

EU-Japan cooperation in offshore wind energy regulatory reform

Japan and the EU have ambitious climate neutrality objectives and energy transition from fossil to renewable energy solutions, such as offshore wind power (OWP), plays an important role in this. The EU operators with their long experience from OWP projects all around the world are technology leaders and there are great opportunities for the EU and Japan to cooperate in a mutually beneficial fashion in our respective markets and in third countries.

Our shared commitment in working together in this field has been demonstrated at the highest level by our leaders in the context of the EU-Japan Summit in May 2021. This gives us a strong mandate to cooperate in finding concrete ways of increasing the share of OWP in our respective energy mixes and of lowering the price of renewable energy. This is particularly important now considering the ambitious targets Japan has set for itself in this regard.

Why regulatory overhaul matters

A smooth roll-out of OWP projects benefits greatly from a regulatory environment that is based on principles of open markets, clarity and transparency. The adoption of these principles leads to healthy competition among economic operators, the introduction of most suitable and up to date technologies and – ultimately – decrease in energy prices making OWP a competitive energy source. The EU is encouraged by Japan's commitment to perform a comprehensive overhaul of regulations affecting OWP to see to what extent they should be revised to meet the above-mentioned objectives.

The OWP tendering guidelines are by far the most important regulatory area in this respect. While Japan is taking its first steps in OWP tendering guidelines, the EU has a long experience in finding the optimal way of designing the rules that lead to optimal results. This is therefore an area where both parties have recognized that the EU best practices provide a useful benchmark for the development of the Japanese tendering system.

The best EU practices as a benchmark for Japan's regulatory reform in the OWP sector

Tendering guidelines

The most progressive practice among the EU Member States, and which according to expert opinions would seem to provide Japan with the most business-friendly, transparent and fair tendering system, would consist of **evaluation criteria that are based (mainly) on price as the defining factor, underpinned by robust, transparent and measurable eligibility/preselection criteria**. In practice this would mean the following:

- 1) The bids would be scored against a quantifiable eligibility/preselection criteria on questions such as economic and technical viability, track record and ability to coordinate with local authorities. The idea here is to test the preparedness of the bidders to perform in accordance with the requirements of the project rather than make comparisons between bids.

- 2) The bids that pass stage 1) would compete on the basis of price as the sole or main criteria. The scoring in the eligibility/preselection criteria would not count in the final evaluation.

Other regulatory aspects

The recent strategic approach by METI and other relevant authorities in reviewing regulations and standards and deepening international cooperation through energy dialogues as tools to lower the price of offshore wind energy is very welcome. The laws being reviewed in the said strategy are relevant and an even wider overhaul of laws and regulations would seem to be justified. This is called for with a view to addressing existing market access obstacles, such as:

- Lack of alignment to international standards;
- Differences in regulatory basis that lead to multiple testing and certification requirements;
- Differences in product and design specifications;
- Overly stringent approval requirements;
- Delays in approval and certification;
- Lack of clear regulatory basis and the use of unpublished guidelines in conformity assessment.

In line with the principles of regulatory cooperation of the Economic Partnership Agreement (EPA) between the EU and Japan, the parties would benefit from sharing information on best practices for example in the area of technical regulation and conformity assessment with a view to removing the above-mentioned obstacles. The EU is of the view that reliance on international standards provides a sound basis for the achievement of this objective. The EU and its Member States have a long experience in developing robust yet business friendly regulatory systems, notably in the context of EN standards.

Consequently, a comprehensive regulatory review and alignment, where appropriate, with best European practices would benefit the Japanese offshore wind energy sector in a number of product groups. These include steel plates, structural components, cables, towers, piles, wind measurement towers, aviation lighting, bolts, nuts and washers and permits for construction and installation work. In many cases the recognition of EN standards or adoption of principles contained therein would greatly facilitate the introduction to markets of these important products. In others, bilateral solutions based on shared principles could be explored.

Examples of preselection/eligibility criteria in the EU Member States' tendering guidelines where the final evaluation of bids is based on price

The general principle

The preselection/eligibility criteria divide bids to those that qualify and those that do not based on simple and measurable criteria. The bid either meets or does not meet the criteria and the bids are evaluated against these criteria and not against other bids. The bids that qualify will then compete on the basis of evaluation criteria (solely or mainly price competition).

Examples of elements that are included in the preselection/eligibility criteria

Financial and economic preconditions

- Bidders must not have debt to public authorities exceeding certain threshold.
- Upon conclusion of the Concession Agreement for construction and connection to the grid of the electric power generating plant, the tenderer must provide a specified guarantee.
- Minimum annual turnover as average over the last x years available. In case of a consortium of bidders, the sum of all participating companies is taken into account Equity ratio of xx% or above OR long term debt rating of xxx in specified debt agencies.
- The tenderer must submit a declaration of intent from a financial institution stating that said institution will provide a demand guarantee (bid bond) corresponding to the amount of the retention penalty established or based on a price of x€/kW.
- Economic feasibility: Needs to be proven based on an operation calculation including: Investment costs per component, costs and benefits for the duration of the project and a calculation of the return on investment.
- Financial feasibility: Application must contain a list of costs and benefits, a financing plan and financial statements. In addition, it is a Requirement that at least 20% of investment is equity capital (capital of participants in collaborative venture and/or capital of parent company).

Track record on (offshore wind) energy projects

- The requirement of a specific minimum number of references of development and management of construction regarding (specific size of) offshore wind farms (during a given reference period)
- at least XXX MW of cumulative installed capacity of offshore wind power (with an individual capacity of XX MW or more) developed or operated by the bidder (or one of the shareholders controlling the bidder) OR more than x billion Euros of investments in offshore energy project (including offshore wind, electricity transmission, oil or gas extraction or transmission, etc.) in the last x years

Technical and capacity related preconditions

- Technical feasibility: The design for the wind need to contain the following as a minimum: wind energy yield calculation, details of requirements stipulated in the site decision
- Max height of the turbines
- Specified capacity requirements for the project
- Max output to the grid connection point

Other preconditions

- Ability to construct the wind farm within a defined time frame:
- A minimum amount needs to be allocated to environmental measures and monitoring.
- Meeting certain clearly defined environmental targets;
- Commitment to provide, for example, wind data

