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Conditions of and Procedure for Reverse Auctions Organised for Generating Energy from Renewable Energy Sources and in Efficient Co-Generation Process

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The Regulation is established on the basis of subsections 59⁴(10), 59⁵(4) and 59⁶(5) of the Electricity Market Act.

Chapter 1 General provisions

§ 1. Scope of regulation

The Regulation regulates the organisation of public reverse auctions to attain the objectives of generating energy from renewable energy sources specified in §§ 59⁴ to 59⁶ of the Electricity Market Act.

§ 2. Terms and definitions

In this Regulation, the following definitions are used:

- 1) tenderer means a person who has submitted a tender in the reverse auction;
- 2) tender means the declaration of intention of a tenderer to participate in the reverse auction on the conditions of the reverse auction and in conformity with the provisions of this Regulation and the Electricity Market Act which is binding on the tenderer as of submission of the tender until the expiry of the minimum term of validity of tenders determined in the notice of the reverse auction;
- 3) support rate means the guaranteed sales price provided in the tender which consists of the average exchange price of electricity in the next-day market in the Estonian price area for the calendar month and the amount of the support specified in § 59⁴, 59⁵ or 59⁶ of the Electricity Market Act, or in the case of a reverse auction relating to a statistical transfer the support rate in euros per megawatt-hour provided in the tender;
- 4) reverse auction means a competitive tendering procedure in order to find a producer of energy from renewable energy sources with the most advantageous support rate;
- 5) joint tenderers mean the tenderers who have submitted a joint tender;
- 6) joint tender means a tender that has been submitted jointly by more than one tenderer.

§ 3. State aid

(1) The support payable to the winner of the reverse auction specified in §§ 59⁴ to 59⁶ of the Electricity Market Act is state aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union, the grant of which shall comply with the European Commission guidelines on the state aid in the areas of the environment and energy and an appropriate decision of the European Commission allowing the grant of state aid.

(2) Information relating to state aid is public information. The person conducting the reverse auction shall, in conformity with subsection 49²(3) of the Competition Act, submit information about the support paid to the winner of the reverse auction specified in §§ 59⁴ to 59⁶ of the Electricity Market Act to the register of state aid and de minimis aid.

(3) The person conducting the reverse auction is obliged to preserve the documents relating to the grant of state aid for ten years as of the date of making the decision specified in subsection 23 (1) or (2).

§ 4. Deciding on organisation of reverse auction

(1) In the cases specified in §§ 59⁴ and 59⁵ of the Electricity Market Act, the Government of the Republic shall, when authorising the organisation of a reverse auction, determine at least the type and the annual quantity of supported energy which is the object of the reverse auction, the due date for commencing generation and the time of presenting the results of the reverse auction.

(2) In the case specified in §§ 59⁶ of the Electricity Market Act, the minister responsible for the area shall, when deciding the organisation of a reverse auction, determine the annual quantity of supported electricity which is the object of the reverse auction, the due date for commencing generation and the time of organising the reverse auction along with the time of presenting its results.

§ 5. Persons organising and conducting reverse auction

A reverse auction shall be organised by the minister responsible for the area and conducted by the transmission network operator.

§ 6. Exchange of information

(1) The person conducting a reverse auction shall send information to a tenderer by e-mail at the address provided in the tender or publish information on its website.

(2) A tenderer shall send information relating to a reverse auction to the person conducting the reverse auction by e-mail at the address of the person conducting the reverse auction or enter information on the website of the person conducting the reverse auction.

Chapter 2 Notice of reverse auction

§ 7. Notice of reverse auction

(1) The notice of a reverse auction shall set out at least the following information:

- 1) the due date for commencing generation and the period during which energy must be generated;
- 2) the type of supported energy which is the object of the reverse auction and its maximum quantity per one calendar year;
- 3) the due date for submission of tenders;
- 4) the minimum term of validity of tenders;
- 5) contact details of the person conducting the auction;
- 6) the amount and conditions for payment of tender security;
- 7) the list of documents required in the composition of tenders;
- 8) the requirements for the generating installation established in the Electricity Market Act and in § 10 of this Regulation and the type of energy to be generated, depending on the type of the reverse auction.

(2) The notice of a reverse auction shall be approved by a directive of the minister responsible for the area.

§ 8. Publication of notice of reverse auction

(1) The notice of a reverse auction shall be published on the websites of the Ministry of Economic Affairs and Communications and the person conducting the reverse auction and in *Ametlikud Teadaanded*.

