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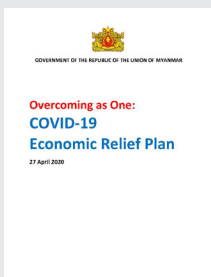


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Edwin is one of Myanmar's most prominent foreign legal advisers and is widely recognized for his experience in power projects. He advises sponsors and lenders on the large majority of IPP projects in Myanmar, including LNG to Power, gas, solar, wind and HPP. He assists the Government, DFIs and IFI's on power projects, policy and reform, and helped draft a new Model PPA in 2018. He is known for actually getting things done and for his extensive regulatory knowledge.

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Government of the Republic of the Union of Myanmar

## HOW TO WIN AT MYANMAR'S SOLAR TENDER, PART OF COVID-19 STIMULUS PACKAGE?

Myanmar is undertaking a first-ever massive tender for 30 ground-mounted solar projects totalling 1,060 MW capacity spread out over nearly half of the country's states and regions. The effort was prompted by the Government's [economic stimulus package](#) meant to minimize the impact of the devastating COVID-19 pandemic. Although Myanmar has relatively few fatalities, hospitality, manufacturing, retail and transportation have been hit early and hard, with China and Korea being major trade partners. Trying to accelerate the country's electrification rate while pushing ahead on its goal of decarbonization is an obvious winning play.

As the Request For Proposal ("RFP") hits the inboxes of hundreds of potential developers, hungry for a market where new entrants have the same chance of success as legacy vested interests, we take a look at the bottom line of this opportunity. What are really the competitive factors here? In other words, what will make you win this tender? And how, in the COVID era, can you actually get a bid before decision makers in a country that is still closed off from foreign countries?

### Extension Not Likely

There has been much debate around the tight deadline for responding to the EPGE's RFP. The invitation went public on 18 May 2020, and the bids must be hand delivered

### Highlights of this note

- ▶ Extension Not Likely
- ▶ The key points of this tender in a nutshell
- ▶ The calendar will eliminate many bidders
- ▶ Quickly finding land will be the crucial competitive factor
- ▶ Which land plot will result in a stronger bid?
- ▶ The credentials to qualify
- ▶ How low can you go
- ▶ Who is best placed to win?
- ▶ How can VDB Loi help you in connection with this solar tender?

by 18 June 2020. Requests for an extension of the deadline were reportedly rejected.

### The key points of this tender in a nutshell

If you want to participate in this tender, you will need to buy the RFP (it's a nominal fee), prepare one or more bids comprising a technical and a separate financial offer (just for the tariff), and submit that by 18 June, just weeks from now.



This tender is actually a tender of 30 individual projects each between 30MW-50MW. So, you can bid for one or more of these individual projects, and each of them will be in competition with other bids for that individual location. You could bid with the plan of winning a group of projects that are located near each other, but each bid stands on its own and there is no guarantee you win all of the locations you plan to include.

At stake is a 20 year PPA (which is included in the RFP) with the utility EPGE at a flat tariff which is the biddable financial factor. The tariff is in US\$ but will be paid in MMK as exchanged by official exchange rate at the time of payment.

Barring any delays, we should know who the winner is in early July 2020, which is purely based on the lowest tariff among those bidders that indeed technically qualify. In February 2021 those winners will have to reach COD. Very ambitious, all of this obviously, just 6 months for permitting, financing, construction, testing and commissioning.

### **The calendar will eliminate many bidders**

A few weeks to put a proposal together for one or more projects is simply not compatible with the management process of a wide range of bidders. But various players were already working on something, or they indeed listened



to our recommendation on 25 February 2020 about the coming tender and prepared, and they got lucky they are at the right substation.

For the others who can't manage such a timeframe, they might wait instead to see who of the more reactive and nimble players will come out of the process victoriously in July and strike a deal with them.

Nevertheless, we believe that the interest for the tender will be very strong and we expect many bids to be submitted.

### **Quickly finding land will be the crucial competitive factor**

The RFP assumes that bidders will find their own land. No land plots have been prepared or allocated by the Government for this tender. As part of the submission, by 18 June, bidders will need to attach maps and land documents of the site they

have secured for the PV plant. They also need to include the land titles of the land right owners and an MOU or Land Lease Agreement for the project, signed with that land owner.

Some bidders have land lined up already. VDB Loi announced on 25 February that a large solar tender was in the works and recommended to clients to start looking for land plots. But it was difficult figuring out which substations were going to be favoured.

