



Making headway in
Japanese offshore wind –
Auction guidelines face
bidder scrutiny

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Auction guidelines face bidder scrutiny

In our latest briefing on the Japan offshore wind market, we discuss the finalised auction guidelines for the first round of fixed-bottom offshore wind farms and the key points arising from the related public consultation.

Background

On 27 November 2020, the Ministry of Economy, Trade and Industry ("**METI**") and the Ministry of Land, Infrastructure, Transport and Tourism ("**MLIT**") (together, the "**government**") released the finalised auction guidelines for the first round of fixed-bottom offshore wind projects in Japan. Bids will be accepted by the government until 27 May 2021 (5pm).¹

Alongside the publication of the finalised auction guidelines, the government released the "**Q&A**" in respect of the public consultation regarding the previously published draft auction guidelines.² There were **1,324 submissions by 43 participants**, demonstrating a high level of engagement by the market.

This note focuses on the final auction guidelines published for the Yurihonjo City offshore (North and South) special promotion zone in Akita Prefecture (the "**Yurihonjo Auction Guidelines**"), noting that the auction guidelines for the other three special promotion zones in "round 1", are similar in form (other than in respect of price, where the Feed-in-Tariff for the Goto City promotion zone is fixed at the current floating offshore wind tariff of JPY36/kwh).

Japan's offshore wind "Round 1" projects



¹ https://www.enecho.meti.go.jp/category/saving_and_new/saiene/yojo_furyoku/dl/sentei/koubo_20201127.pdf

² <https://public-comment.e-gov.go.jp/servlet/Public?CLASSNAME=PCM1040&id=155201106&Mode=1>

Over the following few pages, we discuss the key aspects of the Yurihonjo Auction Guidelines together with selected responses from the Q&A.



FIT CEILING PRICE

The FiT ceiling price has been confirmed at JPY29/kWh. **The level of the FiT ceiling price attracted a significant number of comments³**, with participants in the public consultation highlighting a number of concerns, including:

- the FiT being the **same for all promotion zones included in round 1**, and therefore not taking into account the different characteristics of each promotion zone (such as wind speed or depth);
- the **significant difference** to the previous JPY36/kWh tariff (applicable to projects governed by the Ports and Harbour Act);
- the **appropriateness of the calculation method**; and
- whether the FiT ceiling would **hinder the establishment** of a domestic supply chain.

Particular participants in the Q&A were not shy in their assessment of the FiT being **"too low"**, with some calling into question whether the project in question could be carried out on such a basis.

In response, the government referred to the determination and calculation by the Calculation Committee for Procurement Prices of 15 September, and **defended the calculation method used as appropriate**, including on the basis that suitable data for offshore wind projects was not yet available. The government also indicated that in the future, **the calculation method for the FiT would be improved** using available actual data, albeit it **remains to be seen** what this will mean for any future FiT ceiling prices in future rounds to come.

While a lowering of the FiT from the JPY36/kWh applicable to near shore projects (governed by the Port and Harbour Act) was surely expected by the industry, **the 19.5% cut is evidently seen as aggressive by particular public consultation participants**, prompting reactions not dissimilar to that which was seen when Taiwan sought to cut its offshore wind tariff by 12.7% at the end of 2018.

However, the strong stance taken by the government on the FiT is not necessarily surprising given the strong criticisms and expense of the generous solar PV FiT over the last decade.



FIT TERM

By way of recap, the FiT term is 20 years from the scheduled operation date ("**SCOD**"), and the SCOD must be a date that is no longer than 8 years after the successful bidder notice is provided. The FiT term will be reduced to the extent that the actual commercial operation date is delayed beyond the SCOD set out in the Occupancy Plan submitted by the bidder as part of its bid.

Concerns have previously been raised by industry participants with regard to the limited circumstances in which an extension to the SCOD may be permitted. However, The Yurihonjo Auction Guidelines confirm that such an extension may be permitted only in circumstances where the delay to the SCOD is caused due to a

³ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, question 6 onwards

successful bidder having to use harbours at the same time as "successful bidders of other projects".

