

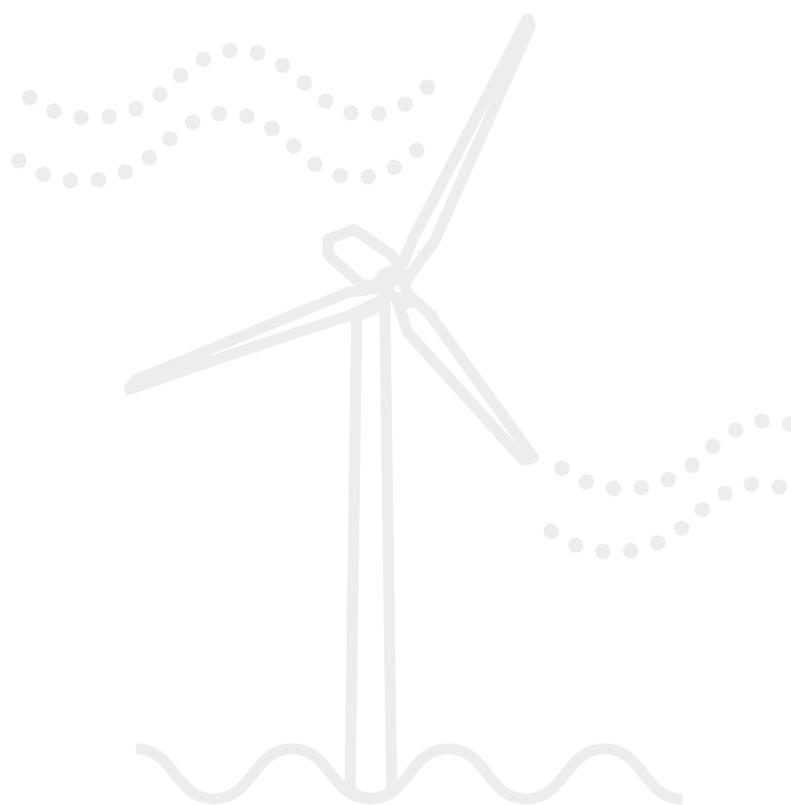
Linklaters

# Japan Offshore Wind (3rd Edition): Time to Bid

September 2020



# Contents



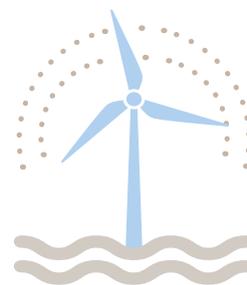
# 1 Executive Summary



# Executive Summary

Despite the COVID-19 pandemic, the offshore wind industry in Japan recently achieved several significant milestones:

- 1.1 **first public auction:** on 27 December 2019, a sea area off the coast of Goto City, Nagasaki Prefecture (see [Schedule 1](#)) (the “**Goto Promotion Area**”) was designated as the first promotion area for a floating offshore wind project under the Act on Promotion of Use of Sea Areas to Develop Marine Renewable Energy Facilities (Act No. 89 of 2018, as amended) (the “**Marine Renewables Energy Act**”). On 24 June 2020, the Ministry of Economy, Trade and Industry (“**METI**”) and Ministry of Land, Infrastructure, Transport and Tourism (“**MLIT**”) released the final public auction guidelines for the Goto Promotion Area (the “**Goto Public Auction Guidelines**”) and launched the public auction for the Goto Promotion Area (the public auction is scheduled to close on 24 December 2020). This is the first public auction under the Marine Renewables Energy Act;
- 1.2 **further promising areas (potential round 2 projects):** on 3 July 2020, four areas<sup>1</sup> were advanced to promising areas (*yuubou kuiki*), and three areas were added to “areas at a certain preparatory stage”, bringing the total to six such areas (see [Schedule 2](#));<sup>2</sup>
- 1.3 **first public-private council:** on 17 July 2020, the first meeting of the public-private council for reinforcing competitiveness of the offshore wind industry was convened. In the opening remarks, Mr. Hiroshi Kajiyama, Minister of METI commented that the forum should discuss longer-term targets to enhance investments in the offshore wind sector;<sup>3</sup>
- 1.4 **remaining round 1 projects:** on 21 July 2020, METI and MLIT designated the following areas as Promotion Areas:
  - i. a sea area off the coast of Choshi City, Chiba Prefecture (the “**Choshi Promotion Area**”);
  - ii. a sea area off the coast of Noshiro City, Mitane Cho and Oga City, Akita Prefecture (the “**Noshiro Promotion Area**”); and
  - iii. a sea area off the coast of Yurihonjo City (North and South), Akita Prefecture (the “**Yurihonjo Promotion Area**”,<sup>4</sup> and together with the Choshi Promotion Area and the Noshiro Promotion Area, the “**Round 1 Fixed-Bottom Promotion Areas**”).



The Goto Promotion Area was designated as the first for a floating offshore wind project

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1 Northern and Southern side of Japan sea off the coast of Aomori Prefecture, and sea areas off the coast of Happo Town, Akita Prefecture and Saikai City, Nagasaki Prefecture.

2 Mutsu Bay, Aomori Prefecture, sea areas off the coast of Katagami City, Akita Prefecture, Murakami City and Tainai City, Niigata Prefecture, Gannu and South Shiribeshi District, Hiyaama, Hokkaido and Yuza Town, Yamagata Prefecture.

3 Japan Wind Power Association proposed to achieve installed offshore wind power capacity of: 10GW by 2030 (1GW/year for the next 10 years), 30-45GW by 2040 and 90GW by 2050.

4 Yurihonjo Promotion Area was initially envisaged as one single area with approximately 700MW electricity output capacity. However, when designating the area as promotion area, METI and MLIT split it into the north and south areas with approximately 350MW capacity respectively (350MW was indicated in the General Sea Areas Public Auction Implementation Guidelines and other sites are also approximately 350MW). However, METI and MLIT also acknowledge the benefit of economies of scale and as such bidders may submit a bid for both or either of north or south of the Yurihonjo Promotion Area. Consequently, complicated issues arise when the bid(s) is/are awarded. For example, if a bidder's combined bid (north and south) receives the highest mark in north but second highest in south, METI and MLIT indicated that bidder may elect to continue with north only or, if it does not elect to continue, north will be re-tendered. However, some members of the METI/MLIT OSW Sub-Committee raised some concerns that, if the successful bidder in south is bidding into the re-tendered north auction, it may have an unfair advantage having access to information in respect of the adjacent area. METI and MLIT are further considering the issue.

METI and MLIT indicated that the draft public auction guidelines for the Round 1 Fixed-Bottom Promotion Areas are expected to be released for public consultation in September 2020 (followed by the launch of the public auction in or around November 2020).<sup>5</sup>

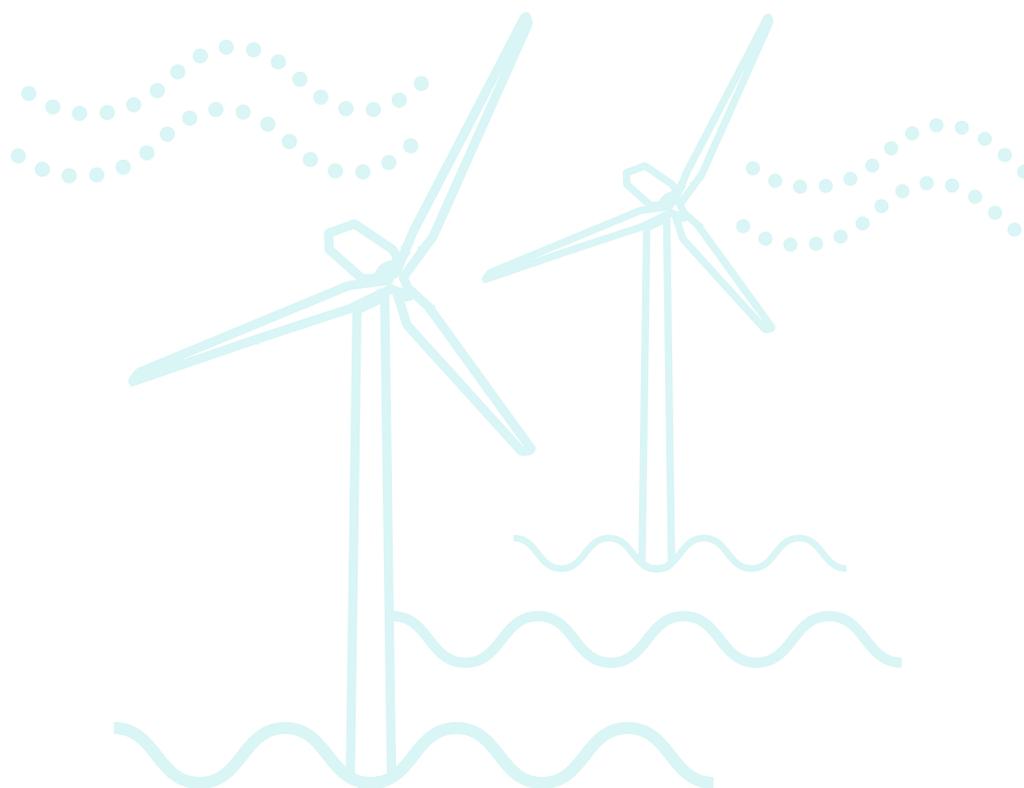
This report focusses on the key terms of the Public Auction Guidelines based on the Goto Public Auction Guidelines and some updates on the Round 1 Fixed-Bottom Promotion Areas according to the recent presentation slides prepared:

- 1.5 by ANRE, for the Calculation Committee for Procurement Price (*chotatsu kakaku tou santei iinnkai*) (“**FIT Determination Committee**”); and
- 1.6 by METI and MLIT, for the METI and MLIT Offshore Wind Promotion Sub-Committee (*you jou furyoku hatsuden sokushin sho iinkai*) (“**METI/MLIT OSW Sub-Committee**”).

All capitalised terms that are not defined herein have the same meaning as defined in the report “*Japan Offshore Wind Report (2nd Edition): At the Crossroads of Key Decisions*” published by Linklaters in November 2019 (the “**2019 LL OSW Report**”).<sup>7</sup> References to Forms are to the forms attached to the Goto Public Auction Guidelines.



Round 1 Fixed-Bottom Promotion Areas are expected to be released for public consultation in September 2020



<sup>5</sup> See page 16 of the presentation slides for the 58th meeting of the Calculation Committee for Procurement Price, etc. published by ANRE on 19 August 2020, available at: [https://www.meti.go.jp/shingikai/santeii/pdf/058\\_01\\_00.pdf](https://www.meti.go.jp/shingikai/santeii/pdf/058_01_00.pdf) (the “**FIT Determination Committee Materials**”).

<sup>6</sup> [https://www.meti.go.jp/shingikai/enecho/denryoku\\_gas/saisei\\_kano/yojo\\_furyoku/pdf/006\\_01\\_00.pdf](https://www.meti.go.jp/shingikai/enecho/denryoku_gas/saisei_kano/yojo_furyoku/pdf/006_01_00.pdf) (the “**METI/MLIT OSW Sub-Committee Materials**”).

<sup>7</sup> <https://www.linklaters.com/en/insights/publications/2019/october/japan-offshore-wind-report-2>



## 2 Public Auction Guidelines



## 2 Public Auction Guidelines

Public Auction Guidelines for individual offshore wind projects are expected to follow the General Sea Areas Public Auction Implementation Guidelines.<sup>8</sup> The Goto Public Auction Guidelines are based on the General Sea Areas Public Auction Implementation Guidelines and METI and MLIT made clear in recently released materials<sup>9</sup> that the Goto Public Auction Guidelines will be used as a base for the Round 1 Fixed-Bottom Promotion Areas (save for project and site-specific matters and differences deriving from the technology used).

