

On 1 December 2020, Cambodia's public utility the Electricité du Cambodge ("EDC") launched a tender for the second phase of its National Solar Park project. The first phase, 60MW, had been won by Prime Road Alternative of Thailand after a competitive tender in 2019.

AUTHOR



Edwin Vanderbruggen
Senior Partner

Edwin has 30 years of experience as a legal adviser, academic, author, and government consultant, and has worked in Southeast Asia for nearly his entire career. He has vast experience advising sponsors, IFIs, oil and gas supermajors, independent power producers, and other multinational enterprises on multibillion dollar energy and infrastructure projects, M&As, and financing transactions. Edwin's experience in Cambodia is wide-ranging and has involved many precedent-setting matters, including a bank merger, the acquisition of a market leading telecom infrastructure company and several high profile energy projects, including the first internationally financed solar project in Cambodia at Bavet, and Phase 1 of the National Solar Project.

WHAT IS DIFFERENT ABOUT CAMBODIA'S NEW SOLAR PROJECT TENDER?

On 1 December 2020, Cambodia's public utility the Electricité du Cambodge ("EDC") launched a tender for the second phase of its National Solar Park project. The first phase, 60MW, had been won by Prime Road Alternative of Thailand after a competitive tender in 2019. The second, 40 MW phase is now on the table, and bids are expected not later than 17 February 2021. The National Solar Park is an Asian Development Bank ("ADB") supported project in the Cambodian province of Kampong Chhnang, a few hours driving from the capital Phnom Penh. Going back to 2018, feasibility and environmental studies have been made in preparation of the project. A large part of the land, nearly everything really, has already been acquired by EDC. In this contribution, we analyze the tender and the project's Phase II, drawing on lessons from Phase I, and discuss some interesting features.

Prime Road is the one to watch, but anything can happen

The EDC broke records for one of the lowest tariffs ever back in 2020, when it officially awarded the bid for Phase I to Thailand's Prime Road Alternative, a group listed on the Stock Exchange of Thailand since 2005. The 60 MW first phase has approximately 9 months after signing the Power Purchase Agreement ("PPA") to commence construction,

Highlights of this note

- ▶ Prime Road is the one to watch, but anything can happen
- ▶ The pre-qualification conditions are not so difficult, and there are no local content or ownership requirements
- ▶ The Cambodian PPA is bankable, and is attractive in the region
- ▶ Comparison between Myanmar and Cambodia Solar PPAs
- ▶ The land acquisition is not going to be a problem
- ▶ How to manage the VAT in your bid?
- ▶ Construction deadlines in the COVID era
- ▶ My prediction

although some delays may be expected on the Government side for the project due to COVID-19. The first tender was, as is the present second tender, conducted with ADB advisory support.

Prime Road is definitely one of the favorites for Phase II, that is clear. The fast-moving power player was able to come up with a highly competitive proposal in 2019, beating a field of experienced and large competitors. Since then, the Stock Exchange of Thailand (“SET”) listed group has gone from strength to strength, at one point nearly tripling its market capitalization during 2020, and posting quarterly results with a 50% jump in revenue.

But the numbers game is unrelenting, and the opening of the financial envelope is a harsh and cold test. All it takes is for one qualifying competitor to dip slightly below the offer of a favorite as Prime Road to catch the prize. I believe a large part of the developer field was taken by surprise by Prime Road’s exceptionally low tariff back in 2019. They will not make the same mistake twice. As there are certainly economies of scale Prime Road can count on should it become the developer for both Phases, I believe some competitors will lean in hard, and go the extra mile to deny the vibrant Thai company a second and decisive win. That is, assuming that Prime Road will in fact bid for Phase II, who knows?

Other talked about names for this tender are Sunseap and Schneitec. The Singaporean company Sunseap is a major player in the region, and was able to win the tender for a 10 MW solar project in Bavet, Cambodia. The project also secured financing from ADB. The well-financed Temasek-backed renewable power specialist has taken advantage of several expansion possibilities outside of Singapore, and Phase II is a relatively rare opportunity for an international competitive tender in Cambodia, a context where Sunseap might do better than with lesser known directly negotiated projects.

Schneitec is, according to the ADB, “a Cambodian solar developer and major distributor of Schneider solar products in Cambodia”. The company was able to launch a large number of solar projects in Cambodia, perhaps with different partners, including a 80MW project in Kampong Speu,

which recently went into operation, a 30 MW project in Pursat and a 60 MW project in Kampong Chhnang. The group also owns 49% in the Bavet 10 MW project mentioned above, which received ADB financing.