The government has clarified in the Q&A that "**successful bidders of other projects**" refers to persons who have received permission under the relevant legislation in order to construct a renewable energy complex in the harbour area. The government also clarified in the Q&A that, if such a delay were to occur, a new SCOD would be agreed between the government and the successful bidder.⁴

The government stressed in the Q&A that the FIT term **would be shortened even if a delay to COD were due to a delay in grid works undertaken by the relevant utility**. The government considers this to be a risk that the successful bidder would be expected to manage. The government also **expressly rejected** the participant calls for the application of a regime which would disapply the provisions on the shortening of the FIT term in case of force majeure and instead called on bidders to set an appropriate SCOD.⁵

Therefore, very limited relief available to the successful bidder in respect of delayed commercial operation clearly remains a fundamental risk of which bidders will need to be aware, and the level of questions / clarifications on this topic in the Q&A evidence that this is indeed seen as a key risk by participants. Such concerns would seem to now also be under renewed focus given the level of the FIT ceiling introduced by the government.



INCUMBENT DEVELOPERS

There is **no specific protection or benefit for existing / incumbent developers** who may have been developing the site in question for a number of years prior to the commencement of the auction process. Previously, a price matching "option" in favour of existing / incumbent developers had been discussed by the industry and the government as a way of giving existing developers a degree of comfort that they would not get gazumped by new bidders. **However, and consistent with the final auction guidelines for Goto (the "Goto Auction Guidelines"), this principle has not been implemented.**

This area remains a key concern in the context of the Japanese auction process. Existing developers for future rounds will therefore be watching with interest to see how incumbent developers fare in the Round 1 auction process, **as it seems unlikely now that the price matching option previously discussed will be implemented** in future rounds unless there is a change in approach by the government.



BID ZONES

Given Yurihonjo is an auction covering two distinct promotion zones (North and South), bids for each of North and South only as well as for North and South together are accepted, **and bidders may submit three proposals** (for each of the North and South area as well as a comprehensive proposal) together. Any proposal should state clearly which area it relates to. Naturally, these options could result **in a variety of scoring**

⁴ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, question 28

⁵ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, see questions 16, 17 and 29 onwards for various queries regarding and objections to the FIT term

results between proposals covering North and South only and comprehensive proposals, and the Yurihonjo Auction Guidelines seek to cover each permutation (and indeed this has prompted a multitude of questions from participants in the Q&A).

Bidders will need to familiarise themselves with how different options and scoring outcomes may be treated in terms of the overall process. It is expected that the auction guidelines of future projects adopting a zoning approach like Yurihonjo **will follow similar lines in terms of catering for the various permutations**.



PORT USE

For Yurihonjo, the government expects that the successful bidder will use Akita Port. After the successful bidder is selected, they will need to enter into contractual lease arrangements with the relevant port entities.

Participants in the public consultation noted that many bidders would be employing project finance and asked the government to ensure that appropriate arrangements regarding the port lease contract would be possible. The government responded that the lease contract **should envisage project finance** and that it was planning to publish a template of this contract online on the MLIT website⁶ (and estimates it will do so during the course of this year⁷), also inviting consideration by the relevant port authorities.⁸

Some concerns were raised by participants in the Q&A regarding the size of the wharf area set out in the Yurihonjo Auction Guidelines (8ha) being perhaps too small. The government responded that if more space were needed, **it would be expected that bidders make their own arrangements and secure additional areas for use**.⁹ Bidders may therefore wish to consider pricing for the same accordingly.



SURFACE RISK

The Yurihonjo Auction Guidelines hint at some **project-specific surface risk** relating to existing or expired mineral rights in the area. Bidders are encouraged to request relevant information from the appropriate government departments ahead of time in order to identify the holders of these existing or expired rights and then contact the rights-holders to ascertain the location of any abandoned wells so that they can then choose appropriate locations for turbines. Bidders should take **the necessary steps and time required to obtain this information and take it into account when planning**.