(2) There must be a period of at least 120 days between the publication of the notice of a reverse auction and the due date for submission of tenders.

§ 9. Amendment of notice of reverse auction

(1) The notice of a reverse auction may be amended prior to the due date for submission of tenders.

(2) Amendments to the notice of a reverse auction shall be published in the same manner as the initial notice. The person who has submitted a tender by the time of amendment of the notice shall be notified of amendment of the notice by e-mail.

(3) In case of amending the notice of a reverse auction the person organising the auction shall extend the term for submission of tenders at least by the term from publication of the initial notice of the reverse auction until the publication of the notice of its amendment.

Chapter 3

Requirements for generating installations, tenderers and tenders

§ 10. Requirements for generating installations

(1) As a result of a reverse auction, support to a producer may be paid for energy generated by a generating installation that has been declared to be compliant under the Electricity Market Act or Commission Regulation (EU) 2016/631 establishing a network code on requirements for grid connection of generators (OJ L 112, 27.4.2016, p. 1–68).

(2) As a result of a reverse auction, support to a producer may be paid for renewable energy generated:

1) for the objective specified in § 59⁵ of the Electricity Market Act, by the installation which will be used, after winning the reverse auction, annually for generating energy from renewable energy sources at least in the volume provided in the tender;

2) for the objective specified in § 59⁴ or § 59⁶ of the Electricity Market Act, by the generating installation for the construction of which in Estonia approval has been granted by the Ministry of Defence by the moment of submitting the tender if this is required in accordance with the legislation and for the connection of which to the network there exists a connection contract that has been entered into or an offer for a connection contract specified in the regulation of the Government of the Republic established on the basis of subsection 42 (3) of the Electricity Market Act which is not older than 365 days at the time of submitting the tender.

(3) The annual quantity of generating energy specified in clause (2) 1) is deemed to be the quantity of energy generated from renewable energy sources which exceeds the quantity of energy generated by the same installation from renewable energy sources within 12 months preceding the publication of the notice of the reverse auction.

§ 11. Requirements for tenderers

A tenderer must be the owner of the generating installation generating the energy tendered by the tenderer at the reverse auction and to be used for the generation upon winning the reverse auction, or the person entitled to use the generating installation.

§ 12. Requirements for tenders

(1) A tender must be digitally signed by the person entitled to represent the tenderer.

(2) A tender must set out the following information:

1) the tenderer's name, registry code, the name of the tenderer's representative and the basis of the right of representation;

2) the tenderer's confirmation that the tenderer accepts the terms and conditions provided in the notice of the reverse auction;

3) information about the generating installation specified in subsection (5);

4) confirmation about compliance of the generating installation with the requirements provided in the notice of the reverse auction and in § 10 if compliance of the generating installation has been established by the moment of submitting the tender;

5) the tenderer's confirmation that in case of being declared as a winner of the auction the tenderer undertakes to commence generation by the generating installation provided in the tender by the due date for commencing generation specified in the notice of the reverse auction and to generate energy from renewable energy sources during the period specified in the notice of the auction in the volume promised in the tender;

6) the tenderer's declaration of intention to participate in the reverse auction which is effective at least until the expiry of the minimum term of validity of tenders provided in the notice of the reverse auction;

7) the quantity of generated energy tendered by the tenderer per one year and indication of the minimum annual quantity of production accepted by the tenderer for participation in the determination of the results of the reverse auction with the tendered price if support cannot be paid for the entire quantity tendered in the tender;

8) the support rate in euros per one megawatt-hour tendered by the tenderer;

9) the tenderer's address, e-mail address, telephone number;

10) in the case of a joint tender, an authorisation to one tenderer to represent all the joint tenderers in any acts relating to the reverse auction;

11) in the case of a joint tender, the confirmation of all tenderers that they shall be solidarily liable for the performance of the obligations arising from the joint tender;

12) written consent of a party to a network contract who is a third party to participate in the tender if the tenderer is not a party to a valid network contract or will not become a party to a network contract to be entered into in the future;

13) other information required in the notice of the reverse auction.

(3) The format for submission of the confirmations and declarations of intention provided in clauses (2) 2) to 6) and 11) shall be provided on the website of the person conducting the reverse auction.

(4) At the reverse auction under § 59⁴ of the Electricity Market Act, the annual quantity of energy tendered by the tenderer or in the joint tender must be at least ten gigawatt-hours or a multiple thereof.

