders will not be answered.

10. Award

When the Danish Energy Agency has assessed whether the tenders are compliant, and which tenders have the lowest prices, the Danish Energy Agency will notify all the tenderers of whether their tenders have been accepted. With regard to tenderers that are not awarded a contract, the notification will also contain a brief account of the relevant grounds for the decision.

The Danish Energy Agency reserves the right to cancel the tendering procedure without awarding contracts, provided there is objective reason to do so. Such reason might be if the tenders (the price per MWh) are deemed too high.

It is a condition for the Danish Energy Agency's signature to a contract that the guarantee of DKK 180/kW covering the retention penalty has been provided, cf. section 3.5.

11. Costs of participation and period of validity of tenders

Tenderers are bound by their tenders for three months after the deadline for submission of tenders.

Regardless of whether the contract is awarded to other tenderers, tenderers are bound by their tenders until the Danish Energy Agency has signed contracts for an installed capacity of 20 MW, although for no longer than the period of validity of three months.

The tenderers' costs associated with the tender procedure are of no concern to the Danish Energy Agency.

12. Processing of tenders

Tenderers are not permitted to attend the opening of the tenders. The Danish Energy Agency will treat the tenders confidentially. However, the Danish Energy Agency is required to publish information on the contents of the successful tenders. The Danish

Energy Agency is required to give access to documents pursuant to the rules on access to documents in the Danish Public Information Act, the Danish Public Administration Act and the Act on Environmental Information.

The Danish Energy Agency is not obliged to return tenders to the tenderers.

The tenderer must observe unconditional confidentiality to third parties concerning matters which might come to the tenderer's knowledge in connection with the tendering procedure.

In the evaluation of the tenders and the other documentation, the Danish Energy Agency reserves the right to make use of external assistance if required.

The Danish Energy Agency considers it important that the invitation to tender creates effective competition between the tenderers and that the tenderers are treated equally.

13. Changes to the composition of the tenderer during the tendering procedure

As a rule, a tenderer cannot be replaced or supplemented during the tendering procedure with one or more economic operator(s), for instance in order to form a consortium. If a tenderer should nevertheless wish to do so, it requires prior written consent from the Danish Energy Agency. When deciding if a request for a change is acceptable, the Danish Energy Agency will assess relevant legislation at the time of the request and the general nature and extent of the change.

14. Check list

Has the tenderer in its offer remembered:

- Tender letter containing the tender price per MWh for 20 years from grid connection and a declaration to undertake to construct and connect to the grid specified solar PV installations, cf. section 6. The tender letter should clearly identify the company or the consortium submitting the tender.
- The tender material in electronic form as stated in section 7.

15. Further information

Please note that:

- all information about the tendering procedure, including answers to questions and changes in the tender material, will be published

at the website of the Danish Energy Agency:
www.ens.dk/en/solarpv

**16. Annex 1 - Template for contract on price premium for
electricity generated at solar PV installations**

17. Annex 2 - Draft demand guarantee

18. Annex 3 - Template for tender letter and declaration to undertake construction of an electricity generating installation and connect it to the grid.