In the Q&A, one participant requested that the information on abandoned wells be supplied in one batch. Another participant queried the government's decision not to disclose information it already had, **or why it was not at least seeking to lighten the administrative load on bidders**. The same participant asked whether the government or the local authority would assist in any discussions or negotiations with the relevant mineral rights holders.

⁶ https://www.mlit.go.jp/kowan/kowan_tk6_000063.html

⁷ Chapter 3(1) of the Yurihonjo Auction Guidelines

⁸ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, questions 178 following

⁹ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209925>, questions 739 and 740

However, the **government reiterated that sight of a transcript of the mining ledger could be obtained by using the prescribed procedure and paying the relevant fees.**¹⁰ Therefore, government evidently sees itself as having discharged its duty to bidders by alerting them to the existence of abandoned wells in the area, and **does not consider the administration burden referenced in the Q&A to be prohibitive to the facilitation of competitive bids.**



FISHERIES FUND

According to the council opinion summary at appendix 2 to the Yurihonjo Auction Guidelines, Yurihonjo City will establish a fund (*kikin*) for the benefit of the region and the fishery industry. The successful bidder must make contributions to this fund out of the income generated from the sale of electricity. In terms of amount, the estimate included in the Yurihonjo Auction Guidelines **is an estimated 0.5% of the projected income from the sale of electricity over 20 years.** In addition, the successful bidder must arrange to discuss with the relevant local council the annual amount of the contribution to the fund as well as its use.

By comparison to the Goto Auction Guidelines this **represents a welcome clarification** in terms of who must set up the fund and the contribution required. It also seems from the Q&A that the government **will expect the successful bidder to work out various details** such as the timing of contributions to the fund and adjustment exact calculation methods in cooperation **with the members of the local council.**¹¹

In the context of the Q&A, a participant asked whether the "estimate" (*meyasu*) as set out in the council opinion summary could be changed to a "maximum". However, the government in its response simply referred back to the council opinion summary.¹² Notwithstanding the welcome improvement on the Goto position, **an element of uncertainty therefore remains on this point** which will need to be taken into account by bidders.



OCCUPANCY PERMIT CONDITIONS

There are multiple conditions to the occupancy permit with which the successful bidder will need to comply, one of which being the obligation not to transfer, sublet, or grant security over the occupation rights. **Accordingly, it is unlikely that bidders will be able to grant security over the occupancy rights over the maritime area for project finance purposes.** However, this will **not be an unfamiliar point** for lenders familiar with project financing offshore wind in other markets.

A successful bidder **must also comply with new guidelines**¹³ regarding the execution of seabed and other maritime surveys in Japanese territorial waters by foreign vessels (April 2020). These new guidelines, while not representing a relaxation of the requirement that foreign vessels must obtain the government's permission prior to conducting any sort of survey, **show that the government is aware that business operators may wish to use foreign vessels** in order to carry out surveys in relation

¹⁰ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209925>, questions 736, 737

¹¹ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209925>, questions 765 and 767

¹² <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209925>, question 738

¹³ https://www.enecho.meti.go.jp/category/saving_and_new/new/information/200401a/

to promotion zones. Therefore, the government **has sought to clarify the paperwork and process required** prior to the engagement by foreign ships of data collection.

It remains to be seen whether and how quickly such permissions are granted to foreign vessels in practice. However, **any efforts to tackle cabotage related issues should be welcomed.**



SHAREHOLDING IN THE SPC

Equity sell-downs and changes in the shareholding of the relevant SPC **are now permitted after extensive discussions with market participants.** Such changes to the shareholding of the SPC will however **trigger the formal process in respect of amendments to the Occupancy Plan**, which essentially involves procuring government consent. Whether consent will be granted will be determined on a **case by case basis.**

The government will evaluate **whether the change would impact the project**, and especially whether either (A) the change would contribute to the public interest or whether (B) there are unavoidable circumstances. In particular, if:

- (1) the entity with the largest share of **voting rights (*giketsuken*) is changing;**
- (2) the entities which were evaluated for the execution, maintenance or operation of the project **exit;** or
- (3) the share of the voting rights of entities which were evaluated **falls below a certain level,**

the impact on the project **would be considered material**, and whether the project **can be appropriately carried out post this change** would form part of the evaluation and whether (A) or (B) applies would be judged particularly strictly.

