

República de Colombia



RESOLUTION NUMBER (XXXX-2022) MD-DIMAR XX XXXXXXX 2022

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“Whereby it is defined the competitive process for the granting of the Temporary Occupation Permit over maritime areas for the development of offshore wind energy generation projects, calls for their execution and other provisions are enacted”

THE MINISTER OF MINES AND ENERGY

In use of its legal powers and in particular the provisions of paragraphs 6 and 9 of Article 59 of Law 489 of 1998, paragraphs 1, 4 and 5 of Article 2 and paragraph 1 of Article 5 of Decree 381 of 2012

and

THE MARITIME GENERAL DIRECTOR

In use of its legal powers and in particular as set forth in paragraphs 2, 21 and 29 of Article 5 of Decree Law 2324 of 1984

CONSIDERING

In accordance with the second paragraph of Article 209 of the National Constitution, the administrative authorities shall coordinate their actions for the proper fulfillment of the purposes of the State.

That Law 489 of 1998, article 6, provided:

Principle of coordination. By virtue of the principle of coordination and collaboration, the administrative authorities must ensure harmony in the exercise of their respective functions in order to achieve the purposes and tasks of the State.

Accordingly, they shall cooperate with other entities to facilitate the exercise of their functions and shall refrain from impeding or hindering the performance of their duties by the organs, units, agencies and entities in charge”

That article 59, ibidem, states in paragraphs 6 and 9 that the following shall be functions of the Ministries

6. To participate in the formulation of government policy on the issues that correspond to them and advance its execution.

9. To promote, in accordance with constitutional principles, the participation of private entities and individuals in the provision of services and activities related to its area of competence.

Article 4 of Law 143 of 1994 states:

The State, in relation to the electricity service, shall have the following objectives in the fulfillment of its functions:

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a) *To supply the community's electricity demand under economic and financial viability criteria, ensuring its coverage within a framework of rational and efficient use of the country's different energy resources;*

b) *Ensure efficient, safe and reliable operation of the sector's activities;*

c) *Maintain and operate its facilities preserving the integrity of people, property and the environment and maintaining the established levels of quality and safety.*

PARAGRAPH: *If the different economic agents wish to participate in the electricity activities, they must be subject to the fulfillment of the above objectives.*

That Article 85, *ibidem*, indicates:

Investment decisions in generation, interconnection, transmission and distribution of electric energy are the responsibility of those who undertake them, who assume the risks inherent in the execution and operation of the projects.

That Decree Law 2324 of 1984, reorganized the General Maritime and Port Directorate - DIMAR, as a dependency of the Ministry of Defense, attached to the Command of the National Navy, indicating in Article 2 its functions and attributions, indicating in numeral 21:

To regulate, authorize and control concessions and permits in the waters, low tide lands, beaches and other public use property in the areas under its jurisdiction.

That Law 1715 of 2014 established in Article 6, paragraph e, that the following shall be the competence of the Ministry of Mines and Energy:

“e) To promote a low-carbon development of the energy sector through the promotion and development of non-conventional energy sources and energy efficiency.”

That Article 169 of Decree Law 2324 of 1984, modified by Article 65 of Decree Law 2106 of 2019, established the general requisites to be required in the concession's granting process carried out by DIMAR.

That Article 2 of Decree 0381 of 2012 assigns the Ministry of Mines and Energy the following functions:

“3. To formulate, adopt, direct and coordinate the policy regarding the generation, transmission, distribution and commercialization of electric energy.”

“4. To formulate, adopt, direct and coordinate the policy on the rational use of energy and the development of alternative energy sources (...).”

That, CONPES 4075 of 2022 related to Energy Transition, establishes that:

“The General Maritime Directorate, in conjunction with the Ministry of Mines and Energy, will define the rules and execute the mechanism that will allow the assignment of maritime areas for the development of offshore wind energy projects.”

That, in accordance with the above,

RESOLVE

Article 1. Object. The purpose of this resolution is to establish the rules, requirements and conditions that govern the competitive process for granting the Temporary Occupancy

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Permit, and subsequent Maritime Concession over Colombian maritime areas, for the development of offshore wind energy generation projects.

Article 2. Definitions. For the purposes of this resolution, in addition to the definitions contained in laws 142 and 143 of 1994 respectively, Law 1715 of 2014, and in Resolution 135 of 2018 issued by DIMAR, the following shall be taken into account:

Competitive Process Administrator o Administrator: It shall be the DIMAR, or the third party designated by DIMAR in accordance with Article 3 of this resolution.