Keep in mind that we are looking for 100 to 150 acres of land, this will normally mean that we need to talk to 20 or more small land holders. In other areas, there will be "agents" who already have or can quickly assemble enough land plots, but at a multiple of the original cost.

So, the first and obvious competitive point is that most potential bidders do not already have and will not be able before 18 June to have, these land





plots identified or signed up. That will be a major differentiator, particularly because within Myanmar it is difficult to travel right now (few flights, travel is allowed but risk of 2 weeks isolation imposed), and foreign travel is entirely banned. Most bidders will need to rely on a local relationship to make this happen. Our firm is already feverishly connecting stakeholders and assisting clients with land document reviews.

### **Which land plot will result in a stronger bid?**

There are a few factors to consider. Of course, the distance to the substation (the T-line is paid for by the sponsors, not by the Government) and the cost price of the main facility land are important factors that might jack up the tariff, rendering your bid uncompetitive.

In terms of regulatory factors, I would first also consider the type of land of the main facility. You will have only 6 months from the award of the bid to COD and in this time you will, among other things, need to obtain the land right approvals and land conversions. Some types of land are easier to convert than other types of land, so I would prefer among the likely land types in these rural areas, Non-Paddy Farmland, for example.

With respect to the T-Line, the RFP does

not state that the route or the right of way needs to be stated in the bids, but I would actually recommend to do that anyway. You are not allowed to place transmission towers everywhere, so that requires a look from the regulatory side as well.

### **The credentials to qualify**

Another factor that will likely eliminate a lot of potential bidders is the required credential package. Bidders, or the bidding consortium must have US\$20 Million average turnover per year in its audited financial statements per project. So, if you bid for 3 30MW sites, you will need US\$60 Million average turnover. This may be divided over the maximum 3 consortium members, if there is a consortium, but the lead must have at least 50% of that requirement.

The bidder or at least one consortium member must also have technical experience with at least 3 generation projects in the past 10 year, at least one of which being a solar project. This does not seem so onerous.

### **How low can you go**

The tariff will be the only selection term for those projects that technically qualify. Minimizing cost on the EPC, the financing, the land will be essential to have a highly competitive tariff, obviously.

### **Who is best placed to win?**

This tender is not for everybody. Winning bidders will have to start construction immediately after being awarded, without a signed PPA for at least some time. This has, unfortunately, become a feature of several power projects in Myanmar. Another risky feature is the need for shortcuts and exceptions you may or may not get when it comes to land approvals and the environmental permits. Not everyone will be willing to bet that it will all go well. And project financing will most likely have to wait until after the construction has been largely completed. On the other hand vendor financing by the EPC provider has been done before in Myanmar solar projects.

A number of bidders will do well in this tender. Bidders who have already been working on a project, and who are in a position to integrate their project in this tender in terms of size and substation will have a nearly insurmountable edge over many others. But even those early birds will likely have to run the numbers again to take into account the increased competition and different scale. The next group of bidders that will do well is those with a deep network of local relationships. Those are namely the best placed to find the required land quickly enough, which is the single most important stumbling block.





VDB Loi is highly regarded for its exceptional experience in Myanmar's energy and infrastructure space. The firm represents well known sponsors and other stakeholders on the majority of IPP projects in the country, comprising multibillion US\$ LNG/gas to Power projects, over 2 Gig in hydropower projects, and nearly 1 Gig in solar and other renewable projects. VDB Loi helped draft the new official model PPA, helps the authorities design a new regulatory framework for sovereign guarantees and previously privatized state owned enterprises in the energy sector for the Government.

### How can VDB Loi help you in connection with this solar tender?

#### Pre-Award:

- We can help with the origination of suitable land for the project
- Our team carries out land due diligence
- We advise on Myanmar laws, permits and taxes, PPA provisions, etc.
- We can provide feedback on your draft bid to help improve its attractiveness
- Our team in Nay Pyi Taw can meet with authorities, do the physical submission

#### Post-Award:

- Assistance finalizing all Government project documents, mainly the PPA
- Draft and negotiate EPC contracts, advise on mitigate unnecessary taxes
- Prepare submission for MIC, full service up to secure MIC Permit
- Project company incorporation
- Permitting: import licenses, construction permits, etc.
- Environmental approvals
- Land conversion, final land lease agreement, all land permitting
- Comprehensive legal service in connection with the financing including drafting and negotiating loan and security documents, security registration, foreign exchange permitting, etc.



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