In this Section, we have focussed on the key terms of the Goto Public Auction Guidelines and, where applicable, provided in *italics* a summary of the changes expected in the Public Auction Guidelines for the offshore wind projects in the Round 1 Fixed-Bottom Promotion Areas (the “**Round 1 Fixed-Bottom OSW Projects**”).

### 2.1 Goto Public Auction Guidelines

On 17 April 2020, a draft of the Goto Public Auction Guidelines was released for public consultation. In parallel, the Agency for Natural Resources and Energy (“**ANRE**”) uploaded on its website a Q&A document in respect of the Draft Goto Public Auction Guidelines (the “**ANRE Q&A**”).<sup>10</sup> This pre-empted some key questions and includes ANRE’s responses to such questions. The public consultation process closed on 16 May 2020.<sup>11</sup>

On 24 June 2020, METI and MLIT launched the public auction for the Goto Promotion Area, and, on the same day, METI and MLIT released their responses to the 425 comments and/or questions submitted in the context of the public consultation of the Draft Goto Public Auction Guidelines (the “**METI/MLIT Responses**”). Based on the public consultation process, METI and MLIT made some helpful changes in the final Goto Public Auction Guidelines.

The key features of the Goto Public Auction Guidelines are illustrated below. In the interest of brevity, we have not repeated the sections which are consistent with the General Sea Areas Public Auction Implementation Guidelines published by METI and MLIT in June 2019, and summarised in the 2019 LL OSW Report (see Sections 1.4 to 1.8 of the 2019 LL OSW Report):



Helpful changes were made to the final Goto Public Auction Guidelines following the public consultation process

<sup>8</sup> See Section 1.5 of the 2019 LL OSW Report.

<sup>9</sup> See page 2 of the FIT Determination Committee Materials and page 24 of the METI/MLIT OSW Sub-Committee Materials.

<sup>10</sup> [https://www.enecho.meti.go.jp/category/saving\\_and\\_new/saiene/yojo\\_furyoku/dl/sentei/nagasaki\\_goto\\_faq.pdf](https://www.enecho.meti.go.jp/category/saving_and_new/saiene/yojo_furyoku/dl/sentei/nagasaki_goto_faq.pdf)

<sup>11</sup> There were 438 comments and/or questions from 35 institutions. 13 comments/questions were not answered.



### Feed-in-tariff

to support floating offshore wind, the feed-in-tariff will be fixed at JPY36/kwh (see [Sections 2.2](#) and [2.13.1](#)).

*This will not be the case for Round 1 Fixed-Bottom OSW Projects where price (the proposed feed-in-tariff) is subject to bid evaluation;<sup>12</sup>*



### Commercial operation date (“COD”) and feed-in-tariff

the feed-in-tariff period will be shortened if the actual COD is delayed beyond the scheduled COD set out in the original Occupancy Plan, save for the adjustment caused by the multiple use of the hub port (see [Section 2.4](#));



### Extension of the occupancy period

the renewal of the Occupancy Plan may be granted if METI and MLIT consider it reasonable from the viewpoint of use and preservation of the Promotion Area and further reduction of electricity cost (see [Section 2.5](#));



### Local fisheries/community

following the Council meetings, a “fund (*kikin*)” for the local fisheries and community must be established by the successful bidder (the amount and other details currently remain uncertain and are subject to further discussion) (see [Section 2.6](#)).

*For projects in the Noshiro Promotion Area and Yurihonjo Promotion Area, the relevant Council requires approximately 0.5% of total revenues over a 20-year period to be contributed to the “fund”;*



### Decommissioning costs

an amount must be proposed by each bidder, which shall not be lower than 5% of the capital expenditure, with appropriate credit support instruments in favour of METI and MLIT (see [Section 2.7](#)).

*This is likely to be different for Round 1 Fixed-Bottom OSW Projects, where METI and MLIT indicated the required decommissioning cost to be 70% of offshore construction costs. In addition, given the fixed-bottom technology used, METI and MLIT propose that, (i) subject to an approval from the Ministry of Environment, certain parts (monopiles 1m below seabed level) are not required to be removed and (ii) a decommissioning costs proposal will not be part of the bid evaluation;<sup>13</sup>*



### Port-related matters

Fukue Port is the port recommended by METI and MLIT,<sup>14</sup> but bidders may propose a different port. Fees and mooring charges are also included in the Goto Public Auction Guidelines if bidders elect to proceed with Fukue Port. Note that bidders are required to provide their project timetable and the scheduled use of the port to the port authority prior to submission (see [Section 2.8](#));

12 See page 24 of the METI/MLIT OSW Sub-Committee Materials.

13 See page 30 of the FIT Determination Committee Materials. See pages 19 and 20 of the METI/MLIT OSW Sub-Committee Materials.

14 The equivalent port for the (i) Choshi Promotion Area is Kashima Port, (ii) Noshiro Promotion Area is Noshiro Port and (iii) Yurihonjo Promotion Area is Akita Port. See pages 14-17 of the METI/MLIT OSW Sub-Committee Materials.



### Information disclosure

information on survey results and any existing grid connection rights (i.e. held by one of the bidders) will be provided by METI and MLIT. Access to information on grid connection rights will require bidders to accelerate the submission date for certain important bid documents (see [Sections 2.9](#) and [2.10](#));



### Guarantee deposit

three guarantee deposits must be provided by the successful bidder, and the time for providing, and the basis of calculating the amount of, each is included. A bidder may choose between cash deposit and a bank guarantee (see [Section 2.11](#)).

*The timing of the third guarantee deposit for the Round 1 Fixed-Bottom OSW Projects is extended to 24 months from bid award;*



### Eligibility and evaluation criteria

experience in offshore wind projects is no longer required for participation in the public auction, but it remains a key criterion for the evaluation. The intention is to enhance competition amongst bidding consortia. Evaluation assumes three packages: installation of turbines; offshore civil works; and operation and maintenance (this is to allow METI and MLIT to compare the proposals). A bidder may present several candidates for the EPC and Other Contractor(s) (as defined in [2.13.1\(i\)](#)) and determine the final candidates after the selection (see [Sections 2.12](#) and [2.13](#));



### Transfer of grid connection rights

if the successful bidder does not already possess grid connection rights, these must be purchased from the existing holder of such rights. A formula for calculating the transfer price that must be paid by the successful bidder is included (see [Section 2.14](#));



### Conditions to the granting of the Occupancy Permit

several conditions must be satisfied after selection of the successful bidder (prior to granting the Occupancy Permit). This also includes compliance with the new guidelines with respect to use of foreign vessels for seabed surveys (see [Section 2.16](#)); and



### Forms of the Occupancy Plan and letter(s) of intent

there are 18 attachments to be submitted by bidders together with the Occupancy Plan (including project timetable, parties' roles, shareholder governance, technical information, construction timetable/programme, operation and maintenance plan, decommissioning, finance plan, risk analysis and other information required for the evaluation, such as local and national economy impact). Letter(s) of intent from contractors and/or potential lenders must also be submitted (but no amount is required to be included in the letter(s) of intent from the potential lenders) (See [Section 2.17](#)).

## 2.2 Project Description

Set out below is a brief summary of the description of the offshore wind power project in the Goto Public Auction Guidelines (the “**Goto Offshore Wind Project**”):

	Description	Goto Offshore Wind Project
1	category of marine renewable energy facilities	floating turbines.
2	capacity requirements	no limit in upscaling capacity (however, effectively capped by the capacity agreed with the grid operator, which is 21 MW); <sup>15</sup>  <b>minimum</b> capacity of generation facilities: 16.8 MW (being 20% less than the anticipated capacity). <sup>16/17</sup>
3	seabed area	2,726.5 ha.
4	feed-in-tariff	<b>JPY 36/kW</b> plus consumption taxes and local consumption taxes ( <b>feed-in-tariff will not be subject to auction, given the Goto Offshore Wind Project will utilise floating turbines – this will be different for fixed-bottom offshore wind projects (see also Section 2.3 for ceiling price).</b>
5	feed-in-tariff period	20 years (or a shorter period if the actual COD is delayed beyond the scheduled COD set out in the occupancy plan ( <i>koubo senyo keikaku</i> ) (the “ <b>Occupancy Plan</b> ”). <sup>18</sup> See Section 2.4.  The scheduled COD must not be a date 8 years after the date the successful bidder notice is provided.
6	effective period (term) of the Occupancy Plan certification	30 years  The 30-year occupancy period assumes 4-5 years of the environmental impact assessment (EIA), 2-3 years for construction, 20 years for operation (i.e. the feed-in-tariff period) and 2 years of decommissioning. A bidder may propose to start operation earlier and thereby contemplate a longer operation period (i.e. selling electricity in the market or entering into (a) corporate power purchase agreement(s)). See also Section 2.4.
7	occupation period	30 years from the date of the occupancy permit ( <i>senyou kyoka</i> ) (the “ <b>Occupancy Permit</b> ”) but shall not exceed the effective period of the certified Occupancy Plan. METI and MLIT may renew the Occupancy Permit after the initial period.  The start of the occupation of the Promotion Area shall not be a date 6 years after the date on which the Occupancy Plan is certified by METI and MLIT.

15 The capacity agreed for each of the Round 1 Fixed-Bottom OSW Projects is: 415MW for Noshiro Promotion Area, 373MW for Yurihonjo Promotion Area (north), 357MW for Yurihonjo Promotion Area (south) and 187MW / 370MW for Choshi Promotion Area. See footnote 16 below for Choshi Promotion Area.

16 The ANRE Q&A clarifies that the Occupancy Plan may be amended after its certification if, following the seabed survey or environmental impact assessment (EIA), it becomes unavoidable to reduce the capacity in excess of 20%.

17 In relation to the Choshi Promotion Area, as of August 2020, there have been two existing developers that are willing to provide grid connection rights to METI and MLIT for the purpose of the public auction. In such case, the minimum capacity requirement will be 20% less than the lesser of the two grid connection rights. In this connection, one of the existing developers seems to be requesting the grid operator to increase its capacity and to have requested METI and MLIT to consider the increased capacity to be set out in the Public Auction Guidelines for the Choshi Promotion Area. METI and MLIT are of the view that the eligible grid connection rights are those rights (and capacity) that the existing developer has set out in a formal contract form before the launch of the relevant public auction (i.e. if, at that point, the grid operator is still considering the request for the (increase in the) connection capacity, such right is not eligible to be set out in the Public Auction Guidelines).

18 The ANRE Q&A Section 1-1 clarifies that the feed-in-tariff period will be shortened if there are delays, notwithstanding the approval with respect to the amendment to the Occupancy Plan pursuant to Article 18 of the Marine Renewables Energy Act.

## 2.3 Ceiling Price<sup>19</sup>

*The proviso of Article 13, Paragraph 6 of the Marine Renewables Energy Act provides that METI and MLIT may elect not to disclose the ceiling price for the feed-in-tariff in the Public Auction Guidelines. METI and MLIT will have set the ceiling price for the relevant project (based on the recommendation from the FIT Determination Committee) and a bid proposing a price exceeding the ceiling price will be automatically disqualified. Based on the supplementary provision in the Marine Renewables Energy Act,<sup>20</sup> the proviso was not effective until the launch of the Goto Offshore Wind Project public auction but it is now effective (and, in any event, the proviso would not have been applicable to the Goto Offshore Wind Project, given that price was not subject to bid evaluation). ANRE indicated to set out the ceiling price in the Public Auction Guidelines for the Round 1 Fixed-Bottom Promotion Areas as this will be the first round of fixed-bottom project auctions and transparency on this point would be beneficial. The ceiling price for each of the Round 1 Fixed-Bottom Promotion Areas has not been determined yet but ANRE indicated that the ceiling price for all 3 Round 1 Fixed-Bottom Promotion Areas will be the same amount.<sup>21</sup>*



“

The ceiling price for all 3 Round 1 Fixed-Bottom Promotion areas are expected to be disclosed and will be the same amount.