If the recent Myanmar solar tender is anything to go by, interest will be massive in 2020. Myanmar tendered a series of 30MW and 40MW projects, totaling 1 GW. As I commented elsewhere, interest in the Myanmar tender was high, some projects receiving five, seven or even nine bids per site. In total 150 bids were submitted for 30 sites. It can be expected that many of the successful bidders for Myanmar’s tender, such as CMEC and Sungrow, as well as those who missed their prize there, may take a shot at Phase II in Cambodia.

The pre-qualification conditions are not so difficult, and there are no local content or ownership requirements

The relatively low bar for admission to submit a bid is one reason why we think competition will be fierce. The Phase II tender has pre-qualification conditions, but not an actual pre-qualification round. That is to say, bidders prepare a “pre-qualification proposal” as envelope I for their proposal. If the conditions are indeed met, the technical evaluation will be done, and eventually the financial proposal will be opened.

The pre-qualification conditions exist for experience and for financial strength. The experience requirement is for development of power facilities of a certain size, but that size is quite a bit smaller than the 40MW which is on the table. Plus, perhaps more importantly, the condition need not be fulfilled by the developer or the consortium itself, but may also be met through the assigned EPC provider. This is a significant flexibility which is granted, allowing also mostly financial players or holding companies to meet the condition.

Cambodia is a fairly open economy for foreign investment. A power producing company may be fully foreign-owned, without local shareholders. Furthermore, Cambodian PPAs rarely contain any local content requirements.

The Cambodian PPA is bankable, and is attractive in the region

Cambodia has used what we may consider its model solar PPA since the 2016 Bavet solar project, which was supported and financed by ADB. The PPA is on a “take-or-pay”- basis, all electricity will be purchased by EDC. There is an annual minimum generation the developer needs to commit too, and penalties for shortfall. There are also payments for “deemed energy” in case of certain Force Majeure (“FM”) events



or certain risks not caused by the developer. There are termination payments that cover the senior debt (and sometimes equity) in various termination scenarios. The usual protections for change in law is provided, as well as international arbitration and sovereign immunity waiver.

The tariff is denominated and paid in US\$, but EDC reserves the right to pay up to 12% in Cambodian local currency, Riel. By the way, Cambodia is largely a dollarized economy. The PPA uses a flat tariff, as was also asked in the Myanmar tender. This certainly makes comparing tariffs easier.

The Cambodian PPA is in my personal view compacter, easier to manage than the Myanmar PPA used in its tender. It is shorter, more to the point, but everything you need is there. After all, this PPA has been financed by the ADB before, so in and of itself it should not present any major challenges.

Comparison between Myanmar and Cambodia Solar PPAs

Issue	Cambodia	Myanmar
Take or pay?	Yes	Yes, with free excess energy
Tariff currency	In US\$, 88% paid in US\$, maximum 12% paid in Cambodia Riel	In US\$, but paid in Myanmar Kyat
PPA term	20 years	20 years
Payments in case of curtailment	Deemed energy payments only in case of EDC Risk Event or Cambodia Political FM, not for non-Cambodia FM or Natural FM.	Deemed energy payments for Government Force Majeure and FM affecting the offtaker, not for FM affecting the generator
Minimum generation requirement	Yes	Yes
Extension of the Scheduled COD	Yes, in case of FM, EDC Risk Event or Emergency	Yes, in case of FM (including Governmental Force Majeure)
Termination payment	EDC has the option to purchase and thus make payment in case of Company EOD, at least at amount of commercial debt. In case of EDC EOD, Political FM, etc, this is an obligation. No termination payment in case of Natural FM.	EPGE does not have the obligation to purchase the project in case of early termination, and will make energy for a duration depending on the cause of termination, and only in case of offtaker default, FM affecting the offtaker or Governmental Force Majeure
Change in Law protection	Yes, with a materiality threshold of USD400,000 for increase in costs	Yes, with a materiality threshold of USD250,000 for increase in costs
Change in tax protection	Contained in general change in law provisions	Contained in general change in law provisions
Concession agreement with government	Yes	No
Sovereign guarantee	No	No
Direct agreement for lenders	Yes	No
Foreign arbitration	Yes, SIAC	Yes, UNCITRAL
Sovereign immunity waiver	Yes	No
Protection in case of privatization of offtaker	No	Yes
Governing law	Cambodian law, supplemented by English law.	Myanmar law.
Land	Provided by EDC	To be found and paid by Company

The land acquisition is not going to be a problem

The EDC has been acquiring land for the National Solar Park since 2016. The general vicinity of the site is well settled, but there are no actual final coordinates in the RFP just yet. That is because some plots are still in process. EDC is not acquiring the land on a compulsory basis but, as ADB puts it, through “willing seller-willing buyer”. This requires negotiation and there is always the possibility for a hold-out land owner in such scenarios, hoping to cash in because he is the last hurdle to the project. EDC keeps flexibility in the final delineation, including for that reason. It may be necessary to go 100 meters to the south or 50 meters to the west, for example.

