

# Dutch Borssele Offshore Wind Project: First Lessons Learned from the DONG Bid

## Introduction

In 2013, the Dutch government committed to increasing the country’s offshore wind capacity from 1,000 MW to 4,500 MW by 2023. This commitment is part of the Dutch government’s overarching EU mandate to meet a minimum target of 14% renewable energy use by 2020. To achieve the offshore wind capacity commitment, the Dutch government has designated five offshore wind farm zones for development, each with a capacity of circa 700 MW. The tender for the first zone was released in 2015, the tender for the second zone is to be released in September 2016, with the tenders for the final three zones expected to occur in succession over the next three years.

## Borssele Offshore Wind Project

On 5 July 2016, the tender for the Borssele Wind Farm Sites I & II (each of 350 MW) was awarded to DONG Energy, which came out ahead against 37 other competing bids. DONG Energy won the concessions with an average bid strike price, excluding transmission costs, of EUR 72.70 per MWh during the first 15 years of the contract, significantly undercutting the maximum amount that was estimated for the tender. DONG Energy will, in accordance with the Dutch tender regulation, build Borssele I & II within four years from July 2016, with a flexibility of one year.

The focus of this update is to consider the next steps in preparing for the Borssele Sites III (330 MW) & IV (350 MW) tender due in September 2016, and to consider the impact of DONG Energy’s bid on tender pricing.

## Next steps

### TIMELINES

16 September 2016	Applications open
29 September 2016	Final bids

The application for subsidy and permit for the Borssele Wind Farm Sites III & IV opens on 16 September 2016, with final bids due by close of business on 29 September 2016. The application forms require, amongst other things, the provision of a project plan, operational calculations, annual accounts and a financing plan.

Winners of the site development tenders will be granted a permit to build, operate and decommission the wind farm according to the Offshore Wind Energy Act (*Wet Windenergie op zee*), a SDE+ grant and offered a grid connection to the mainland. The Ministry of Economic Affairs provides site data, which can be used for the preparation of bids for these tenders. This cuts back dramatically times for permitting that are applicable in other jurisdictions.

In order to be granted the SDE+ subsidy, the winner of the tender must enter into an execution agreement with the Ministry within two weeks from award of the contract to build and operate the wind farm, and provide a bank guarantee of EUR 10,000,000 within four weeks from the award. The winning bidder must also enter into a Realisation Agreement and a Connection and Transmission Agreement with TenneT, the appointed Dutch offshore wind system operator, prior to realisation or operation of the connection, and must provide a second bank guarantee of EUR 35,000,000 within twelve months of award of the contract. A decommissioning bank guarantee of EUR 120k/MW must also be provided by the time of electricity production. The amount of this guarantee is subject to an annual indexation of 2% for the first twelve years of operation. After these twelve years, and also after seventeen years of operation and one year before decommissioning, the indexation percentage will be set again.

The permit that is awarded will be valid for a thirty year period, and the wind farm must be operational within five years. The wind farm will be permitted to operate until 2029. After the power generation operations have ceased, the permit holder must decommission the wind farm within a two year period (but within the term of the permit).

## Impact of DONG Energy Bid

DONG Energy's bid reflects the world's cheapest offshore wind development by some margin. The low price cannot be explained by any one factor, and it remains to be seen the extent to which the price awarded for Borssele Sites I & II will affect the tender which is ultimately chosen for Sites III & IV. The Dutch government's primary concern is to meet their offshore wind commitment by 2023. Accordingly, we expect the Dutch government to pay close attention to pricing, but to also extensively analyse the extent to which each bidder can meet the requirements set out in its tender, including in relation to timing and financial viability, at the price stipulated.

DONG Energy has submitted its bid for Borssele Sites I & II without a consortium. Given the low pricing of its winning bid, it is to be expected that some market parties may feel pressure to decrease their bid for Borssele Sites III & IV. DONG Energy may pursue the same strategy for Borssele Sites III & IV.

In relation to Borssele Sites III & IV, from a financial point of view, an expected change has been made to the tender procedure, by decreasing the price cap. During the tender for Borssele Sites I & II, a maximum price cap for the SDE+ subsidies was set at 12.4 Euro cent per kWh, whereby DONG Energy required 7.27 Euro cent per kWh. The cap for Borssele Sites III & IV could be lowered significantly, but this has not happened. This new cap is 11.975 Euro cent per kWh: still considerably higher than the DONG Energy bid and also higher than the second lowest auction price for the Horns Rev 3 offshore wind farm in Denmark, being 10.31 Euro cent per kWh. Therefore, the question is whether the decrease of the price cap will have any actual impact on the future bids.

From a legal point of view no significant changes have been made to the tender procedure. The Netherlands Enterprise Agency has recently provided a [consolidated set of relevant applicable law](#) (dated August 2016), including a translation in English for the upcoming procedure.

## What we offer

Simmons & Simmons has long been recognised as a leader in advising on many of the most complex and multi-jurisdictional renewable energy schemes in the market, including both on and offshore wind projects. Several individuals are "leading individuals" in their field of expertise, and the team has a Tier 1 ranking by Legal 500 EMEA 2016 for its Project Finance and PFI expertise.

We assist governments, project developers and financiers in relevant specialist legal areas including (project) finance, SDE(+) subsidies, off take agreements, grid connection, planning and consenting, construction, maintenance and decommissioning (EPC/TSA and O&M/SA agreements with turbine suppliers, foundation constructors etc.), tendering, corporate and tax structuring (including shareholders' agreements and corporate governance) and once a project is underway: sales of participations.

A number of our lawyers have been involved with the new Dutch offshore wind legislation on plot decisions, SDE subsidy regimes, requirements regarding permitting, tender regulations and the role and liabilities of TenneT. This involvement includes advising the Dutch government on such legislative frameworks and working closely together with TenneT on applicable regulations.

Please contact us if you would like further information regarding the relevant legislation and regulations concerning Dutch offshore wind farms.

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