”

## 2.4 COD and Feed-in-Tariff

One of the areas where many comments/questions were raised in the public consultation process was in relation to the COD and how that interacts with the feed-in-tariff period. The Draft Goto Public Auction Guidelines were clear that the feed-in-tariff period will be shortened if the actual COD is delayed beyond the scheduled COD set out in the original Occupancy Plan.<sup>22</sup> It was re-emphasised in the METI/MLIT Responses that the shortening of the feed-in-tariff would apply to delays for any reason (including natural disasters and other force majeure events – although there is an indication that this may depend on the COVID-19 situation and further details may be announced at a later date). METI/MLIT Responses repeatedly state that (i) bidders should take all risks into account when proposing the scheduled COD and (ii) bids will be evaluated based on the project timeline and project feasibility (indicating a bid demonstrating a **reliable** project completed in a shorter period would receive higher marks in the evaluation).<sup>23</sup>

The METI/MLIT Responses also confirm that:

- 2.4.1 COD and therefore the start date of the feed-in-tariff period, is the date the offshore wind project is able to generate the full capacity set out in the Occupancy Plan. No phased completion dates may be included for the purposes of the feed-in-tariff period in the Occupancy Plan (this was our understanding but has been reconfirmed);
- 2.4.2 subject to the occupancy period, electricity generated during a period not falling within the feed-in-tariff period may be sold in the wholesale electricity market;<sup>24</sup>

<sup>19</sup> See Page 36 of the METI/MLIT OSW Sub-Committee Materials.

<sup>20</sup> Article 2 of the supplementary provisions of the Marine Renewables Energy Act.

<sup>21</sup> See page 21 of the FIT Determination Committee Materials.

<sup>22</sup> Section1-2 of the ANRE Q&A clarifies that the feed-in-tariff period will be shortened for any delay caused by the environment impact assessment process. There were comments that the long stop date should be the date 8 years after the successful bidder notice regardless of what is proposed by the bidder (no later than 8 years is one of the requirements when setting the original scheduled COD in the original Occupancy Plan – see Item 5 of [Section 2.2](#)).

<sup>23</sup> See Nos. 15, 16, 22, 203, 205, 206, 207 and 252 of the METI/MLIT Responses. However, please also see the last paragraph of [Section 2.4](#).

<sup>24</sup> See No. 20 of the METI/MLIT Responses.

2.4.3 if COD has been achieved earlier than the scheduled COD set out in the original Occupancy Plan, the feed-in-tariff period will be 20 years from the date of the actual COD with no reduction in the feed-in-tariff period (an amendment to the Occupancy Plan is required and is subject to METI's and MLIT's approval);<sup>25</sup> and

2.4.4 the successful bidder is required to:

- i. apply for the feed-in-tariff METI certification (the "**METI FIT Certification**") within one year after notification of the selection of the successful bidder; and
- ii. obtain the METI FIT Certification within 6 months from the application.<sup>26</sup>

There were comments<sup>27</sup> that **Section 2.4.4(ii)** is not in control of the successful bidder and therefore the cut-off date is unfair. However, METI and MLIT maintained their position and noted that the METI FIT Certification is expected to be granted to the successful bidder unless the application documents are incomplete.

The METI FIT Certification is subject to the "sunset date" provision in the amended Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (Act No.108 of 2011, as amended) (the "**FIT Act**") that was passed on 5 June 2020. If COD does not occur within a certain grace period (to be set out in the relevant METI ordinance later this year), the METI FIT Certification will cease to be in effect without any notice. The METI/MLIT Responses confirmed that this is applicable to the Goto Offshore Wind Project.

The amended FIT Act also provides a subsidy regime replacing the existing feed-in-tariff regime (the "**FIP Regime**"). The FIP Regime will come into effect on 1 April 2022. The METI/MLIT Responses confirmed that the existing feed-in-tariff regime will apply to the Goto Offshore Wind Project.<sup>28</sup>

*For the Round 1 Fixed-Bottom OSW Projects, ANRE indicated that, if COD has been delayed due to the multiple use of the relevant marine renewable energy generation facility hub port<sup>29</sup>, scheduled COD may be extended without shortening the FIT period.<sup>30</sup>*

## 2.5 Extension of the Occupancy Period

The Draft Goto Public Auction Guidelines indicated that the 30-year occupancy period<sup>31</sup> may be renewed.<sup>32</sup> There were comments requesting for certainty of the renewal as that would allow bidders to assume the extension of the operation period and therefore propose a competitive price.<sup>33</sup> METI and MLIT responded that the renewal may be granted if METI and MLIT consider it reasonable from the viewpoint of use and preservation of the Promotion Area and further reduction of electricity cost.<sup>34</sup> The following factors will be taken into account in the decision:

- 2.5.1 whether or not the facilities are able to generate electricity after the expiry of the original occupancy period; and
- 2.5.2 the operational track-record under the original Occupancy Plan.<sup>35</sup>

25 See No. 203 of the METI/MLIT Responses.

26 See Section 9(6) of the Goto Public Auction Guidelines.

27 See No. 346 of the METI/MLIT Responses.

28 See No. 25 of the METI/MLIT Responses.

29 MLIT referred to four candidate base ports being Akita Port, Noshiro Port, Kashima Port and Kitakyushu Port on 4 August 2020. See materials available at [https://www.mlit.go.jp/policy/shingikai/port01\\_sg\\_000277.html](https://www.mlit.go.jp/policy/shingikai/port01_sg_000277.html). See also the last paragraph of **Section 2.8**.

30 See page 37 of the FIT Determination Committee Materials.

31 Note that the occupancy period shall not exceed the effective period of the certified Occupancy Plan. See Item 7 of **Section 2.2**. The start of the occupation shall be a date no later than 6 years after the date on which the Occupancy Plan is certified by METI and MLIT. In practice, it is expected that the actual occupancy period is 30 years, less the development period (the period not requiring occupancy of the relevant sea area).

32 See Item 7 of **Section 2.2**.

33 One of the reasons cited is the life expectancy of wind turbines and other components of an offshore wind farm (which is longer than 20 years – potentially 35 years).

34 See Nos. 35, 36, 37 and 38 of the METI/MLIT Responses.

35 See Nos. 31, 32 and 39 of the METI/MLIT Responses.

## 2.6 Fisheries/Local Community Matters<sup>36</sup>

A summary of the agreed matters in the Council is attached as Appendix 2 to the Goto Public Auction Guidelines in accordance with the Promotion Area Designation Guidelines.

The Council agreement:

- 2.6.1 refers to the principle of coexistence and prosperity – this means (i) the selected operator shall contribute to the local economy (including providing electricity and energy security plans following natural disasters), (ii) the selected operator shall respect (comply with) the opinion of the Council and (iii) so long as the selected operator complies with the Council opinion, the Council provides its consent to the use of the Promotion Area for the Goto Offshore Wind Project;
- 2.6.2 requires the selected operator to (i) build trust by extensive explanation and consultation, (ii) establish a fund (*kikin*) which will be used for cooperation and coexistence with the local community and fisheries in consultation with Goto City and (iii) carry out a survey on the impact the Goto Offshore Wind Project may have on the fishing industry.<sup>37</sup> The amount of the fund and other details (including the start for payments into the fund) will be provided in the local ordinances after the bidder selection;<sup>38</sup> and
- 2.6.3 requires the selected operator to construct, operate and maintain the Goto Offshore Wind Project by providing ample advance explanation, consultation and discussion with the relevant fisheries, ship operators, coastal defence authorities, managers of relevant facilities (e.g. ports) and the local governments. The selected operator is also required to take protective measures against typhoons and other natural disasters and set out vessel operation rules following discussion with the stakeholders.

*The substance of the Council agreement varies from project to project. Bidders would need to review carefully the Council agreement for the relevant Round 1 Fixed-Bottom OSW Project. A notable difference is that, for the Noshiro Promotion Area and Yurihonjo Promotion Area, the relevant Council requires approximately 0.5% of total revenues over a 20-year period to be contributed to the “fund”.*



36 See Section 2(5)2 and Appendix 2) (P9/67) of the Goto Public Auction Guidelines.

37 See Appendix 2, Section 3(2) (P67-68) of the Goto Public Auction Guidelines.

38 See pages 4, 11 and 14 of the minutes of the explanatory session by the members of the council for Goto City available at: [https://www.enecho.meti.go.jp/category/saving\\_and\\_new/saiene/yojo\\_furyoku/dl/sentei/nagasaki\\_goto\\_minutes.pdf](https://www.enecho.meti.go.jp/category/saving_and_new/saiene/yojo_furyoku/dl/sentei/nagasaki_goto_minutes.pdf)

## 2.7 Decommissioning Costs<sup>39</sup>

2.7.1 In accordance with the Marine Renewables Energy Act and the General Sea Areas Public Auction Implementation Guidelines,<sup>40</sup> the Goto Public Auction Guidelines set out the detailed requirements for decommissioning, which include:

- i. a requirement to provide in the Occupancy Plan the bidder's estimate of the decommissioning costs which shall not be less than 5% of "capital expenditure". The METI/MLIT Responses clarified that the "capital expenditure" means the "costs for installation of the relevant power generation facilities" which is expected to be reported by each generator to METI under the FIT Act.<sup>41</sup> This includes design costs, equipment costs, construction costs, connection costs and other costs paid for installation of renewable energy power generation facilities and other ancillary facilities.<sup>42</sup>

*For the Round 1 Fixed-Bottom OSW Projects, (i) METI and MLIT indicated the required decommissioning cost to be 70% of offshore construction costs based on an analysis carried out by DNV-GL and (ii) the amount of decommissioning costs would not be subject to the bid evaluation;<sup>43</sup> and*

- ii. credit support instruments in respect of decommissioning costs must be provided on or before COD. There are two options as set out below (and the collateral may be a combination of the two):<sup>44</sup>

- (a) either of (A) a deposit with a Legal Affairs Bureau or (B) a decommissioning letter of credit issued by a financial institution (that provided a letter of intent) in favour of the government; and/or

- (b) a reserve in a bankruptcy-remote bank account (e.g. escrow account established with a trust bank) in favour of METI and MLIT. Withdrawal from such account would not be permitted without the consent of METI and MLIT.

2.7.2 The METI/MLIT Responses clarified that:

- (i) the decommissioning letter of credit must be provided by a financial institution with a credit rating of A- or A3 or above (given by an FSA-registered rating agency);<sup>45</sup>
- (ii) the secured amount of each credit support instrument (cash deposit, decommissioning letter of credit or bankruptcy-remote bank account) may change each year so long as the aggregate amount is no less than the estimated decommissioning cost proposed by the bidder in the original Occupancy Plan (also clarified that cash reserved may be used to pay decommissioning costs);<sup>46</sup> and
- (iii) with respect to the meaning of "restoration to the original state", subject to local stakeholders' opinions, removal of all power generation facilities will be required.<sup>47</sup> There were concerns with respect to the monopiles of fixed bottom projects but METI and MLIT did not respond to such comments on the basis that the Goto Offshore Wind Project is a floating project.

39 See Section 2(5)3 (P9) of the Goto Public Auction Guidelines.

40 See Section 1.5 xii of the 2019 LL OSW Report.

41 See Item 6, Paragraph 1, Article 5 of the Enforcement Regulations of the FIT Act.

42 See Section 2(5)3iii(A) (P10) of the Goto Public Auction Guidelines and Nos. 59, 64 through 70 of the METI/MLIT Responses.