However, the government, in the Yurihonjo Auction Guidelines, acknowledges that **in the interest of increased liquidity and of lowering the cost of funds**, it is also important to show some flexibility. Accordingly, if a change in the share of voting rights does not fall within (1) to (3) above, the **government would generally consider** such a change to be contributing to the public interest.

For (3), the government included a footnote to explain that "a certain level" would be taken to mean less than 2/3 of voting rights before and 1/2 or less after COD. During the Q&A, **the government clarified** that the 2/3 and 1/2 refer to the aggregate share of the voting rights of such evaluated entities (and not the share of voting rights of one single such entity).¹⁴

There were a number of questions in the Q&A concerning which scenarios would fall within (1) to (3) above and would, therefore, be viewed less favourably.

¹⁵ For instance, the government clarified that if two members of the SPC have 40% of the voting rights, but only one of them transfers 10% of its voting rights, this would still fall within (1) and be evaluated more strictly.¹⁶ This Q&A response may cause bidders to pause for thought, as it shows that the government interpretation of (1)

¹⁴ Chapter 9(5)(4) of the Yurihonjo Auction Guidelines (SPCの構成員の変更について) and <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, question 535

¹⁵ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, questions 523 to 535

¹⁶ <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, question 534

may be significantly stricter than what a literal translation of (1) might suggest.

The various prescriptions around any replacement indicate that the government, whilst having made this concession to the market, does not (as a general rule) look upon any change falling within (1) to (3) favourably and **bidders should not assume that consent from the government for the change will be forthcoming**, particularly if the member being replaced is the lead member of the SPC.

It seems from the Q&A that other changes may be permitted more easily (potentially in relation to "intermediary holdco" structures¹⁷) although **the government certainly seems to be giving itself quite a bit of leeway to consider the merits of each proposed change on a case by case basis.**

In our view, the potential negative evaluation and strict implementation by the government of factors (1) to (3) above could be a key issue for some equity investors, as demonstrated by the level of Q&A on the SPC shareholding rules. The government seems to wish to **maintain a higher level of control over changes in shareholding than is typical**, presumably partly because the capability of the shareholders forms part of the bid evaluation.

Nonetheless, international developers who are used to relatively free transferability of equity interests, particularly post COD, **may be concerned by the somewhat broad and unclear government consent rights.**



GUARANTEES

Three guarantees must be provided by the bidder (a cash deposit or bank guarantee can be used).

- **First guarantee:** to be provided on or prior to bid submission (JPY500/kW multiplied by the electricity output of the offshore wind farm);
- **Second guarantee:** to be provided within 8 weeks after the successful bidder notification (JPY5,000/kW multiplied by the electricity output); and
- **Third guarantee:** to be provided within 24 months of bid announcement (JPY13,000/kW multiplied by the electricity output). The 24 month period **represents an extension of time by comparison to the Goto Auction Guidelines**, which provided for only 12 months. The government has explained previously that it extended this time period in recognition of the fact that, compared to Goto, the time required for relevant surveys in Yurohonjo is expected to be longer.¹⁸

For each of the second and third guarantee, the amount of the guarantee **may be reduced if an additional guarantee is also provided** to the relevant power transmission and distribution operator to secure grid connection rights.

