

VICTORIAN RENEWABLE ENERGY TARGET (VRET) AUCTION SCHEME NOW TAKING BIDS

20 November 2017 | Australia

Legal Briefings - By **Gerard Pike, Alison Dodd and Belinda Moore-Gilbert**

In response to Victoria becoming the first state to legislate for its renewable energy targets, the Victorian Renewable Energy Target 2017 Reverse Auction (the **Reverse Auction**), will award commercial contracts which enable up to 650 megawatts (**MW**) of large-scale renewable energy generation (with 100MW of this reserved specifically for large scale solar).

The Request for Proposal (**RFP**) process is being steered by the Department of Environment, Land, Water and Planning (**DELWP**) on behalf of the Victorian State Government and was issued on the 14 November 2017.

Successful proponent(s) will be required to enter into a Support Agreement with the State of Victoria (bidders will be required to bid any departures to the pro forma support agreement provided as part of the RFP). The term of this agreement will be 15 years from the commencement of supply (the **Term**).

DEADLINE

Proponents must send compliant proposals to DELWP by **2:00pm on 14 February 2018**. This allows approximately 4-5 months before the formal notification of the successful proponent (estimated to be announced in **July 2018**).

DELWP will hold a briefing on the VRET Auction on 28 November in Melbourne.

ELIGIBLE PROPOSALS

For a proposal to be considered in the Reverse Auction:

- **Proponent eligibility criteria** pertaining to jurisdiction of incorporation, solvency, regulatory compliance in relation to employee entitlements and the *Workplace Gender Equality Act 2012* (Cth) must be met.
- **Project eligibility criteria** the following 9 items must be met for the project to be eligible. It must:

1. be a recognised renewable energy source;
2. have a generation capacity of no less than 10MW;
3. be a new facility;
4. have registered already with AEMO;
5. have already submitted a complete Connection Application to the connecting NSP;
6. have a live planning permit from the relevant authority;
7. be able to commence commercial operations on or before September 2020;
8. be for a facility whereby a minimum of 10% of a project's total estimated labour hours must be undertaken by apprentices, trainees, or engineering cadets under the Major Projects Skills Guarantee; and
9. demonstrate local community support to a level of 'involve' as described in the Community Engagement and Benefit Sharing Guide (in the RFP).

Whilst there is no specific requirement that the projects be physically located in Victoria, the State has noted that each submission will be evaluated against a range of criteria to ensure that the project is of 'direct benefit' to Victoria.

COMMUNITY ENGAGEMENT AND JOB GROWTH EMPHASIS

The RFP documentation emphasises community engagement and job growth in regional areas.

The government favours proposals that '*seek mutually beneficial outcomes for the local community*'. Proponents should consider engaging with local communities and should highlight this in their response to RFP.

This can be achieved through:

- allocation of jobs to local workers;
- implementing local training programs;
- creating relationships and consulting with the community early on in the process; and
- implementing benefit sharing programs which create mutually beneficial outcomes for both the developers and the community.

PAYMENT STRUCTURE

The Support Agreement contains a hybrid payment mechanism comprising a:

1. **fixed Base Amount payment** - \$/MW/year to be paid annually in arrears; and
2. **variable Contract for Difference (CfD) payment** - this being to be paid on a monthly basis. Under the CfD payment, the State will set the CfD strike price component in the form of \$/MWh of eligible electricity generated and any payment owed will be '*calculated through the difference between the set CfD strike price and the price of that MWh in the wholesale market*'.

Being a two-way CfD payment, the successful proponent will owe the State where the price of the MWh is above the CfD strike price in the wholesale market (and in the opposite scenario, where the price of MWh is below, the State will owe the proponent). A \$0 per MWh floor price will also exist.

Payment will be subject to a project 'Payment Cap' which will include all Base Amount payments and net CfD payments over the term.

Proponents are asked to bid two scenarios for each of the minimum Base Amount and the Payment Cap support amount - one in which the LGCs are transferred to the State and the other in which the LGCs retained and not transferred to the State (see LGCs section below).

PRICING AND ESCALATION

The Contract Prices are pre-set at: AU\$56.52/MWh (wind projects); AU\$53.06/MWh (fixed plate solar projects); and AU\$56.85/MWh (single axis solar projects).

Each of the Contract Price and the Base Amount must be escalated annually on each Review Date by 2.5% (review date being the 1 January of each Supply Year commencing 2021) for the Term.

The Payment Cap is escalated by 4% on 1 July of each year commencing 2018 for the duration of the Term.

LARGE-SCALE GENERATION CERTIFICATES (LGCS)

As mentioned above, the proponents must bid two sets of prices based on:

1. bundled transfer of all LGCs to the State; and
2. where the LGCs are kept and traded by successful proponents,

the State will then assess both LGC treatment options looking at value for money.

CHANGE IN LAW

In the event that there is a change in law, the parties to the Supply Agreement will take a risk sharing approach in which the successful proponent is able to pass through 50% of its increased/decreased (as applicable) costs associated with the energy generation of the Facility to the State by an adjustment to the Contract Price or the Base Amount.

If the proponent is also transferring LGCs to the State then 50% of the increases/decreases in the creation, supply, registration, approval or transfer of Green Products will also be passed through.

In the event of a policy change (such as the repeal of the RET) the RFP clarifies that the agreed Base Amount and the Government's set CfD strike price will not be adjusted and *'any LGCs that are required to be transferred to the Government, but cannot be due to the repeal of the Federal RET, will not incur a penalty'*.

EVALUATION OF PROPOSALS

The RFP sets out a range of criteria and weightings that will be used to evaluate the proposals. The most heavily weighted (each weighted 25 per cent) of these are:

- project **financial feasibility and commercial viability**;
- project **technical feasibility**; and
- project **contribution to economic development** in Victoria.

Other evaluation criteria include the project's approach to **community engagement**, an assessment of how the project's **financial benefits** will be shared with local communities and the project's **impact on existing electrical network infrastructure**.

Value for money has been flagged as critical to a proponents success. The independent evaluation panel will determine this by looking at both price bids and a project's performance in the evaluation criteria. The State has said that *'projects with lower bid prices in conjunction with good scores in the evaluation criteria will generally offer the best value for money.'*

HERBERT SMITH FREEHILLS CAN ASSIST

For further information or assistance in navigating the RFP process contact Herbert Smith Freehills' market-leading full service renewables team.

Note: the information contained in this article is derived directly from the RFP documentation released on 14 November 2017 by the Victorian State Government. The reader is encouraged to consult the RFP documentation to supplement the information contained within this summary.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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