43 See page 30 of the FIT Determination Committee Materials and page 20 of the METI/MLIT OSW Sub-Committee Materials.

44 See Section 2(5)3iii(B) (P10) of the Goto Public Auction Guidelines.

45 See Section 2(5)3㉞b) \* of the Goto Public Auction Guidelines. The rating itself does not have any impact on the evaluation. See No. 79 of the METI/MLIT Responses. The credit rating requirement is in line with the project guarantee deposits.

46 See No. 60 of the METI/MLIT Responses and the leading paragraph of Section 2(5)3㉞ of the Goto Public Auction Guidelines. Also see No. 78 of the METI/MLIT Responses.

47 See Nos. 46 through 58 of the METI/MLIT Responses.

For the Round 1 Fixed-Bottom OSW Projects, given the fixed-bottom technology used, METI and MLIT propose that, (i) subject to an approval from the Ministry of Environment, certain parts (monopiles 1m below seabed level) are not required to be removed and (ii) a decommissioning costs proposal will not be part of the bid evaluation;

## 2.8 Port-Related Matters<sup>48</sup>

The Goto Public Auction Guidelines designates Fukue Port as a port available for the Goto Promotion Area (a bidder may propose a different port in the Occupancy Plan if Fukue Port is not its preferred port).<sup>49</sup>

The Goto Public Auction Guidelines set out the details for use of the port which include an annual fee (per square meter) for use of the port and the relevant piers/quays (JPY730/m<sup>2</sup> for normal use and JPY1,368/m<sup>2</sup> for other use) and mooring charge of JPY67/t per day.

In addition, bidders are required to provide their project timetable and the scheduled use of the port to the relevant authority to confirm the availability of the port prior to bid submission – timing implications to be noted.

After selection of the successful bidder, the selected bidder is required to submit a port use plan and obtain an approval from the relevant port authority.

*The equivalent port for the (i) Choshi Promotion Area is Kashima Port, (ii) Noshiro Promotion Area is Noshiro Port and (iii) Yurihonjo Promotion Area is Akita Port.<sup>50</sup> On 2 September 2020, MLIT designated Akita Port, Noshiro Port, Kashima Port and Kitakyushu Port as “marine renewable energy generation facility hub ports”.<sup>51</sup>*

## 2.9 Information Disclosure<sup>52</sup>

The Goto Public Auction Guidelines indicate that the following information has been made available:

2.9.1 survey results for wind conditions, marine conditions and seabed conditions; and

2.9.2 information with respect to the grid connection contract provided by one of the bidders (see Section 2.10).

## 2.10 Grid Connection Information

The procedure for disclosure to bidders of (i) grid connection contract information; (ii) information required for the calculation of the transfer price to be paid on transfer from the incumbent developer (if it is not the successful bidder) to the successful bidder; and (iii) information with respect to associated assets (e.g. cables) for the Goto Promotion Area was uploaded to ANRE’s website on 22 April 2020.

A bidder is required to submit the following documents to METI and MLIT to access the information in (i) to (iii) above:

2.10.1 an application form;

2.10.2 confidentiality undertaking;

2.10.3 a document demonstrating the bidder (or its proposed contractor(s’)) experience in offshore civil works (i.e. one of the eligibility requirements for participation in the public auction);

2.10.4 [a] letter[s] of intent from its contractor(s); and

2.10.5 [a] letter[s] of intent from its potential lender(s).

“

On 2 September 2020, MLIT designated Akita Port, Noshiro Port, Kashima Port and Kitakyushu Port as “marine renewable energy generation facility hub ports”.

”

48 See Section 3(1) and Appendix 3 (P12/70) of the Goto Public Auction Guidelines.

49 See Section 1.5 xi of the OSW Report of the 2019 LL OSW Report.

50 See pages 14-17 of the METI/MLIT OSW Sub-Committee Materials.

51 Available at [https://www.mlit.go.jp/page/kanbo01\\_hy\\_007596.html](https://www.mlit.go.jp/page/kanbo01_hy_007596.html)

52 See Section 3(2)) (P12) of the Goto Public Auction Guidelines.

Bidders must submit the documents set out in [Sections 2.10.1 to 2.10.5](#) in advance in order to access information in relation to grid connection rights. This reduces the time available to bidders to submit these particular documents. In addition, financial institutions may not be able to issue letters of intent without reviewing the grid connection information.

In response to comments requesting to remove the letters of intent requirement, the METI/MLIT Responses stated that the bid eligibility requirements must be satisfied for the purposes of accessing grid connection information given that, ultimately, the grid connection information should only be used by the bidder participating in the public auction.<sup>53</sup> The requirement remains unchanged in the updated guidelines for disclosure of grid connection information on 24 June 2020.<sup>54</sup>

*The electricity output for offshore wind projects will be restricted by the grid connection capacity, and the minimum output requirement is 20% less than the maximum electricity output.*<sup>55</sup>

## 2.11 Three-Phase Bid/Project Guarantee Deposits<sup>56</sup>

2.11.1 The Goto Public Auction Guidelines set out the detailed requirements for the bid/project guarantee deposits.<sup>57</sup> These must be provided for three phases, as set out below:

- i. first guarantee deposit: to ensure appropriate implementation of the public auction and avoid fraudulent manipulation of public auctions or excessive price competition, each bidder is required to provide a bid guarantee deposit on or prior to the submission of the Occupancy Plan. The required deposit amount is obtained by multiplying (a) JPY500/kW by (b) the electricity output of the offshore wind farms

proposed in the relevant bids (where (b) means the lesser of (x) the output capacity in the Goto Promotion Area and (y) the maximum electricity input capacity);

- ii. second guarantee deposit: the selected successful bidder must provide a project guarantee deposit within 8 weeks and a day after successful bidder notification. This is stated to ensure safe implementation of the project. The required deposit amount is JPY5,000/kW multiplied by the electricity output, and the first guarantee deposit set out in [Section 2.11.1\(i\)](#) will be applied to the payment of the second guarantee deposit; and
- iii. third guarantee deposit: in addition to the first and second guarantee, an additional project deposit/guarantee must be provided within 12 months of the bid announcement (this is also when the feed-in-tariff amount is fixed). The required deposit amount is JPY13,000/ kW multiplied by the electricity output, and the first and second guarantee deposit set out in [Sections 2.11.1\(i\)](#) and [\(ii\)](#) will be applied to the payment of the third guarantee deposit. See [Section 2.11.5 for Round 1 Fixed-Bottom OSW Projects](#).<sup>58</sup>

2.11.2 There are two options for providing the bid guarantee deposits: (i) by depositing the relevant amount of cash with the designated account of Bank of Japan; or (ii) by providing a bank guarantee in the form set out in Form 4-2 or Form 4-3 (as applicable). The key terms of the bank guarantee securing the first guarantee deposit are set out below. For the second guarantee deposit and third guarantee deposit, switching from a bank guarantee to cash deposit is permitted but not the other way around.

53 See Nos. 102 and 103 of the METI/MLIT Responses.

54 Available at <https://www.mlit.go.jp/kowan/content/001342120.pdf>

55 See pages 15 and 16 of the FIT Determination Committee Materials. The grid connection capacities that have been offered for each of the Round 1 Fixed-Bottom Promotion Area: 415 MW for the Noshiro Promotion Area, 373 MW for the Yurihonjo Promotion Area (North), 357 MW for the Yurihonjo Promotion Area (South) and 187.2 MW and 370 MW for the Choshi Promotion Area.

56 See Section 5(3) (P21) of the Goto Public Auction Guidelines.

57 See Section 1.5 vi. of the 2019 LL OSW Report.

58 See page 18 of the FIT Determination Committee Materials.

	Term	Goto Public Auction Guidelines
1	Acceptable bank guarantee provider	A financial institution with a credit rating of A-/A3 or above (given by an FSA registered credit rating agency)  Issued by a branch in Japan, signed by the representative director (or an officer representing the institution)
2	Guarantee period	To end on a date later than [31 December 2021]
3	Expiry date (last date the guarantee may be called)	6 months (or a longer period) after the end of the guarantee period
4	Obligor	Consortium members or the special purpose company (“SPC”)
5	Payment	Within 10 business days of a demand by MLIT
6	Other terms	Irrevocable and unconditional
7	Currency	JPY
8	Governing law and dispute resolution forum	Japanese law and Tokyo District Court

2.11.3 The Goto Public Auction Guidelines also provide details of force majeure events which will exempt the bidder(s) from payment of the guarantee deposits. Force majeure events for this purpose are:

- i. emergency measures (including expropriation) taken by MLIT following an extraordinary disaster in accordance with Article 23 of the Marine Renewables Energy Act;
- ii. direct loss caused by a “disaster of extreme severity” as specified in Article 2, paragraph 1 of the Act on Special Financial Support to Deal with the Designated Disaster of Extreme Severity (Act No. 150 of 1962, as amended); and
- iii. direct loss caused by war or armed conflicts.

2.11.4 In response to requests to clarify if the three-phase guarantee deposits (or bank guarantees, if the successful bidder elects) are required to be provided on a joint and several basis or may be provided by each consortium member or shareholder of an SPC (or bank guarantee, as applicable) on a several basis, the METI/MLIT Responses clarified that:

- i. if a consortium has not set up an SPC before bid submission, the requirement is not joint and several and therefore, so long as the aggregate amount covers the required amount in the first phase, the guarantee deposit (or bank guarantee) may be provided on a several basis.<sup>59</sup> After the bid award, an SPC must be set up (see Section 2.12.1(iv)) and guarantee deposits for phases two and three must be provided by that SPC (guaranteeing SPC’s obligations);<sup>60</sup> and
- ii. if an SPC is the bidder, that SPC shall provide the guarantee deposits (or bank guarantees) guaranteeing its obligations.<sup>61</sup>

<sup>59</sup> See Nos. 166, 167 and 175 of the METI/MLIT Responses.

<sup>60</sup> See No. 178 of the METI/MLIT Responses.

<sup>61</sup> See No. 165 of the METI/MLIT Responses. The guarantee deposits are required to be provided in the name of the SPC. Please note that No. 165 refers to the deposit, not the bank guarantee.

2.11.5 One of the key comments in relation to the phase three guarantee deposit was the requirement to provide the guarantee deposit within 12 months from the bid announcement.<sup>62</sup> The expectation would be that the final investment decision (the “FID”) is made before such date (and the cost to procure the guarantee deposit or bank guarantee would be part of “project costs”). However, there are potential delay factors (which may not be in the successful bidder’s control), such as seabed conditions, environmental impact assessment, ClassNK wind farm certification<sup>63</sup> (if project finance lenders require) and making the FID within 12 months from bid announcement appears to be unrealistic. METI and MLIT maintained their position, noting that this was the view provided by the Calculation Committee for Procurement Prices (a committee administered by METI setting the feed-in-tariff for each year).