This also represents **a welcome change when compared to the Goto Auction Guidelines, as the government seems to have acknowledged** that doubling up on guarantees would represent an excessive burden on successful bidders.¹⁹

¹⁷ https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923_questions 528 to 530

¹⁸ https://www.meti.go.jp/shingikai/santeii/pdf/058_01_00.pdf

¹⁹ https://www.meti.go.jp/shingikai/santeii/pdf/058_01_00.pdf



FUNDS FOR DECOMMISSIONING

At the bidding stage, the cost required for decommissioning will be uniformly taken to **be 70% of the offshore construction costs**, and accordingly the cost for decommissioning will not form part of the evaluation.

However, once a successful bidder has been selected, the successful bidder must consider the method and cost of decommissioning and, following consultation with METI, MLIT and the Ministry of the Environment, **potentially amend its Occupancy Plan in respect of these costs before the start of construction**. In addition, as it is likely that technology will advance in the interim, it may be necessary to reconsider the methodology for costing decommissioning.

This **represents a helpful change by comparison to the Goto Auction Guidelines**, which stipulated that decommissioning costs would be taken to be 5% of "capital expenditure", prompting a number of questions as to how "capital expenditure" should be calculated for this purpose.²⁰

Accordingly, it **now appears clearer that decommissioning costs will not be subject to evaluation for bid purposes**, but the successful bidder should be prepared to turn their mind to the question following selection. However, This helpful change does not address the wider issue **of whether the 70% figure mentioned above is an appropriate baseline** for the bidding process in the first place.



INFORMATION DISCLOSURE

Information on wind resource survey results and any existing grid connection rights (held by other bidders) **will be provided by the government at the request of a bidder**. Access to the grid connection rights requires bidders to submit certain bid documents in advance of the submission date – **reducing the time available to the bidder to submit these particular documents**, a point of which bidders far into their due diligence and procurement will no doubt already be aware.

Separately, bidders may find it interesting to note that the Yurihonjo Auction Guidelines have added **an additional scenario in which the government may make "secondary use" of the Occupancy Plans submitted without seeking the express permission of the relevant bidder**. As with the Goto Auction Guidelines, documents submitted and personal information may be disclosed to the police for the purposes of confirming the requirements which must be met for the bidder to take part in the auction. However, the Yurihonjo Auction Guidelines also envisage that bids **may be used for the purposes of considering policy changes for the purposes of bringing about a long-term, safe and effective offshore renewable energy business**.²¹

Not surprisingly, this was picked up on by participants who had **understandable concerns around the protection of their intellectual property**. Following a question in the context of the Q&A as to how the intellectual property of participants would be protected in this second scenario,²² the government amended the wording to state that

²⁰ Public comments number 59 and 64 to 70 (<https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000203500>) and https://www.enecho.meti.go.jp/category/saving_and_new/saiene/yojo_furyoku/dl/sentei/nagasaki_goto_kouboFAQ.pdf

²¹ Chapter 10(3)(5) of the Yurihonjo Auction Guidelines

²² <https://public-comment.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000209923>, question 592.

it would ensure individual information would not be clear and would treat the information in such a way that the participant's trade secrets **would not be unfairly infringed**.

The degree of comfort that bidders will take from this government response **remains to be seen**.



SUPPLY CHAIN

For brevity, we have not in this briefing note reiterated the now well-established scoring regime and other selection criteria of the auction process itself. However, and **by way of an interesting comparison to the Goto Auction Guidelines**, we note that the Yurihonjo Auction Guidelines state expressly that a bidder may present several candidates for EPC and other contractors, **with a half-sentence being added (when compared to Goto)** making it clear that bidders who nominate more than one candidate for a contractor **will not receive a lower score** for this reason when compared to bidders who only present one candidate. This is a **welcome clarification** for bidders, while noting that the same does not deviate from the principle that changing contractors originally named in the bid is discouraged as the contractors so nominated form the basis of the evaluation.