(5) A tenderer states in the tender the EIC (*Energy Identification Code*) codes of the existing generating installation used for the generation of tendered electricity and the metering point. In the case of a new generating installation, the tenderer states the address and nominal power of the generating installation under construction, and if these exist, also the EIC codes of the generating installation and the metering point.

(6) A tenderer may submit a tender for generating energy from renewable energy sources by one or more generating installations. If one tender is submitted for the generation by several generating installations, then all the terms and conditions of the reverse auction must be fulfilled by all the generating installations provided in the tender.

(7) A tenderer or joint tenderers together may submit a separate tender in respect of each generating installation. In such case, non-compliance of a generating installation provided in one tender with the terms and conditions of the reverse auction shall not affect compliance with the requirements of the generating installations provided in another tender of the same tenderer or the same joint tenderers.

(8) One and the same generating installation shall not be used in a tenderer's different tenders within the framework of one and the same reverse auction.

§ 13. Security and reverse auction costs

(1) A tenderer shall furnish a security no later than by the due date for submission of tenders.

(2) The security may be a deposit paid to the bank account of the person conducting the reverse auction or a warranty by a credit or financial institution or an insurer which must be effective at least until the due date for presenting the results of the reverse auction provided in subsection 4 (1).

(3) The amount of the security in euros shall be calculated by multiplying the annual quantity of generation in gigawatt-hours tendered in the tender by one thousand.

(4) The person conducting the reverse auction shall return the security to the person submitting the tender within ten days after the adoption of, or failure to adopt, the order of the Government of the Republic specified in subsection 23 (1) or (2) or after the reverse auction is declared to have failed in accordance with § 24.

(5) The person conducting the reverse auction shall return the security to the person who has paid the security for participation in the reverse auction but who has not submitted a tender or who has withdrawn the tender before or after the arrival of the due date of the reverse auction within ten days after receiving a corresponding request from the person.

(6) A tenderer shall not be entitled to demand compensation for the costs incurred in connection with the reverse auction or for the arisen loss due to the reason that the order of the Government of the Republic specified in subsection 23 (1) or (2) was not adopted in respect of the tenderer or that the reverse auction was declared to have failed.

Chapter 4 Submission and withdrawal of tenders

§ 14. Submission of tenders

(1) A tender together with all the documents serving as its annexes shall be submitted to the person conducting the reverse auction at the e-mail address provided in the notice of the reverse auction and in such a manner that it would reach the person conducting the reverse auction by the due date set out in the notice of the reverse auction.

(2) By submitting a tender, the tenderer confirms that the tenderer complies with all the terms and conditions provided in the notice of the reverse auction. The submission of a conditional tender is not permitted.

§ 15. Confidentiality of tenders

The contents of tenders are confidential until the adoption of the order specified in subsection 23 (1) or (2).

§ 16. Withdrawal of tenders

A tenderer may withdraw a tender before the due date for submission of tenders by submitting a corresponding notice to the person conducting the reverse auction in the same format as the tender.

Chapter 5

Proceedings concerning tenders

§ 17. Opening of tenders

(1) The person conducting a reverse auction opens the tenders on the working day following the due date for submission of tenders.

(2) The person conducting a reverse auction prepares a report on the opening of tenders. The tenderers' names, registry codes, the quantity and type of generated energy tendered together with the minimum quantity specified in clause 12 (2) 7) and the tendered support rate are entered in the report.

§ 18. Compliance of tenderer and tender with requirements

(1) The person conducting a reverse auction compares the tenderer and the tender with the notice of the reverse auction and with the requirements of this Regulation and §§ 59⁴ to 59⁶ of the Electricity Market Act, but does not evaluate substantive conformity of the tender with the requirements provided in §§ 11 and 12.

(2) The person conducting a reverse auction grants a reasonable period to a tenderer for eliminating any deficiencies in the tender.

(3) The person organising a reverse auction returns the tender if the tenderer or the tender does not comply with requirements provided in subsection (1) or if the tenderer has failed to furnish a security by the due date for submission of tenders.

§ 19. Ranking of tenders

(1) The person conducting a reverse auction ranks the tenders that have passed the initial check by the tendered support rate, starting from the lowest support rate.

(2) If the quantity provided in one tender is not sufficient for fulfilling the quantity which is the object of the reverse auction, other tenderers are also taken into account in the ascending order of the support rate of tenders upon ranking of submitted tenders until the quantity which is the object of the reverse auction is fulfilled. In such case, the support rate of each tenderer is the support rate provided in the tender until the quantity which is the object of the reverse auction is fulfilled.