*For the Round 1 Fixed-Bottom OSW Projects, METI and MLIT indicated that the date the third guarantee deposit would be required will be 24 months after the notice of successful bidder. METI and MLIT acknowledge that time is required for carrying out a seabed survey and other surveys post-bid and hence the 12 months extension.*

*In addition, METI and MLIT indicated that, if a bidder has already provided guarantee deposit to the grid operator for the purpose of securing grid connection rights, an amount equal to the grid connection guarantee deposit will be deducted from the second and third project guarantee deposits.<sup>64</sup>*

## 2.12 Eligibility requirements for the Bid and compliance matters<sup>65</sup>

The General Sea Areas Public Auction Implementation Guidelines already include detailed guidance for eligibility requirements.<sup>66</sup> The Goto Public Auction Guidelines largely follow this guidance. However, following discussion with market participants and industry bodies, some noticeable changes have been proposed in the eligibility requirements:

### 2.12.1 Eligibility requirements (foreign entities and offshore wind track-record)

In the General Sea Areas Public Auction Implementation Guidelines, it was not clear if a consortium was able to incorporate an SPC and use that SPC for the bid. In addition, there was a requirement that the bidder must be a company headquartered, or has its main office, in Japan (and if the bidder is a consortium all members had to comply with this requirement).<sup>67</sup>

Following discussion with market participants and industry bodies, this requirement has been altered, and the Goto Public Auction Guidelines provided that:

- i. a consortium may incorporate an SPC for the bid; and
- ii. the shareholder(s) of the SPC who have voting rights may be foreign entity(ies) subject to compliance with the other eligibility requirements.<sup>68</sup>

Note that there are no minimum shareholding requirements for Japanese companies.

62 See Section 2.11.1.

63 See <https://www.classnk.or.jp/hp/en/authentication/renewableenergy/windfarm.html>

64 See page 18 of the FIT Determination Committee Materials.

65 See Section 5(1), Appendix 4) (P16/72) of the Goto Public Auction Guidelines.

66 See Section 1.5v. of the 2019 LL OSW Report.

67 See Section 1.5v b A of the 2019 LL OSW Report.

68 See Section 1.5v of the 2019 LL OSW Report for other eligibility requirements.

Subsequent to the public consultation, the Goto Public Auction Guidelines and the METI/MLIT Responses clarified the requirements as follows:

- iii. if a foreign entity wishes to participate in the public auction, it must set up an SPC in Japan and participate as a shareholder of such SPC. In contrast, Japanese companies may participate in the public auction without setting up an SPC (but are required to set up an SPC if the project is awarded to a consortium – see paragraph (iv) below);<sup>69</sup> and
- iv. it was not an express requirement for a consortium to establish an SPC after the selection of a successful bidder in the Draft Goto Public Auction Guidelines. Section 5(1) of the final Goto Public Auction Guidelines require the successful bidder to establish an SPC. All shareholders of the SPC must be members of the original consortium unless otherwise approved by METI and MLIT.

Experience in domestic or overseas offshore wind power projects is removed from the eligibility requirements,<sup>70</sup> on the basis this may hinder competition in a nascent market. Experience in offshore wind (including that of foreign members/shareholders) remains a key criterion in the

evaluation of the Occupancy Plan. Emphasis is placed on the substance of the role the relevant shareholder played in other offshore wind projects, and how this knowledge would be shared with the Goto Offshore Wind Project. The shareholding percentage in other offshore wind project companies is not a key factor in the context of the evaluation (see [Section 2.13.1](#)).

Experience in offshore civil works completed<sup>71</sup> within 10 years prior to the launch of the public auction is an eligibility requirement. This requirement may be satisfied if one consortium member, or a contractor, has the relevant experience. This requirement must be experience of the company proposed to carry out civil works (it may be the bidder, one of the consortium members, the SPC's direct shareholder or the contractor (as the case may be)) but does **not** otherwise include the experience of the parent company or subsidiaries.<sup>72</sup> This is for the eligibility requirement and it appears that this is different from the evaluation criteria where shareholders' experience is relevant so long as knowledge is shared – see [Section 2.13.1\(ii\)](#).<sup>73</sup>



69 See Nos. 133, 155 and 373 of the METI/MLIT Responses.

70 Section 1.5 v. b. B. of the 2019 LL OSW Report.

71 See Section 2-3 of the ANRE Q&A.

72 See No. 378 of the METI/MLIT Responses.

73 See Section 2-2 of the ANRE Q&A.

In relation to the requirement that the bidder has no “capital or personal relationship with other parties participating in the public auction”,<sup>74</sup> the ANRE Q&A clarifies that a member of the bidding consortium (or a shareholder of the bidder SPC), or any group company, is **not** permitted to participate in other bids. METI/MLIT Responses did not clarify whether or not a consortium member or shareholder of an SPC is not prohibited from participating in public auctions for other Promotion Areas (probably on the basis that it is sufficiently clear in the Goto Public Auction Guidelines that the no “capital or personal relationship with other participants” applies only to participants in “this public auction”). A contractor may however support multiple bids for the Goto Offshore Wind Project.<sup>75</sup>

METI/MLIT Responses also clarified the following:

- i. a representative company must be nominated for the purposes of the bid but (I) the representative company does not have to be the largest shareholder of the SPC and (II) there are no minimum shareholding requirements;<sup>76</sup>
- ii. advisors and financial institutions may support multiple consortia or SPCs;<sup>77</sup> and
- iii. in response to comments that the Draft Goto Public Auction Guidelines could be interpreted to exclude corporate finance and other financing options, the Goto Public Auction Guidelines expressly set out the eligibility requirement(s) for each financing option:
  - (a) if a bidder opts for project financing at the SPC level, letter(s) of intent from banks experienced in project finance transactions are required (no change from the Draft Goto Public Auction Guidelines), and

- (b) if a bidder does not opt for project financing at the SPC level, an undertaking letter from that bidder setting out the following is required:
  - (I) a confirmation that it has completed the required internal corporate procedures with respect to the use of its own funds; and
  - (II) if any external financing is anticipated (e.g. corporate loans, corporate bonds), the (A) finance arrangement, (B) status of discussion with the financiers and (C) relevant procedures which will be necessary in the future; and
- iv. a member of a consortium or shareholder of an SPC may support another consortium or SPC as a contractor (“cooperating company”) subject to appropriate information barriers set up between the relevant parties (this was already clear in Section 2-10 of the ANRE Q&A).<sup>78</sup> In this regard, an additional sentence has been included in the Goto Public Auction Guidelines which prohibits provision or collection of information associated with the public auction to or from other potential bidders.<sup>79</sup>



“

a member of a consortium or shareholder of an SPC may support another consortium or SPC as a contractor (“cooperating company”) subject to appropriate information barriers set up between the relevant parties.

”

74 See Section 1.5 v E of the 2019 LL OSW Report.

75 See Section 2-10 of the ANRE Q&A.

76 See No. 139 of the METI/MLIT Responses.

77 See No. 193 of the METI/MLIT Responses.

78 See Nos. 188 and 192 of the METI/MLIT Responses.

79 See Section 5(1)1) vii) of the Goto Public Auction Guidelines and No. 385 of the METI/MLIT Responses.

### 2.12.2 Compliance Matters

The General Sea Areas Public Auction Implementation Guidelines restricts bidders from contacting local stakeholders during the bid period (i.e. the period from the date on which the final public auction guidelines are published to the date on which the successful bidder notification is made) in a manner which undermines the fairness, transparency or competitiveness of the auction process.

The Goto Public Auction Guidelines provide further guidance on this point – set out below are some examples of prohibited bidder activities (and reference below to ‘local stakeholders’ means members of the Council or members of any organisation which takes part in the Council):

- i. asking local stakeholders about other potential bidder(s) information;
- ii. requesting local stakeholders to lobby with prefectures in favour of that bidder;
- iii. asking local stakeholders for advice on the public auction; or
- iv. paying for meals and/or drinks or other act which favours local stakeholders.

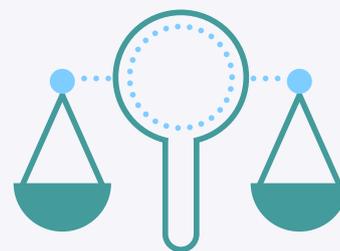
Contacting local stakeholders for the purposes of carrying out surveys or participating in local events is permitted so long as the bidder ensures there is no act that undermines the fairness, transparency and competitiveness of the auction process.

Approaching local authorities (directly or indirectly) is also permitted so long as the bidders do not fall foul of the National Public Service Ethics Act (Act No.29 of 1999, as amended) or other ABC regulations.

The Goto Public Auction Guidelines also include requirements which continue after bidder selection (e.g. reporting the start of commercial operation, cooperation with curtailment requests and provision of information in respect of capacity and relevant cost).

METI/MLIT Responses clarified that a bidder is required to ensure its contractors comply with the compliance matters set out in the Goto Public Auction Guidelines.<sup>80</sup>

In addition, many comments were made on the engagement with local stakeholders and how bidders may ensure they are not “undermining the fairness, transparency and competitiveness of auction process”.<sup>81</sup> In this regard, the METI/MLIT Responses suggested that keeping a record of the engagement (time, location, participants (preferably including an independent third party) and substance of the conversation) may be effective (although METI and MLIT cautioned that a record may not be conclusive evidence).<sup>82</sup>



“

The Guidelines restricts bidders from contacting local stakeholders during the bid period in a manner that undermines the fairness, transparency and competitiveness of the auction process.

”

80 See Section 5(1)2v) of the Goto Public Auction Guidelines.

81 See Nos. 140 through 152 of the METI/MLIT Responses.

82 See No. 143 of the METI/MLIT Responses.

## 2.13 Evaluation Criteria

### 2.13.1 Previous Experience/Track-record<sup>83</sup>

The General Sea Areas Public Auction Implementation Guidelines provided detailed guidance for the evaluation criteria regarding the Occupancy Plans.<sup>84</sup> The key difference in the Goto Public Auction Guidelines is that all candidates will receive 120 points on the price. Price will not be an evaluation criterion for the Goto Promotion Area because floating turbines will be used –

*this is expected to be different for bottom fixed turbines. Price will be part of the evaluation for Round 1 Fixed-Bottom OSW Projects.*<sup>85</sup>

The substance of the Project Feasibility Criteria in the Goto Public Auction Guidelines is substantially the same as those set out in the General Sea Areas Public Auction Implementation Guidelines.

The Goto Public Auction Guidelines further elaborate on the scope of the eligible previous experiences as set out below:

#### i. Experience of Project Sponsors and EPC and Other Contractor(s) (each as defined below)

The Goto Public Auction Guidelines categorise the core roles for offshore wind power projects into the following three categories/packages: (i) installation of wind turbines, (ii) offshore civil works and (iii) operation of offshore wind projects (including maintenance and operation). This is to ensure bidders compete on a level playing field and allow METI/MLIT to compare the proposals.

The Goto Public Auction Guidelines also categorise the participants for offshore wind projects into the following two categories: (a) companies which implement and manage the relevant projects (the “**Project Sponsors**”) and (b) companies which undertake the engineering (E), procurement (P) and construction (C) and maintenance and inspection, etc. regarding the production, installation and maintenance of the wind turbines and offshore structures (the “**EPC and Other Contractor(s)**”). Project Sponsors and EPC and Other

Contractor(s)’ experience is deemed as the relevant bidder’s experience.

The EPC and Other Contractor(s)’ experience may include the “cooperating” companies (i.e. multiple candidate EPC and Other Contractor(s)) who provide a letter of interest in the Form 3-2-4 as it might be difficult to complete the selection of the EPC and Other Contractor(s) at the time of bid submission. However, changes to the EPC and Other Contractor(s) should be minimised as much as possible after the application for the public auction because they are a part of the evaluation.

A bidder may propose multiple candidates for the EPC and Other Contractor(s) and determine the final candidates after the selection. Please note however that if multiple candidates are presented, the evaluation of that bidder’s Occupancy Plan will be based on the least favourable EPC and Other Contractor candidate.

*The ability to propose several candidates was in respect of the project implementation capability criterion but METI and MLIT indicated that, for the Round 1 Fixed-Bottom OSW Projects, the ability to present multiple candidates may extend to other evaluation criteria. METI and MLIT clarifies that the mere fact that the bidder selected only 1 candidate for EPC and Other Contractor does not mean that bidder will receive higher marks than bidders who presented several candidates (it will be a comparison between the candidate proposed by the first bidder and the least favourable candidate proposed by the second bidder).*



“

The substance of the Project Feasibility Criteria in the Goto Public Auction Guidelines is substantially the same as those set out in the General Sea Areas Public Auction Implementation Guidelines.