GRID CONNECTION RIGHTS

If an existing developer has grid connection rights but is not the successful bidder, the existing developer **must transfer its grid connection rights** to the successful bidder within three months from the day following the date on which the successful bidder is notified. The price which the successful bidder would have to pay to the existing developer for the grid connection rights (as well as other conditions of transfer) is set out in appendix 5 to the Yurihojo Auction Guidelines. **Bidders (existing developers or otherwise) will no doubt be scrutinising such formula accordingly.**



LENDER DOCUMENTATION

If project financing is envisaged, the financing plan (project cost, estimated debt and equity, interest and potential lenders – supported by letter(s) of intent), credit rating and financial information of consortium members must all be attached to the bid submission. As subsequently clarified by the government, the letter(s) of intent to be procured from potential lender(s) **do not require any specification of the amount to be provided by the lender in question.**²³ The lenders must have project finance experience.



IN TERMS OF FUTURE AUCTION GUIDELINES FOR ROUNDS 2 AND 3, MARKET PARTICIPANTS SHOULD NOT EXPECT THESE TO BE DRASTICALLY DIFFERENT FROM THE ROUND ONE PROJECTS. WE ANTICIPATE A CASE OF EVOLUTION RATHER THAN REVOLUTION

²³ https://www.enecho.meti.go.jp/category/saving_and_new/saiene/yojo_furyoku/dl/sentei/nagasaki_goto_faq.pdf

Concluding remarks

The **FiT ceiling price** and the **absence of protections for bidders with regard to any delay to commercial operations** stand out as two particular key issues for bidders.

However, the government evidently considers that, notwithstanding the extensive feedback from the industry on these two issues, the round one fixed-bottom project auction guidelines (as drafted) will deliver competitive bids **given the level of interest in the developing offshore wind industry in Japan at this stage**. Lessons from the expensive solar FiT are prevalent in the government's mind it would seem.

However, hints by the government in the Q&A of the FiT ceiling price formulae being improved in the future suggest that **perhaps the government is aware that its position in the round 1 auction may require adjustment**. The voting rights restrictions **may also be unappealing** to those lead developers who were hoping to achieve a quick sell-down of their equity.

In terms of future auction guidelines for rounds 2 and 3, market participants **should not in our view expect these to be drastically different** from the round one projects. We anticipate a case of **evolution rather than revolution** as, while not moving much (if at all) on key risk allocations, the government does seem to be prepared to take market feedback into account on certain points where it



feels it is able to do so. This is evidenced by the incremental clarifications and amendments that have been made to the round one fixed-bottom projects when compared to the

The developing offshore wind market in Japan has made significant progress in a relatively short period of time

earlier published Goto Auction Guidelines discussed above. **This in itself is encouraging** in that current features of the process which are seen to be problematic by bidders may see improvements in the future, **albeit perhaps not at the pace that the market participants would ideally like to see**.

While there are clearly aspects of the round 1 auction guidelines that have given industry participants not insignificant cause for concern (and such aspects will require further due attention and consideration by the government moving forward), **the developing offshore wind market in Japan has made significant progress in a relatively short period of time**.

Taking into account that the Act for the Promotion of Use of Marine Areas for Development of Marine Renewable Energy Generation Facilities was only approved in November 2018²⁴, the successful publication of the round 1 auction guidelines this year (and the interest generated in the same) should be applauded, particularly so given the pandemic induced global economic slowdown. With the round 1 auctions now all up and running, **the developing offshore wind industry in Japan has another key building block in place as it seeks to put itself at the forefront of Japan's efforts to decarbonise by 2050**.

If you would like to discuss any point raised in this briefing note in further detail, **please do not hesitate to get in touch** with any of the Ashurst Japan offshore wind team (details below). We would be delighted to hear from you.



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²⁴ Please see our earlier related briefing notes - "[Making headway in Japanese offshore wind - Japanese parliament passes Offshore Wind legislation](#)" (February 2019) and "[Making headway in Japanese offshore wind - one year on](#)" (December 2019), as well as our recent report "[Offshore Wind in Asia: Recent Developments and Future Opportunities](#)" (June 2020)



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