(3) If the support rates of the tenders required for fulfilling the quantity provided in the notice of the reverse auction are equal, the tenderer who has tendered a greater quantity for the same support rate is preferred.

(4) If the tendered quantities in the tenders ranked by the support rate do not add up to a multiple of the quantity which is the object of the reverse auction, the first tender which meets the following criteria is also taken into account:

1) it is permitted to exceed the quantity which is the object of the reverse auction by up to 20 per cent if one more tenderer is declared as a winner, in addition to the tenderer or tenderers that have tendered the lowest support rate, if, by adding the quantity provided in the tender, the quantity which is the object of the reverse auction is exceeded by up to 20 per cent;

2) if, upon adding the quantity provided in the tender specified in the previous clause, the quantity which is the object of the reverse auction is exceeded by more than 20 per cent, the tender is taken into account only if the difference between 120 per cent of the quantity which is the object of the reverse auction and the quantities tendered by the tenderer or tenderers who have tendered a lower support rate is greater than the minimum annual production tendered on the basis of clause 12 (2) 7).

(5) In the case specified in clause (4) 2), the corresponding tenderer may receive support at the support rate tendered in the tenderer's tender only for such quantity which corresponds to the difference between 120 per cent of the quantity which is the object of the reverse auction and the quantities tendered by the tenderer or tenderers who have tendered a lower support rate.

(6) On the basis of the ranked tenders, the person conducting the reverse auction compiles a list of tenderers, tenders and generating installations for fulfilment of the quantity provided in the notice of the reverse auction.

(7) In the case of a tenderer whose tender exceeds the quantity provided in the notice of the reverse auction upon ranking of tenders, the compliance of the tenderer and the tender with the requirements shall not be checked in accordance with § 20.

§ 20. Substantive checking of compliance of tenderer and tender with requirements

(1) After ranking of tenders the person conducting the reverse auction notifies the tenderer or the tenderers on the basis of the list compiled on the basis of subsection 19 (6) of the need to submit within ten days, for

the purpose of substantive evaluation of compliance of the tenderer and the generating installation with the requirements, in the case of a reverse auction organised to attain the objectives specified in §§ 59⁴ and 59⁶ of the Electricity Market Act, the approval of the Ministry of Defence required for constructing the generating installation if required in accordance with the legislation and a connection contract that has been entered into or a network operator's offer for a connection contract specified in the regulation of the Government of the Republic established on the basis of subsection 42 (3) of the Electricity Market Act or a connection contract for the purpose of proving the circumstances specified in clause 10 (2) 2).

(2) If a tenderer fails to submit the evidence specified in subsection (1) in time or if it appears from the submitted evidence that the tenderer or the tenderer's generating installation does not comply with the requirements specified in §§ 10 and 11, the person organising the reverse auction notifies the tenderer of the need to submit the corresponding evidence within ten days. The person organising the reverse auction has no obligation to grant an additional term if it is obvious that the non-conformity cannot be eliminated.

(3) The person organising a reverse auction returns the tender if the tenderer does not submit all the evidence specified in subsection (1) within the granted additional term or if the tenderer or the generating installation does not comply with the requirements specified in §§ 10 and 11.

(4) If a tender has been returned to the tenderer in accordance with subsection (3) or if a tenderer withdraws the tender before the presentation of the results of the evaluation specified in subsection 21 (1) to the person organising the reverse auction, the person conducting the reverse auction makes a substantive checking of compliance with the requirements, instead of the excluded tenderer, in respect of the first tenderer whose ranking is behind the tender of the tenderer who was excluded from the list specified in subsection 19 (6). If the quantity tendered by such tenderer exceeds the quantity which is the object of the reverse auction, the procedure provided in subsections 19 (4) and (5) applies.

§ 21. Presentation of list tenders

(1) The person conducting the reverse auction presents a list of the tenderers complying with the requirements to the person organising the reverse auction within 70 days after the due date for submission of tenders.

(2) If a tenderer withdraws a tender or if non-compliance of a tenderer appears after presentation of the results of the evaluation specified in subsection (1) or if a tender is returned in accordance with subsection 23 (2), the tenderers in the subsequent rankings are not proposed to be declared as winners instead of such tenderer.

Chapter 6 Winning and failure of reverse auction

§ 22. Proceedings on information presented by person conducting reverse auction

(1) The person conducting a reverse auction checks the compliance of the tenderers provided in the list specified in subsection 21 (1) with the requirements of the Regulation and the Electricity Market Act and presents a list of tenderers to whom support will be paid to the Government of the Republic within ten days.