”

83 See Section 8(4)1) (P45) of the Goto Public Auction Guidelines.

84 See Section 1.6 and Appendix 6 of the 2019 LL OSW Report.

85 See page 24 of the METI/MLIT OSW Sub-Committee Materials.

## ii. Relevance of Experience

The previous experience will be reviewed from the following viewpoints:

- a. whether the experience is relevant in the context of natural and social conditions in Japan (i.e. involvement in domestic projects);
- b. the extent of compatibility with the Goto Offshore Wind Project in view of size and specifications (e.g. 21MW, floating turbines); and
- c. whether it is its own experience (rather than that of group companies) or it can demonstrate that, effectively, it is considered to be its own experience (see below).

Emphasis is placed on the roles played by the relevant person and the relevance to the Goto Offshore Wind Project rather than the bidders' (direct or indirect) shareholding in the relevant offshore wind project. Each consortium member's or shareholder's experience (if the bidder is an SPC) will be taken into account if based on provision of human resource and information sharing framework, experience in offshore wind projects and offshore civil works (including in other countries) is deemed equivalent to the bidder or relevant shareholder's own experience. The sentence indicates that experience of group companies (not only parent companies) counts towards the relevant shareholder's experience but further clarification from METI and MLIT is awaited.<sup>86</sup>

## iii. Automatic Disqualification

If a bidder fails to satisfy the criteria described in paragraphs (ii)(a) to (ii)(c) above in respect of any of the three categories/packages (i.e. (i) installation of turbines, (ii) offshore civil works and (iii) operation of offshore wind power farms (including maintenance and operation)), the bidder will be disqualified automatically.

The METI/MLIT Responses include the following helpful clarifications:

- a. experimental offshore wind projects count towards offshore wind experience;<sup>87</sup>
- b. track-record of offshore wind projects in operation phase (i.e. completed) will receive higher marks than projects that are in development phase;<sup>88</sup>
- c. proposal on supply chain will be considered in the Project Feasibility criterion, not only in Local Community/Economic Impact criterion;<sup>89</sup>
- d. no ClassNK certification at the time of the bid would necessarily have an adverse impact on the Project Feasibility criterion (METI and MLIT will consult with the relevant experts);<sup>90</sup>
- e. disaggregated construction packages may be proposed and in that case the bid will be evaluated as the Project Sponsors also playing the EPC and Other Contractor(s) role;<sup>91</sup>

86 See Section 2.13.1 and No.132 of the METI/MLIT Responses. In this connection, No. 333 of the METI/MLIT Responses differentiates the members of the SPC (which means the direct holders of voting rights – see No. 341 of the METI/MLIT Responses) and parent companies, etc. This appears to mean that an affiliated company is eligible, subject to assessment of the human resource allocation and information-sharing framework.

87 See No. 253 of the METI/MLIT Responses. METI and MLIT answered in the context of turbine installation.

88 See No. 284 of the METI/MLIT Responses.

89 See No. 257 of the METI/MLIT Responses. See Section 1.6.2 i of the 2019 LL OSW Report for the definition of each criterion.

90 See No. 270 of the METI/MLIT Responses.

91 See No. 285 of the METI/MLIT Responses. METI and MLIT responded in the context of offshore civil works.

- f. it is possible that there is no bidder in the Top Rank<sup>92</sup> (no “top runner”);<sup>93</sup>
- g. no bidder will be in the Middle Rank<sup>94</sup> (or above) if it does not have experience in installing wind turbines in Japan (including onshore);<sup>95</sup>
- h. an inadequate finance plan and/or cashflow analysis results in an automatic failure of the bid;<sup>96</sup>
- i. the letters of intent from the project finance lenders are relevant only in the context of the adequacy of the finance plan (and not considered in the context of the broader Project Feasibility criterion);<sup>97</sup>
- j. the substance of the letters of intent issued by the potential project finance lenders is not relevant to the evaluation. The letters of intent do not have to provide an amount to be financed by the relevant potential lender;<sup>98</sup>
- k. letters of intent and commitment letters are alternatives<sup>99</sup> and, in practice, commitment letters are not expected; and
- l. “IRR” required in the bid forms means pre-tax IRR (“P-IRR”).<sup>100</sup>

### 2.13.2 Supply Chain for Stable Electricity Supply<sup>101</sup>

#### i. Matters to be included in the supply chain establishment plan

The planned supply chain will be evaluated from the viewpoint of (i) the stable electricity supply and (ii) the reduction in future electricity price. The detailed examples of the review points are set out below:

- a. Stable Electricity Supply
  - I. speedy procurement of the relevant parts in the event of breakdowns or emergencies;
  - II. robustness of the supply chain, including diversification and procurement from multiple suppliers; and
  - III. establishment of technology development systems compatible with Japan’s natural conditions including collaboration with the component manufactures.
- b. Reduction of Future Electricity Price
  - I. enhancement of a competitive environment in establishing its supply chain, including the removal of barriers to new entrants to the market;
  - II. continuous review of the existing supply chain to, for example, reduce transportation costs and other costs; and
  - III. establishment of technology development systems for cost reductions which include collaboration with the component manufactures.

92 See the table set out in Appendix 6 of the 2019 LL OSW Report.

93 See No. 257 of the METI/MLIT Responses.

94 See the table set out in Appendix 6 of the 2019 LL OSW Report.

95 See No. 275 of the METI/MLIT Responses.

96 See No. 269 of the METI/MLIT Responses.

97 See No. 409 of the METI/MLIT Responses.

98 See Nos. 216 and 418 of the METI/MLIT Responses.

99 See Nos. 161, 162 and 416 of the METI/MLIT Responses.

100 See No. 217 of the METI/MLIT Responses.

101 See Section 8(4)2) (P46) of the Goto Public Auction Guidelines.

## ii. “Hard” and “Soft” Supply Chains

The Goto Public Auction Guidelines refer to two types of supply chains for evaluation purpose. First is the supply chain for the physical materials (“hard” aspect) which include those for core wind turbine components (nacelles, bearings, speed-up gears, towers, blades, nacelle supporters), transmission lines (including underwater cables) and foundations. The other is the supply chains for operation and maintenance e.g. human resources and logistics (“soft” aspect).

## iii. Clarification in the METI/MLIT Responses

METI and MLIT clarified in their responses that:

- a. electricity cost reduction proposals mean electricity cost reduction for future projects (as well as the Goto Offshore Wind Project);<sup>102</sup>
- b. “collaboration and business partnership for technical innovation having regard to Japan’s natural conditions”<sup>103</sup> means business partnerships between the bidder and (a) turbine parts supplier(s) or (b) the relevant turbine manufacturer, in each case, on the condition that the relevant turbine manufacturer supports the bid (a letter of intent is required – see paragraph (c) below);<sup>104</sup>
- c. letters of intent from turbine manufacturers are required;<sup>105</sup>
- d. quantitative and/or specific proposals will receive higher marks in the Local Community/Economic Impact criterion;<sup>106</sup> and
- e. localisation of supply chains is not the only way to receive marks in the Local Community/Economic Impact criterion. It is indicated that contribution to the local and national economy through the use of renewable energy may also receive marks in this criterion.<sup>107</sup>

*For the Round 1 Fixed-Bottom OSW Projects, METI and MLIT indicated that latest technology would not only mean the technology is new, but it also has to be reliable. The reliability would be determined in the context of Japan’s natural conditions (seismic, marine and tropical storms etc.).*

## 2.13.3 Decommissioning<sup>108</sup>

The Goto Public Auction Guidelines expressly mention that the amount and the calculation logics of the decommissioning costs set out in the Occupancy Plan will be an important element for evaluation of the Project Implementation Capability.

The METI/MLIT Responses clarified that an insufficient amount of the decommissioning costs would result in lower marks in the (A) feasibility of the project plans, (B) coordination with the local community and/or (C) impact on the local economy (and there is no clear allocation between (A), (B) and (C) above).<sup>109</sup>

*For the Round 1 Fixed-Bottom OSW Projects, the amount and the calculation logics of the decommissioning costs will not be part of the evaluation. See Section 2.7.*

102 See No. 259 of the METI/MLIT Responses.

103 See Section 2.13.2.

104 See No. 300 of the METI/MLIT Responses, although the response to this comment is unclear.

105 See No. 290 of the METI/MLIT Responses.

106 See Nos. 263 and 264 of the METI/MLIT Responses.

107 See No. 266 of the METI/MLIT Responses.

108 See Section 8(4)3)) (P47) of the Goto Public Auction Guidelines.

109 See Nos. 304 and 305 of the METI/MLIT Responses.

## 2.14 Transfer of Grid Connection Rights<sup>110</sup>

If a bidder has already secured grid connection rights but is not the successful bidder, that unsuccessful bidder is required to transfer the connection rights to the successful bidder.<sup>111</sup> The Goto Public Auction Guidelines require this process to be completed within three months and a day after the successful bidder notification.

A formula for the calculation of the transfer price of the grid connection rights is as follows:

Transfer Price = (Paid Interconnection Work Cost + Miscellaneous Expenses Equivalent) × Profit Rate Where:

- > **Paid Interconnection Work Cost** is the paid portion of the direct expenses in relation to interconnection work payable to the relevant general transmission and distribution business operator;
- > **Miscellaneous Expenses Equivalent** is 1% of the direct expenses in relation to interconnection work (the total amount including the undisbursed portions) (but capped at JPY7.5 million); and
- > **Profit Rate** 1.001 (annual rate)<sup>112</sup> will be multiplied by the total amount of Paid Interconnection Work Cost and Miscellaneous Expenses Equivalent for the period from:

- i. in respect of the paid portion, the payment date, (or, if there have been multiple payments, the respective payment dates); and
- ii. in respect of the amount paid for the Miscellaneous Expenses Equivalent, the last payment date, to the date of the transfer of the grid connection rights under the relevant grid connection agreements and the agreements for interconnection works.

See [Section 2.10](#) for disclosure of information related to grid connection rights.

A bidder who has access to the grid connection right may request the relevant general transmission and distribution business operator to reassess the grid capacity (at that bidder's own cost (JPY220,000) and having regard to the reassessment period which is at least three months).<sup>113</sup>

The METI/MLIT Responses clarified that the incumbent developer that secured grid connection rights will not merit any advantage in the evaluation.<sup>114</sup>



110 See Section 9(4), Appendix 5) (P50/74) of the Goto Public Auction Guidelines.

111 See Section 1.5 xviii of the 2019 LL OSW Report.

112 This figure has been clarified as rate, not amount. See Section 9(4)1) and Appendix 5) Section 2 of the Goto Public Auction Guidelines and No. 312 of the METI/MLIT Responses.

113 See Section 10(2) of the Goto Public Auction Guidelines.

114 See No. 256 of the METI/MLIT Responses.

## 2.15 Amendments to the Occupancy Plan

### 2.15.1 Guiding Principles<sup>115</sup>

Any amendment to the Occupancy Plan is permitted if the following requirements provided in Article 18, Paragraph 2 of the Marine Renewables Energy Act are satisfied:

- i. the changes would contribute further to the public interest; or
- ii. there is a compelling reason and the change is unavoidable.

Examples given in the Goto Public Auction Guidelines as acceptable amendments are: (i) changes applying the latest technical knowledge and experience to the construction and other processes, (ii) replacement of equipment to use the best available technology and (iii) changes following required surveys or project implementation process (where only concepts were proposed at the bid stage). In any event, any amendments to the Occupancy Plan must not be changes that will lower the standards of the proposal.