In my experience with Phase I, this does not cause significant delays, but there are nevertheless some challenges associated with somewhat delayed paperwork due

to titles being acquired or converted later. In Cambodia, the project company will be given one big lease of land by EDC, and that is in terms of process only possible after merging all land sites into one big title. This consolidation can only start once the last title has been acquired, so there is a bottleneck.

This stands in sharp contrast to solar projects where the developer has to find, acquire and convert his own land largely without the help of the utility. This was for example the case in Myanmar’s tender, which nevertheless resulted in record-low tariffs and major competition.

How to manage the VAT in your bid?

Selling electricity is exempt from VAT in Cambodia, so when an IPP generates electricity and sells it to EDC under a PPA, it may not charge EDC any VAT. That is fine, but that also means that the IPP cannot offset any VAT that is charged by its suppliers,

chiefly the EPC provider, with any output VAT as normally happens in a VAT system. In other words, any VAT that the EPC provider charges to the IPP, will have to be basically absorbed by the IPP. In the end, of course, this will be found in the tariff to EDC anyway. But, here is what will be a differentiator between bidders: how much VAT will you assume the EPC provider will be charging you? Or for that matter, how much withholding tax (a 14% or 10% income tax deduction that applies to certain services).

The tax assumptions could mean life or death for a financial proposal. With VAT at 10% and withholding tax at 14% or 10%, applying those taxes to the cost of the plant has a significant and likely even determining impact on the tender outcome.

The tender information states that tax holidays as per law will be provided, but leaves considerable uncertainty, particularly with when



it comes to the VAT and withholding tax, which are not mentioned in Cambodia's laws setting out the tax incentives for investment projects. It is less wellknown that, in certain circumstances, the EPC and the IPP can receive a VAT exemption from the Government. But, can you count on that when you make your bid? This uncertainty, the amount of taxes you are going to include, is one of the hurdles that bidders must scale in this tender.

Construction deadlines in the COVID era

The Cambodia PPA's timetable is tight, but not unreasonable. From the signing of the project documents including the PPA, the company has 9 months to obtain its investment license, its generation license, environmental permits and to close with its lenders. The COD should be within 18 months from the execution of the PPA, but that period can be extended for various reasons, including Force Majeure events, or events that are due to EDC itself. An epidemic is already recognized in the text of the PPA as an example of a "natural force majeure event".

Impact of COVID on the construction of infrastructure in Cambodia is noticeable, but not severe. At the

time of writing, numbers of infected persons are relatively low, not exceeding double digits for many months. Government offices, banks and retail continue to be open and the country remains reachable for international travel, with several flights arriving per day. Arrivals are however subject to several COVID tests, and a 2 week quarantine period.

My prediction

This will be a heavily fought battle. I predict there will be more than 10 qualifying bids received by EDC for this 40 MW project, only slightly dampened by the holiday periods in "the West". More than half of these will be strong bids from Chinese companies. Spurred on by increased optimism with a vaccine on the horizon, and enticed by a well prepared, land-ready project with a bankable PPA and without a major foreign exchange risk, I expect bidders will try to reach or stay close to a target of 4 US\$ cents, or somewhat above. A few bidders will be able to go well below this magic threshold number while still making money, and chances are they will walk away with Phase II.

CONTACTS

MYANMAR



Charles Magdelaine
Counsel
charles.magdelaine@vdb-loi.com

CAMBODIA



Mariza Ung
Senior Associate
mariza.ung@vdb-loi.com

PHNOM PENH

No. 33, Street 294 (corner of Street 29), Sangkat Tonle Bassac
Khan Chamkarmorn, Phnom Penh 120101
T: +855 23 964 430~434
F: +855 23 964 154

YANGON

Level 10, Unit 01-05, Junction City Office Tower,
Corner of Bogyoke Aung San Road and 27th Street,
Pabedan Township
T +951 9253752~756
F: +951 9253758

NAY PYI TAW

Nilar #2, Business Center, Park Royal Hotel Nay Pyi Taw,
Jade Villa no. 13/14 Hotel Zone,
Dekhina Thiri Township
T: +95 678 106089
F: +95 678 108 092