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New offshore wind farms: a market's perspective

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Introduction (i)

- > Netherlands: long tradition in wind power. Recent projects include:
 - Egmond aan Zee (completed: 2006) 108 MW
 - Princess Amalia (completed: 2008) 120 MW
 - Luchterduinen (completed: 2015) 129 MW
 - Gemini (completed: 2017) 600 MW

- > New investments due in the Netherlands. Dutch energy agreement:
 - 2015-2019: 5 x 700Mw (10 x 350MW), € 18bn investment
 - target: 40% cost reduction through efficiency
 - State to commission the build of an offshore grid

- > Novelty:
 - State determines location and prepares spatial planning
 - competitive tendering for subsidy and right to build and operate wind farm

- > Parallel with Dutch infrastructure projects

Introduction (ii)

- > Dutch infrastructure and building projects (PPP/DBFM(O)):
 - to date: the Dutch government has tendered over 20 projects (total value over € 6 bn)
 - recent projects include:
 - Zaanstad prison PPP project (€ 210 M)
 - A12 roads PPP project (€ 120 M)
 - SAA A9 PPP roads project (€ 600 M)
 - IJmuiden Sea locks PPP project (€ 850 M)
 - until 2020: 19 projects in pipeline

- > All PPP/DBFM(O) tenders achieved financial close according to schedule

- > Key factors to success:
 - balanced (bankable) and standardised documentation
 - sustained pipe line of projects
 - the use of the Competitive Dialogue

Introduction (iii)

- > Expectation: tender procedures for the new Dutch wind farms will develop in a manner very similar to the infrastructure and building tenders.

- > Reasons:
 - competitive tendering for the right to build and operate an object (wind farm, road or building).
 - both types of projects are based on non-recourse or limited recourse finance
 - bids to include commitment to realise and operate wind farm ("committed tenders")

- > Legislative framework for wind programme is being developed. Information in this presentation is provisional

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1. Regulatory framework in a nutshell

- > Site decision (*Kavelbesluit*)
 - Locations for the offshore wind farms
 - Requirements for Wind permits

- > Wind permit (*Wind vergunning*)
 - based on Site decision
 - to be granted only to the winner of the subsidy tender
 - provides for exclusive right to build and operate the wind farm

- > SDE subsidy: '*Stimuleringsregeling Duurzame Energievoorziening*'
 - subsidy per kilowatt-hour actually delivered to the grid
 - term: 15+1 year
 - mechanism to balance out peaks in energy production

2. SDE subsidy tender: general

SDE subsidy tender:

- tenderers to bid for subsidy for 350 MW or 2 x 350 MW
- no prequalification
- bids below maximum price (*Site Base Amount*), known prior to submission
- feasibility (both financial and technical) of the solution offered
- bids may include mark up for indexation risk
- lowest price per kWh wins (taking into account both 1x350mW and 2x350mW bids)
- bid must include undertaking to actually realise and operate the wind farm

> Realisation Agreement (*Uitvoeringsovereenkomst*)

- civil law arrangement in addition to subsidy scheme (known from e.g. public transport concessions)
- includes obligations for party to which the subsidy was granted (such as the obligation to realise and operate the wind farm)

3. SDE subsidy tender: committed tenders (i)

- > Undertaking to realise en operate the wind farm ('Committed tender')
- > Undertaking must be supported by a bank guarantee (of € 5 M per 350 MW ?)
- > 'Committed tenders' have major impact on the structuring of the tender procedures and preparations of the bid/application
- > Committed tenders' in Dutch infrastructure projects:
 - unconditional offer, no negotiations with the Authority following bid submission
 - lenders commit to fund the project prior to bid submission (subject to final credit approval and satisfactory documentation)
 - lenders' due diligence (technical, legal, tax), prior to bid submission
 - all major subcontracts commercially agreed upon, prior to bid submission (possibly heads of terms)