Examples given in the Goto Public Auction Guidelines as acceptable amendments are: (i) changes applying the latest technical knowledge and experience to the construction and other processes, (ii) replacement of equipment to use the best available technology and (iii) changes following required surveys or project implementation process.



### 2.15.2 Changes in Consortium Members or SPC Shareholders<sup>116</sup>

The General Sea Areas Public Auction Implementation Guidelines do not clearly provide the rules for changes to the members of a consortium or shareholders of the SPC. The Goto Public Auction Guidelines provide for the basic rules and principles for such changes as set out below.

If any changes are made to the members of a consortium or shareholders of the SPC, the Occupancy Plan is required to be amended as such information will be provided in the Occupancy Plan (including the shareholding/voting share percentage held by each shareholder). In addition, given that the selection is based on the expected performance and the roles played by each original consortium member or SPC shareholder at the time of selection, the basis of the selection may be undermined and thereby may raise concerns on the successful bidder's ability to implement the project. As such, any changes in the member of consortium or shareholder of the SPC will trigger a formal amendment process in respect of the Occupancy Plan (as set out in [Section 2.15.1](#)).<sup>117</sup>

The Goto Public Auction Guidelines further provide that the satisfaction of the two requirements set out in [Section 2.15.1](#) shall be carefully reviewed, especially in cases such as the following where the change implies a significant impact on the Project Implementation Capability:

- i. there is a change in the largest shareholder;
- ii. any Project Sponsor exits from the consortium or SPC; or
- iii. the transfer of shares (voting rights) causes the shareholding percentage of the member(s) (whose experience was the basis of the evaluation) to fall below a "certain threshold" (see below).



115 See Section 9(5)1)ii) (P53) of the Goto Public Auction Guidelines.

116 See Section 9(5)4) (P53) of the Goto Public Auction Guidelines.

117 See Article 18(2) of the Marine Renewables Energy Act.

The METI/MLIT Responses clarified that, if the bid evaluation was made based on certain shareholders' experience<sup>118</sup> and those shareholders' original aggregate shareholding is below two thirds (2/3) of total voting rights before the transfer, any further transfer or exit of any such shareholder will be cautiously reviewed. In any event, an amendment to the Occupancy Plan and, therefore, an approval from METI and MLIT are required.<sup>119</sup>

The term "certain threshold" referred to in paragraph (iii) above changes pre and post commercial operation (on the basis that the risk profile changes) and means:

- a. prior to COD, two thirds (2/3) of the total voting rights; and
- b. on or after COD, 51% of the total voting rights.

Whilst the Goto Public Auction Guidelines maintain that any amendment should be approved on a case by case basis, those indicate that, for cases which do not fall within the cases (i) to (iii) above, the relevant amendment to the Occupancy Plan would in principle be approved. This is based on the extensive discussion with market participants and industry bodies, and recognition by METI and MLIT of the importance of flexibility and liquidity on equity sell-downs, given that such flexibility and liquidity would reduce the estimated cost of capital and, therefore, the feed-in-tariff.

The METI/MLIT Responses also clarified the following:

- I. any change in the shareholding of intermediary holding companies (including intra-group transfers) will trigger the requirement to amend the Occupancy Plan and therefore an approval from METI and MLIT is required;<sup>120</sup> and
- II. any new shareholder is required to satisfy the eligibility requirements (in addition to the requirements for amendments to the Occupancy Plan).<sup>121</sup>

## 2.16 Conditions to the granting of the Occupancy Permit<sup>122</sup>

The Goto Public Auction Guidelines set out the following conditions to the granting of the Occupancy Permit. In this connection, the successful bidder is required:

- 2.16.1 to obtain written consents from the fisheries (who are members of the Council);<sup>123</sup>
- 2.16.2 to follow instructions to suspend operation without compensation in the event driftwood or stranded vessels are required to be removed following a natural disaster (such as typhoon);
- 2.16.3 to ensure the mooring facility is compliant with the technical standards specified in Article 56-2-2 of the Port and Harbour Act (Act No. 218 of 1950, as amended);
- 2.16.4 not to transfer, sublet or grant security over the occupation rights (see paragraph (iv) below);
- 2.16.5 to ensure that the construction, operation and maintenance activities are compliant with the MLIT technical guidelines;
- 2.16.6 to consult with and have regard to the safety and preservation of the environment of the port and harbour area;
- 2.16.7 to ensure that it will have regard to the environmental impact during the course of construction and project implementation;
- 2.16.8 to obtain the relevant generation permit;
- 2.16.9 not to install other facilities;
- 2.16.10 not to use the permitted area for other purposes;

118 See No. 342 of the METI/MLIT Responses.

119 See No. 340 of the METI/MLIT Responses.

120 See No. 333 of the METI/MLIT Responses.

121 See No. 127 of the METI/MLIT Responses.

122 See Section 9(7) 2) iv) (P56) of the Goto Public Auction Guidelines.

123 This is obtained by virtue of the Council agreement attached to the Goto Public Auction Guidelines (see ANRE Q&A Section 5-1).

- 2.16.11 to consult with METI and MLIT if cables are required to be re-routed;
- 2.16.12 to refer and comply with “notice to the relevant business operators in respect of use of foreign vessels for carrying out marine surveys in the territorial waters (April 2020)” when carrying out surveys with respect to wind conditions and seabed conditions; and
- 2.16.13 to comply with MLIT requirements if any unexpected circumstances occur.

The METI/MLIT Responses clarified the following:

- i. the occupancy fees are payable annually. The rate is based on proximate land value and as such (i) there is no single rate that applies to all projects and (ii) the rate may change over the 30-year period;
- ii. the default rate applicable to occupancy fees is 3% [per annum];
- iii. a delay in payment of occupancy fees will not result in immediate revocation of the Occupancy Permit; and
- iv. it is reconfirmed that creation of a security interest on the Occupancy Permit is not expected and that METI and MLIT will not be entering into a direct agreement with the project finance lenders.

*Following the split of the Yurihonjo Promotion Areas into north and south, each of the areas may need to occupy the other area in order to place the seabed transmission cables and communication cables (the “**Seabed Transmission Cables**”). METI and MLIT indicated that such occupation of the other area would be approved on the condition that the certified Occupancy Plan sets out the layout of the Seabed Transmission Cables and consents from the selected bidder of the other area and local stakeholders are obtained. Similarly, the offshore wind project for the Choshi Promotion Area may require occupation of the general sea area outside of the Choshi Promotion Area for the Seabed Transmission Cables. The Public Auction Guidelines for the Choshi Promotion Area will include some guidance for the occupation of the areas outside of the Choshi Promotion Area.<sup>128</sup>*



124 See Nos. 349, 351 and 352 of the METI/MLIT Responses.

125 See No. 355 of the METI/MLIT Responses. It is not clear if the rate is per annum.

126 See No. 357 of the METI/MLIT Responses.

127 See No. 363 of the METI/MLIT Responses.

128 See Page 38 of the METI/MLIT OSW Sub-Committee Materials.

## 2.17 Form of the Occupancy Plan and Letter(s) of Intent

The Goto Public Auction Guidelines include the relevant designated forms. The forms include instructions which provides an idea of the quality as well as quantity of information that is required to be provided to METI and MLIT. Key points are:

- 2.17.1 milestone dates are required to be included in the Occupancy Plan (start of construction, date of connection to the grid, start and end dates of commercial operation, start and end dates of the decommissioning period). This means any delays will require an amendment to the Occupancy Plan (i.e. the changes are subject to METI and MLIT approval);
- 2.17.2 there are 18 attachments requiring detailed information. The Goto Public Auction Guidelines are clear that **any failure to achieve the commitments made in the Occupancy Plan may result in the revocation of the certification of the Occupancy Plan;**
- 2.17.3 a project timetable (up to decommissioning) is required together with a process of considering and reasoning for the setting of milestone dates (Form 3-1-5);
- 2.17.4 parties' roles and governance of the SPC (including CVs of the executives) are required (Form 3-1-6). **A consortium agreement or draft shareholders' agreement is required to be attached;**
- 2.17.5 technical information (structure and design) is required (Form 3-1-7);
- 2.17.6 construction timetable/programme is required (Forms 3-1-8 / 3-1-9);
- 2.17.7 operation and maintenance plan is required (Form 3-1-10);
- 2.17.8 decommissioning plan is required (including an estimate for the decommissioning costs) (Form 3-1-11);
- 2.17.9 finance plan (project cost, estimated debt and equity, interest and potential lenders – supported by letter(s) of intent), cash flow model (B/S, P/L, cash flow estimate, estimated timing of moving into the “black”, timing of clearing cumulative operating deficit, IRR, DSCR and sensitivity analysis), credit rating and financial information with respect to the consortium members are required (Form 3-1-12);
- 2.17.10 risk analysis with respect to construction, operation and maintenance, financial risk and other risks (Form 3-1-13);
- 2.17.11 proposals in relation to (i) repair and supply chain strategy (“hard” and “soft”) (Form 3-1-14), (ii) reduction of future power price (Form 3-1-15), (iii) use of best available technology (Form 3-1-16), (iv) coordination with local authorities (Form 3-1-17), (v) coordination and coexistence with local fisheries (Form 3-1-18), and (vi) impact on local and national economy (Forms 3-1-19 and 3-1-20); and
- 2.17.12 reporting to METI and MLIT (Form 3-1-21).

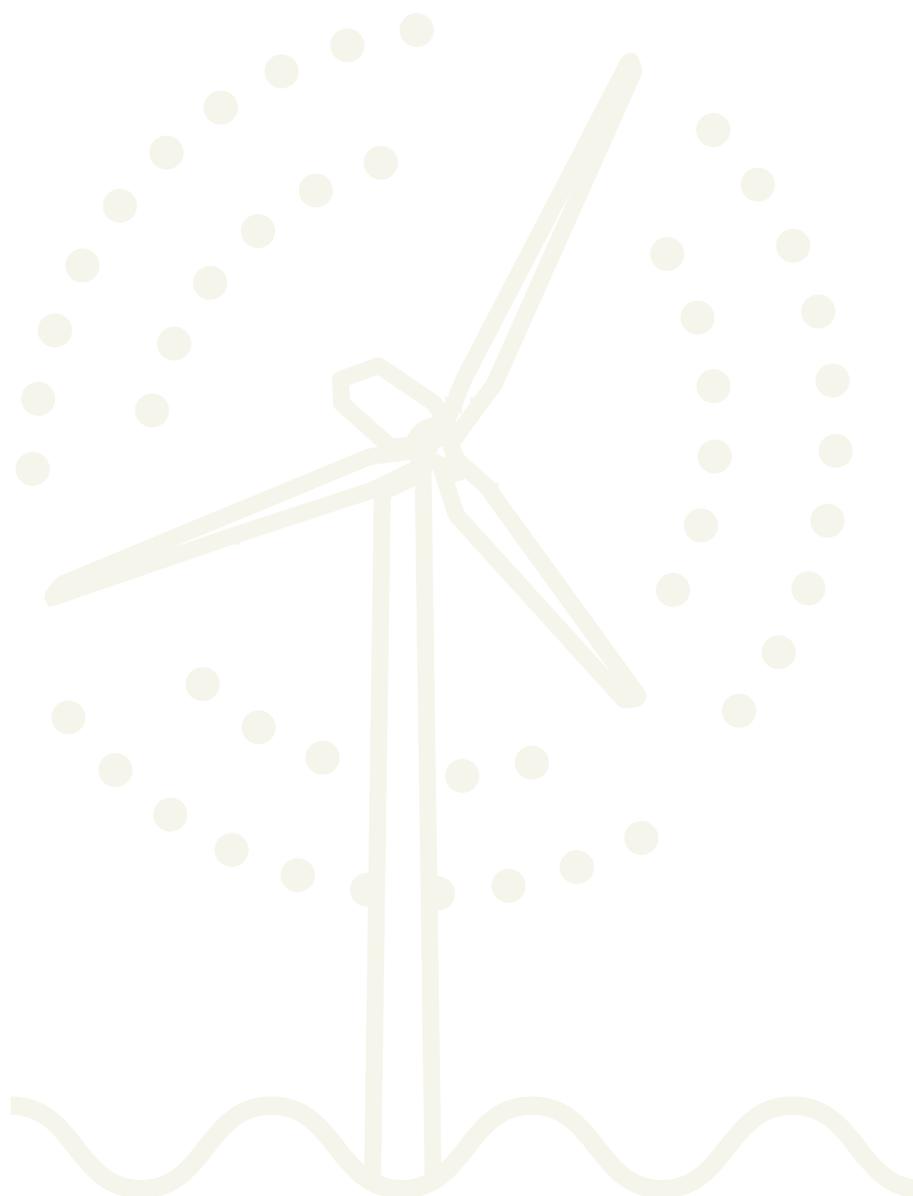
The forms of the letter(s) of intent with respect to the EPC and Other Contractor(s) and potential lenders are also attached to the Goto Public Auction Guidelines. The letter(s) of intent to be procured from the potential lenders do not require an amount that it is expected to provide in financing.<sup>129</sup>

<sup>129</sup> See ANRE Q&A Section 2-7.

