

Tenders for Ground-Mounted Solar Installations – Beginning of a New Era

On 28 January 2015, the German Federal Cabinet (*Bundeskabinett*) enacted the Regulation introducing Tenders for ground-mounted Solar Installations (*Freiflächenausschreibungsverordnung*).

Beginning of a New Era

The new Regulation marks the beginning of a new era. The funding system for renewable energy sources has so far been based on technology-specific statutory tariffs which are calculated in advance on the basis of scientific expert reports.

The reformed Renewable Energy Sources Act 2014 (EEG 2014) aims to completely convert this funding system to a tender system in order to determine the amount of financial funding by 2017 at the latest. The idea behind the tender system is to achieve the expansion targets of renewable energy sources in a more cost-efficient manner by creating a scarcity situation and generating competition. This constitutes the largest change in the funding system for renewable energy sources since the introduction of the EEG.

Now that the Regulation has been adopted, the first step towards this change has been taken. During this first phase only the funding for electricity from ground-mounted solar installations will be determined competitively by tenders. First experiences will thus be gathered. In a second step the funding level for all renewable energy sources will be determined competitively by tenders by 2017 at the latest.

Tender Design

The new Regulation stipulates the relevant framework conditions for the new funding instrument:

Tender Volume and Bid Dates

An average annual tender volume of 400 MW installed capacity is stipulated in the Regulation. Tenders in 2015 will cover 500 MW, in 2016 400 MW and in 2017 300 MW. Last year roughly 500 MW of installed capacity were added in the ground-mounted solar installation sector. The average annual tender volume is based on this development.

There will be several tender rounds in each year. The first tender round will take place by 15 April 2015 (first bid date) with a volume of 150 MW installed capacity, followed by bid dates on 1 August 2015 and 1 December 2015. Further bid dates are scheduled for 1 April, 1 August and 1 December 2016 and 2017.

The Federal Network Agency (*Bundesnetzagentur*) will announce details regarding each tender round on its website as a rule eight weeks before each bid date.

Tender Procedure

The aim of the procedure is to put out to tender the funding amount for energy production. The individual bidders will name the quantity of installed capacity for which they would like the entitlement to funding. They offer an "applicable value" (*anzulegender Wert*) which forms the basis of the calculation of the market premium (*Marktprämie*) and thus the funding amount under the EEG 2014.

The bidders can make offers ranging between 100 kW and 10 MW of installed capacity. A maximum "applicable value" is fixed for the bid amount. This maximum value may not be exceeded in the bids. It is not based on the statutory tariff for ground-mounted solar installations applicable until the change to the tender system but on the higher statutory tariff for large roof-mounted solar plants. In this way the bidders can include the risks and the increased administrative expense of the tender procedure when duly calculating their bids. The maximum value is basically structured on a diminishing scale. The actual value in each case is published by the Federal Network Agency before each tender round.

If the total bids made exceed the tender volume (i.e. for the first bid date on 15 April 2015 the value of 150 MW) the bidders are awarded the bids, beginning with the lowest bid value, until the tender volume is reached. If the bid values of several bids are equally high the bid quantity is decisive. Small bid quantities are given preference in order to favour small and medium-sized enterprises.

Interestingly, the first tender round on 15 April will be carried out under the "pay-as-bid" procedure. The applicable value exactly as offered will be allocated to each successful bid. In the further course of the ensuing tender rounds on 1 August 2015 and 1 December 2015 the bids will be awarded on the basis of the "uniform pricing" procedure. Unlike the pay-as-bid procedure, here each successful bid is allocated the funding amount of the highest (!) successful bid. If the tender volume for these two bid dates is not covered by enough bids – i.e. there is no lack – the funding amount even increases to the maximum value of the respective tender round published in advance.

From 2016 onwards, the Regulation provides a return to the pay-as-bid procedure. In this way the two price rules common practice in tenders will be tested in the context of the pilot tenders.

Irrespective thereof, the Federal Network Agency can also react to strategic bidder conduct. The Regulation includes the competence to determine the price rules (pay-as-bid or uniform pricing) at short notice according to the strategic conduct of the bidders in the previous tender rounds. In such cases the Federal Network Agency publishes the price rule on for the respective bid date in advance.

Once a specific applicable value is allocated to a successful bid it will form the basis of the calculation of the funding amount under the EEG 2014 for the whole funding period of twenty years.

Project Realisation

The Regulation also contains many complex individual provisions ensuring project realisation in the new tender procedure.

For example, fines are foreseen to ensure that the bids submitted are serious and binding. The bidders cannot just let the awarded bid expire without having to pay a fine. In addition, bidders must pay fines if the awarded bid amount is not realised in full. As an exception there is a 5% de minimis threshold. If the project is not realised within a prescribed period fines are also incurred. In order to secure the fines each bidder has to pay a security deposit in advance to the Federal Network Agency.

On the other hand the Regulation also takes into account a high probability that a project will be realised. If the bidder can prove that he is well advanced in obtaining permits for his project the security deposit is halved.

Complex Provisions with major Chances for Bidders

This brief overview of the most important elements of the new Regulation demonstrates what chances the new tender system offers investors. Starting with the first bid date on 15 April 2015 market participants can gather their first experiences with the various price rules and bidder strategies. It remains to be seen whether, despite the in some cases complex provisions a large number of market participants will join in the tenders, as intended by the government.

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