

Client Alert

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PLN Invites Blanket Prequalification for Future Indonesian Renewable IPPs

PLN has recently issued an invitation for prequalification of developers interested in participating in future renewable Independent Power Projects in Indonesia. A copy of the PLN announcement is attached to this Client Alert.

What is the background to this new Prequalification process?

The recently passed Minister of Energy and Mineral Resources Regulation No 50/2017 requires PLN to carry out a “direct selection” process for the purposes of awarding IPPs for the following renewable energy technologies:

- wind;
- solar PV;
- biomass and biogas;
- hydro; and
- tidal.

“Direct selection” means that PLN is required to carry out a limited tender process with a minimum of two bidders to award the relevant project (as opposed to running a full tender, open to anyone interested to participate). So the question that has lingered since the passing of Regulation 50 is – how does PLN define the category of developers who can participate in this “limited tender”? It appears that this new announcement by PLN is aimed at defining the “limited tender” group. So we would expect that any developer who successfully passes this prequalification process and is therefore registered on the “List of Selected Providers” will be entitled to participate in future limited tenders for awarding renewable projects. It follows that those developers that are not on the List of Selected Providers will not be entitled to participate in the limited tender.

In the limited tender processes (commonly referred to as “beauty parades”) historically run by PLN (eg, the early Java 5 project, the award of rights to do an expansion at the Paiton power facility in East Java), the number of invited bidders were a very small number (ie, less than 10). It would appear that this current process is going to result in a very large number of invited bidders for future projects. Accordingly in practice, the running of future tenders for awarding these renewable projects will look more like a full tender process amongst dozens of bidders, than a beauty parade amongst a handful of bidders.

What renewable energy projects are covered?

The announcement covers solar PV projects, hybrid energy projects, wind projects, biomass biogas projects, municipal waste projects and tidal projects. Accordingly, the renewable projects not covered by this procurement process include geothermal projects or hydro (whether large scale or mini hydro projects).



In this respect, the current call for prequalification does not align neatly with the provisions of Regulation 50:

- Regulation 50 requires that a limited tender process be carried out for hydro projects. That is, PLN is no longer free to directly appoint hydro developers on a bilateral business-to-business basis. Accordingly, we would have thought that this current call for prequalification might have also included hydro developers. The somewhat unique challenge with hydro projects is that they are very site-specific. So even if developers were on a pre-qualified list, the reality is that the only developer who could implement the project is the developer sitting on the land rights or water use rights at the relevant location. So it would seem that PLN is still considering how it deals with this “limited tender” requirement for hydro projects.
- Regulation 50 does not require a limited tender for municipal waste to energy projects (ie, PLN is free to directly appoint developers of those projects, in accordance with the specific regulations governing procurement of municipal waste to energy projects). Accordingly there does not appear to be any apparent need for this blanket prequalification of municipal waste to energy developers.
- Hybrid projects are not referred to in the regulatory framework governing renewables as a separate category of renewable projects, and there remains some uncertainty as to precisely where they fit in the regulatory landscape - particularly as relates to what procurement process needs to be followed by PLN to award those hybrid projects which comprise some form of thermal element (eg, hybrid solar - diesel projects). All thermal projects (with the exception of mine mouth coal and stranded/wellhead gas projects) are required to be implemented through a full tender process, so whether these renewable-thermal hybrids will be instead put through the faster-track limited tender process is yet to be seen.

Do foreign developers need to establish local entities to prequalify?

The PLN announcement does clearly contemplate that foreign entities (from countries with diplomatic relations with Indonesia) can participate. As per the usual PLN procurement process, we would expect that once PLN initiates a limited tender for a particular project, developers who are on the List of Selected Providers will be able to participate in that tender process (along with a local partner to meet any mandatory Indonesian ownership requirements). If the developer is successful in winning the bid, then the foreign developer and its selected local partner will then proceed to establish an Indonesian project company, which will then sign the Power Purchase Agreement with PLN.

On the issue of whether both the foreign partner and the local partner need to be on the List of Selected Providers, we would expect that the terms of the limited tender documents would only require the lead member of the bidding consortium to be from the List of Selected Providers, with the additional consortium members only needing to meet the criteria laid out in the tender package itself. So, for example, if a foreign investor was looking to participate in the tender for a new 50MW wind project (where 95% foreign ownership is permitted), we would expect that the tender package would only require that the foreign partner be registered on the List of Selected Providers (and there would not be a



requirement for the selected local partner to also be registered, although the local partner may need to pass the other prequalification criteria set out in the tender documents such as credit rating and the like).

Which entity should be put forward to satisfy the requirements?

The announcement calls for experience in developing, constructing and/or operating renewable energy plants that have successfully been in operation for at least one year. As is often the case, the entity that actually has that expertise is a special purpose project entity located in the jurisdiction in which the relevant project is located. For example, if a developer has a solar project that is in operation in India, the actual legal entity that has that experience is the Indian project special purpose company. So does that mean that the Indian project company must apply for the prequalification for the future Indonesian projects? PLN's approach has typically been that a parent company can rely on the experience of its operating subsidiary in order to meet these technical prequalification requirements. So if the Indian solar project company is ultimately owned by a large multinational developer based in (say) Singapore, then that Singapore entity can submit the prequalification application, relying on its subsidiary's experience.