(2) If a reverse auction has been organised on the basis of § 59⁵ of the Electricity Market Act and the producer who has made the best tender in the reverse auction uses biomass for generation of energy, the person organising the reverse auction prepares the analysis specified in subsection 59⁵(6) of the Electricity Market Act after receipt of the list specified in subsection 21 (1). The minister responsible for the area presents the Government of the Republic with the results of the analysis and a proposal for payment of support to the producer commencing to use biomass within 30 days after receipt of the information specified in subsection 21 (1) from the person conducting the reverse auction.

§ 23. Decision of Government of Republic

(1) The Government of the Republic decides by an order the payment of support to the tenderer or tenderers who have won the reverse auction.

(2) Before entering into the contract specified in subsection § 92⁴(1) of the Electricity Market Act, the Government of the Republic hears the opinions of the Economic Affairs Committee and the Environment Committee of the *Riigikogu* and decides on declaring the producer of energy based on biomass who has made the best tender as the winner.

(3) The order of the Government of the Republic includes the following information about the winner of the reverse auction:

- 1) the name and registry code;
- 2) the EIC code and location of the generating installation if it exists;
- 3) the support rate;
- 4) the quantity of energy that the producer is obliged to generate per calendar year and for which support per calendar year is to be paid;

5) the period of payment of support.

§ 24. Declaring of reverse auction to have failed

(1) The minister responsible for the area declares a reverse auction to have failed if:

- 1) no tenderer complies with the conditions of the reverse auction; or
- 2) no tender complying with the conditions of the reverse auction was submitted in the reverse auction; or
- 3) the Government of the Republic, after hearing the opinions specified in subsection 23 (2), decides not to enter into a contract.

(2) The decision on declaring a reverse auction to have failed shall be published on the websites of the Ministry of Economic Affairs and Communications and the person conducting the reverse auction.

Chapter 7

Suspension and termination of payment of support

§ 25. Commencement of generation

(1) The tenderer who has been declared as a winner of a reverse auction undertakes to commence generation by the generating installation provided in the tender to the extent provided in the tender by the due date for commencing generation stated in the notice of the reverse auction.

(2) In the case of a reverse auction specified in § 59⁴ or 59⁶ of the Electricity Market Act, the commencement of generation is deemed to mean the commencement of generation within the meaning of subsection 108 (3) of the Electricity Market Act.

(3) In the case of a reverse auction specified in § 59⁵ of the Electricity Market Act, the commencement of generation is deemed to mean the commencement of generation within the meaning of subsection 108 (3) of the Electricity Market Act or the transmission of energy to a district heating network or final consumer.

§ 26. Fluctuation of quantity of generated energy

If a producer who has been declared as a winner generates from renewable energy sources by the generating installation or generating installations provided in the tender in total per year more than the annual production volume tendered in the tender, support shall not be paid for the quantity in excess of the volume provided in the tender or the quantity in excess of the reduced volume determined in accordance with subsections 19 (4) and (5).

§ 27. Suspension of payment of support due to non-compliance with conditions of support

(1) If, after commencement of generation of electricity, in the case of a tenderer who has been declared as a winner, the conditions provided in subsections 59¹(1) and (2) of the Electricity Market Act are not fulfilled, the person conducting the reverse auction shall suspend payment of the support to the corresponding producer until the non-compliance is eliminated.

(2) Suspension of payment of support does not suspend the running of the support period and it does not extend the period of payment of support.

§ 28. Non-compliance of tenderer or generating installation with requirements and failure to perform generating obligation

(1) If, in the case of a tenderer who has been declared as a winner, there appears a non-compliance of the tenderer or the generating installation with the requirements after adoption of the order specified in subsection 23 (1) or (2) or if the tender does not fulfil the quantity of generation provided in the order specified in subsection 23 (1) or (2), the person organising the reverse auction grants a term to the tenderer for elimination of the non-compliance unless the non-compliance cannot be eliminated.

(2) If the non-compliance specified in subsection (1) cannot be eliminated or if the non-compliance is not eliminated within the term determined by the person organising the reverse auction, the Government of the Republic is entitled to declare the order specified in subsection 23 (1) or (2) to be repealed in respect of the corresponding tenderer.

(3) If a tenderer who has been declared as a winner has commenced generation by the moment the non-compliance specified in subsection (1) appears, the person conducting the reverse auction suspends payment of the support to the corresponding producer until the deficiency is eliminated.

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