3. SDE subsidy tender: committed tenders (ii)

- > 'Committed tenders' in Dutch wind projects may be very similar to infrastructure tenders:
 - unconditional offer, no negotiations with the Authority following bid submission
 - lenders commit to fund the project prior to bid submission (subject to final credit approval and satisfactory documentation)
 - lenders' due diligence (technical, legal, tax), prior to bid submission
 - PPA agreed, prior to bid submission (possibly heads of terms)
 - 'balance of plant' and turbine supply agreed, prior to bid submission (possibly heads of terms)

- > Alternative:
 - make offer without committed funding and without agreed terms for subcontracts
 - If financial close cannot be achieved: forfeit of bid bond/bank guarantee

- > No alternatives in infrastructure: if there is no lenders' support letter, bid is invalid

3. SDE subsidy tender: committed tenders (iii)

> Advantages of committed tenders:

- financial close can be achieved within 3-4 months after the appointment of preferred bidder
- tender procedure is transparent and allows for 'fair competition' (comparing 'apples and apples')

> Disadvantages of committed tenders:

- preparing the bid is costly (i.e. conducting a technical, legal and tax due diligence and negotiating subcontracts)
- preparing the bid is time consuming (tender procedures include dialogue meetings with the Authority and negotiations with subcontractors)
- in spite of investments: the outcome of the tender is unsure

> Recommendations for offshore wind tenders

- reduce number of bidders to three or five by way of prequalification
- compensate losing bidders for bid costs

4. Provisional time table Borssele

2015	
Q1/Q2	Draft SDE subsidy decision open for consultation
Q2	Draft Site decision open for consultation
Q3	Draft Site decision formally filed for public inspection
Q4	Publication SDE subsidy decision
Q4	Final Site decision
Q4	Start SDE subsidy tender
2016	
Q2/Q3	Bid submission, application for Wind permit
Q3	Appointment winning bidder
Q4	Financial Close [Wind permit available]

5. Project finance and risk allocation (i)

> Allocation major risks wind farm, public <> private

Risk	Who bears the risk?	Comment
Grid is not ready when park is ready	[public]	Legislation is being prepared. The State will provide for compensation to operator wind farm in case of delays. Compensation to include loss of income up to a certain level
Site decision is suspended or nullified	[private]	Site decision should be irrevocable when bids are made. However, in the Borssele tender this will probably not be the case. Objections may lead to a change in requirements. This may necessitate in a change to the bid. To be addressed in legislation or tender documents.
Wind permit or SDE subsidy grant is suspended or nullified	[private]	Wind permit and subsidy grant: normal appeal procedures apply. Risk of delays in case of appeals against outcome of the tender by losing bidders. To be addressed in legislation or tender documents.
Site data (geology, geomorphology, archaeology, wind) incorrect	[public / private]	Reports will be prepared at the instruction of the State. The State's current position is that it will not accept liability for errors / incompleteness in these reports
UXO's (unexploded ordnance)	[private]	The presence of UXO's may cause substantial delay. Pursuant to desktop studies risk is limited. The State will not commission any further investigations.
Security over wind permit, subsidy?	[private]	New legislation provides that both the Wind permit and subsidy are transferable, subject to consent from the Minister. Hence, both the Wind permit and subsidy can be pledged (<i>verpand</i>) if Minister cooperates.

5. Project finance and risk allocation (ii)

- > A number of risks have not been addressed in the draft documentation, such as:
 - force majeure
 - change in law

- > Realisation agreement would be the best place to further deal with risk allocation and consequences if risk materialises

- > Starting point for allocation of risks: a risk should be borne by the party best capable of mitigating such risk

6. Conclusion

- > Expectation: tender procedures for the new Dutch wind farms will develop in a manner very similar to the Dutch infrastructure tenders
- > State will require 'committed tenders'. Hence, formation of consortia, material contracts (possibly HoT's) and lenders' due diligence should be completed before bid submission
- > Borssele tender: interested parties should participate in the consultation on the draft SDE subsidy decision and the draft Site decision. Consultation to start in 2nd or 3rd quarter of 2015
- > Risk allocation public <> private to crystalize
- > Impressive investment in wind farms. New legal framework: excellent basis for the new programme. Great opportunities for the market.

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