Is the technical experience the only criteria to particulate in PLN renewable IPP tenders?

We would expect that as and when PLN puts together a limited tender bid package for a particular project, PLN will be requiring further criteria to be met by bidders who are included on the List of Selected Providers. These criteria typically involve a combination of administrative, financial and technical criteria such as bidders having a certain credit rating granted by one of the recognised rating agencies and meeting certain minimum historical EBITDA thresholds to demonstrate that the bidders have the means to fund the equity portion of the project. So we would expect that there will be a second round of more detailed prequalification requirements in the individual bid packages that are subsequently put together by PLN.

Will PLN still implement projects on a direct appointment basis?

The ability of PLN to directly appoint developers (particularly those developers that have some form of pre-existing contractual relationship with PLN at the time Regulation 50 was introduced) remains somewhat unclear. The fact remains that the Government Regulation relating to the electricity sector (which rank higher in the hierarchy of laws in Indonesia) expressly provide that PLN is permitted to directly appoint renewable developers to implement IPP (without any form of tender process, whether limited or otherwise). Yet Regulation 50 does call on PLN to carry out limited tenders for all renewables except geothermal and municipal waste to energy.

With hydro projects being excluded from this current prequalification process, it appears that PLN is still considering whether to proceed with hydro projects on the basis of direct appointment (as a limited tender does not make a lot of sense



for site-specific hydro). So it will be interesting to see whether PLN continues to pursue direct appointment projects outside the limited tender framework.

Conclusion

It is very encouraging for renewable developers to see PLN getting down to the business of implementing a procurement framework for renewables in a manner consistent with the recent regulatory reforms pushed through by the Indonesian Government. If the level of interest seen in the recent Sumatera solar PV tenders was any indication, we would expect to see a large number of developers apply to have their names included on the List of Selected Providers.

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PT PLN (PERSERO)

INVITATION FOR LIST OF SELECTED PROVIDERS (DAFTAR PENYEDIA TERSELEKSI / DPT) FOR IPP (INDEPENDENT POWER PRODUCERS) RENEWABLE ENERGY POWERPLANTS

1. PT PLN (Persero) intends to select a potential project sponsor which will be list on Selected Providers (Daftar Penyedia Terseleksi / DPT) to develop IPP Renewable Energy Powerplants. As per Ministry of Energy and Mineral Resources Regulation No. 50 / 2017, the Procurement Process of IPP Renewable Energy Powerplants will be held with direct selection mechanism from a pool of Qualified Applicants listed on Selected Providers (as the case maybe update from time to time) (Daftar Penyedia Terseleksi / DPT) that meet criteria on Pre-Qualification Quesionnaire Document.
2. The project for IPP Renewable Energy Powerplants are Solar PV, Hybrid Energy, Wind Energy, Biomass, Biogass, Municipal Waste and Tidal Wave (the "Project"), which will be implemented on BOOT (Build, Own, Operate & Transfer) pursuant to a long term Power Purchase Agreement (PPA).
3. PT PLN (Persero) hereby invites interested Parties who have intention to be qualified and included on Selected Providers List (Daftar Penyedia Terseleksi / DPT) for development of IPP Renewable Energy (RE) Powerplants :

Title	: DAFTAR PENYEDIA TERSELEKSI (DPT)
RE Powerplant Type	: Solar PV, Hybrid Energy, Wind Energy, Biomass, Biogass, Municipal Waste and Tidal Wave.

The interested Party have to submit application and state type of RE powerplant that will be applied, in accordance with Pre-Qualification Quesionnaire Document.

4. The interested Party shall be a company from Indonesia or Country which has diplomatic relation with Indonesia. The Qualified Applicant will be required to incorporate Special Purpose Company among the listed Qualified Applicant on Selected Providers. In accordance with Laws of Indonesia, if a Party is foreign company, they shall engage with reputable local company for Special Purpose Company incorporation in order to execute Power Purchase Agreement.

For qualification, the Parties must demonstrate that they have experience in implementing at least 1 (one) IPP Contract, EPC Contract and/or O&M Contract which has been completed within the last 10 (ten) years and achieved satisfactory records for one (1) years operation for each unit of Power Plant.

In addition, the interested Parties shall fulfill financial requirement as set forth in the Pre-qualification Questionnaire Document. Whereas for each criteria / requirement, the interested Parties shall submit evidence on their application with a recent valid document.

5. The interested Parties, which represented by its authorized person, may respond with intent to register the Pre-qualification Questionnaire Document from **October 18th 2017 – October 27th 2017 (working hours from 08.00 – 16.00 West Indonesian Standard Time)**, after payment of a non refundable fee in the amount of Rp 10.000.000,- (ten million Rupiah) at the address below:

PT PLN (Persero) Head Office

c/o Chief of Procurement Committee for List of Selected Providers
Main Building, 13th Floor, Jalan Trunojoyo Blok MI/135, Kebayoran Baru, Jakarta 12160
Phone +6221- 7251234, 7261122, Ext. 1175
Fax +6221- 7227063

6. The Application shall be submitted in one (1) original, one (1) copy and one (1) electronic copy by hand not later than **15:00 PM** local time on **November 14th, 2017** to the above address in the sealed envelopes with clearly marked the type of powerplant as mentioned as Project.

Jakarta, October 12th, 2017
Procurement Officer for List of Selected Providers