## Conclusion

The rules of the game are becoming clear. Drafts of the Public Auction Guidelines for Round 1 Fixed-Bottom Promotion Areas are expected to be released imminently. The process for round two started and it is likely that there will be two rounds of public auctions in the next 12-18 months.

Recent developments demonstrate Japan's strong commitment to the offshore wind industry. Offshore wind power is expected to play a key role in Japan's energy strategy to achieve its Paris Agreement commitment. Longer term targets are being discussed and METI and MLIT are engaging with the private sector to enhance investment in this industry. 2020 will be the start of Japan's new journey navigating through the energy transition.



# Appendices



## Promotion Area (*sokushin kuiki*) off the coast of Goto City, Nagasaki Prefecture

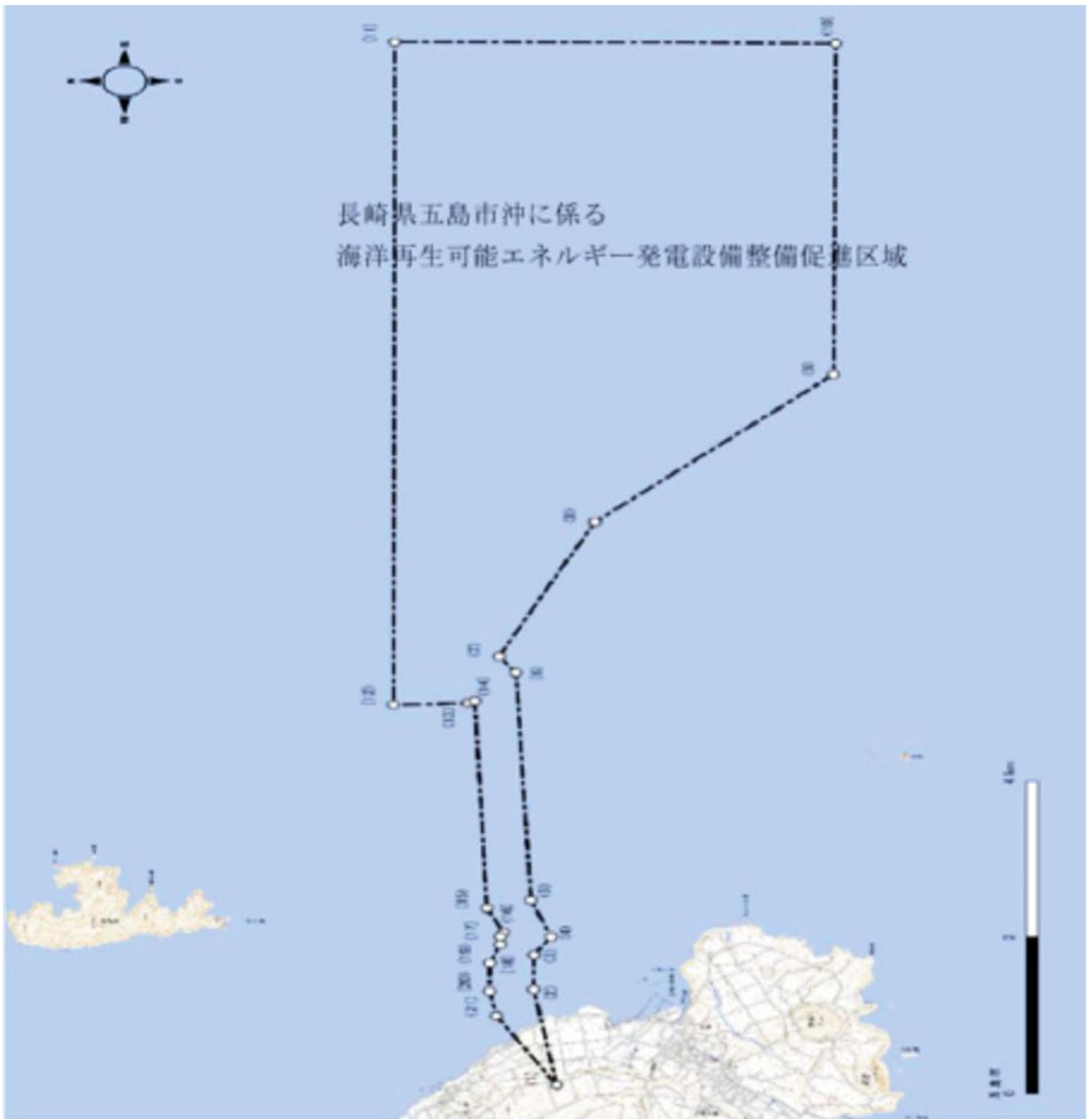
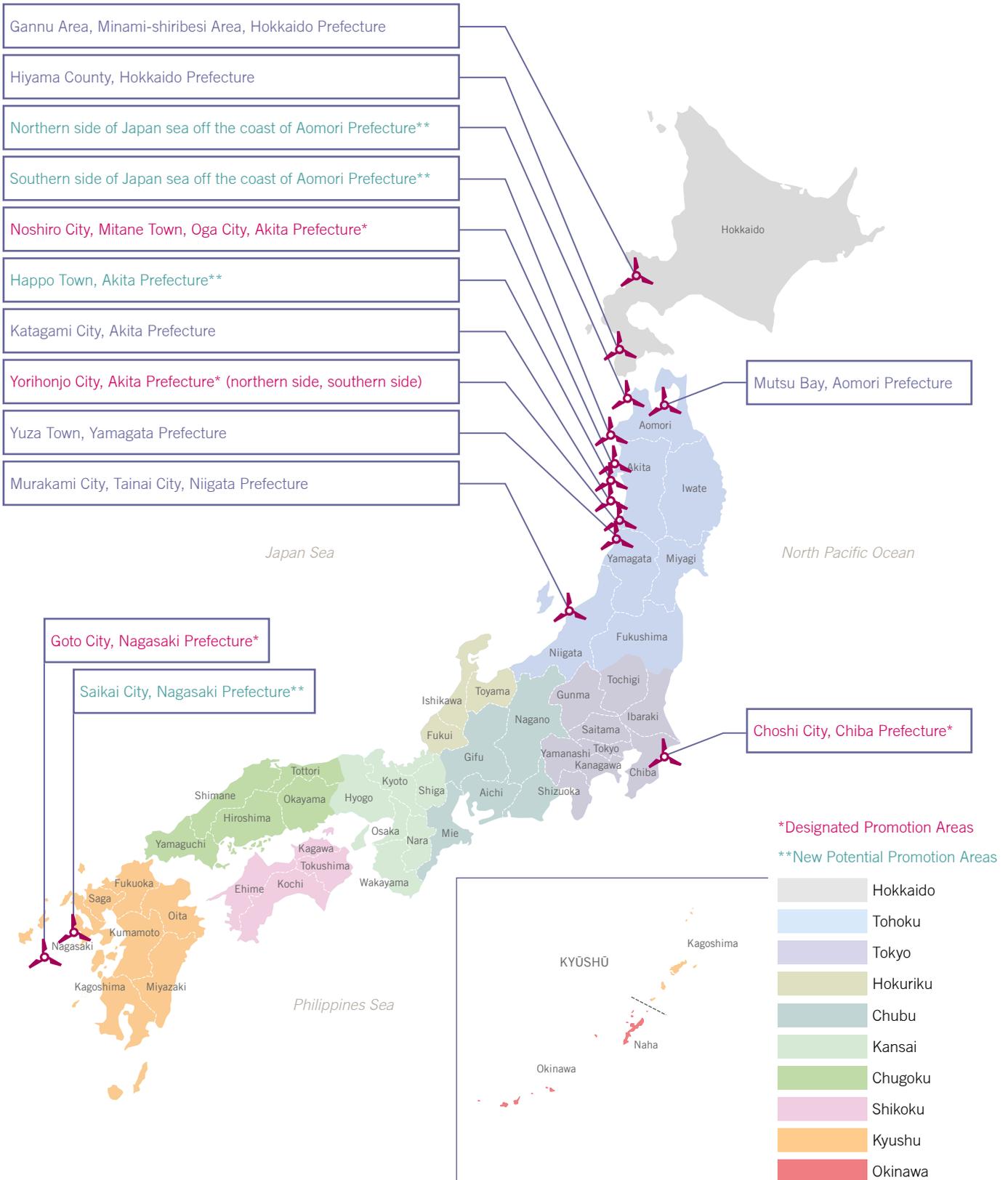


図 本公募占用指針「1. (3) 占用の区域」における区域



# Preparatory Stage Areas



## Contacts

To find out more about Japan offshore wind, please contact any of the following individuals:

### Japan



**John Maxwell**  
Partner, Tokyo  
Asia Head of Energy & Infrastructure  
Tel: +81 3 6212 1227  
[john.maxwell@linklaters.com](mailto:john.maxwell@linklaters.com)



**Hirofumi Taba**  
Partner, Tokyo  
Tel: +81 3 6212 1245  
[hirofumi.taba@linklaters.com](mailto:hirofumi.taba@linklaters.com)



**Xylia Sim**  
Counsel, Tokyo/Singapore  
Tel: +65 6692 5893  
[xylia.sim@linklaters.com](mailto:xylia.sim@linklaters.com)



**Mamoru Ikeda**  
Managing Associate, Tokyo  
Tel: +81 3 6212 1251  
[mamoru.ikeda@linklaters.com](mailto:mamoru.ikeda@linklaters.com)

### Hong Kong SAR



**James McLaren**  
Partner, Hong Kong SAR  
Asia Head of Renewable Energy  
Tel: +852 2842 4106  
[james.mclaren@linklaters.com](mailto:james.mclaren@linklaters.com)



**Ying Fu**  
Counsel, Hong Kong SAR  
Tel: +852 2901 5379  
[ying.fu@linklaters.com](mailto:ying.fu@linklaters.com)

### London



**John Pickett**  
Partner, London  
Tel: +44 20 7456 5926  
[john.pickett@linklaters.com](mailto:john.pickett@linklaters.com)

### South Korea



**Joo Hee Lee**  
Managing Partner, Seoul  
Tel: +82 2 6320 1040  
[joo\\_hee.lee@linklaters.com](mailto:joo_hee.lee@linklaters.com)

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