Submarine cable: Element made up of conductor(s) and other materials, through which the electrical energy generated by the project is transported from its marine substation or common coupling point, to the National Interconnected System - SIN or to the load center associated with the connection permit granted to the project.

Maritime Concession or Concession: Administrative act issued by DIMAR, by means of which the use and enjoyment of a maritime public use property is granted in favor of a determined person to develop a project or activity.

S-curve for the Temporary Occupancy Permit Stage: Graphical representation of the accumulated progress of the activities during the term of the Temporary Occupancy Permit as a function of time, which allows comparing the actual progress with the progress planned in the schedule, with the purpose of establishing project deviations and taking timely corrective actions. It shows on the ordinate the estimated percentage of progress during the execution time and on the abscissa the elapsed time. Contains, among others, the date of application for the maritime concession.

S-Curve for the Maritime Concession Stage: Graphical representation of the accumulated progress of the activities of the construction stage during the maritime concession as a function of time, which allows comparing the actual progress with the progress planned in the schedule, with the purpose of establishing deviations and taking timely corrective actions. It shows on the ordinate the estimated percentage of progress during the execution time and on the abscissa the elapsed time. Contains, among others, the commissioning date and, if required, the connection of the generation project to the national or regional transmission grid, as the case may be.

Decommissioning: Total or partial decommissioning or removal of equipment and elements that are or were part of the offshore wind energy generation project, in order to free the area that was under concession from constructions and elements. The above, under the environmental, social and safety guidelines provided by Colombian regulations.

Offshore wind energy: Energy obtained from that non-conventional source of renewable energy that consists of the movement of air masses captured by wind turbines located in offshore areas.

Fixed offshore wind foundation: A type of foundation in which wind generation equipment is anchored directly to the seabed or sea floor by means of monopiles, concrete platforms, tripods or anchor points as a single underwater structure.

Floating offshore wind foundation: Type of structure in which the wind generation equipment is stabilized on the surface by means of floating systems that do not form a single solid anchoring structure between the generation equipment and the seabed.

Commissioning date – (FPO): Date on which the project must start generating electricity according to its S curve.

Temporary Occupancy Permit or Permit: Administrative act issued by DIMAR in which the successful bidder is granted exclusivity over a certain area for the development of the activities listed in Article 5 of this resolution.

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The Specific Bidding Documents and Bases of Conditions: Specific terms and conditions applicable to the round of allocation of maritime areas that will be established by the Administrator. These specific documents will contain the guidelines for the presentation and evaluation of proposals, requirements, schedule, among others.

The Specific Bidding Documents and Bases of Conditions must have the prior no objection of the DIMAR and the Ministry of Mines and Energy.

Offshore wind project bidder or Bidder: Legal entity or associative scheme of natural or legal person, which participates from the habilitation phase in the process of allocation of offshore areas for offshore wind energy generation.

Marine substation: Point of Common Coupling (*PCC*) that collects the power injection from the power generation units present in the offshore area and performs a voltage variation to transport the net energy produced by the generation project.

Article 3. Implementation. The DIMAR may implement the competitive process referred in this resolution or may designate a third party for its implementation and development.

The Administrator shall publish the Specific Bidding Documents and Bases of Conditions, which must include the prior no objection of the DIMAR and the Ministry of Mines and Energy, in accordance with the provisions of this resolution.

Paragraph. When the competitive process is executed by a third party, the DIMAR may establish the rules through which the Administrator can count on the necessary resources to cover the technical, legal and technological deployment of the implementation.

CHAPTER I

Competitive process for the allocation of the Temporary Occupancy Permit over offshore areas for the development of offshore wind energy

Article 4. Phases of the Competitive Process. The rounds to allot maritime areas for the development of offshore wind energy projects will be a competitive process for the selection of the awardee or awardees of the Temporary Occupancy Permit. The process will be developed in the following phases:

1. Publication of the bidding documents and conditions of the process.
2. Habilitation.
3. Nomination of areas.
4. Presentation of offers
5. Evaluation of offers and selection of the successful bidder.
6. Formal Awarding

CHAPTER II

Temporary Occupancy Permit and Maritime Concession

Article 5. Product of the competitive process - Temporary Occupancy Permit. The result of the competitive process will be the Temporary Occupancy Permit for the maritime areas. The DIMAR will formalize such Permit through an administrative act within 15 days following the award.

Temporary Occupancy Permit:

- a) It shall include the exact description of the location, boundaries and extension of the public use property granted, with the corresponding location plan.
- b) It will be only on the area that the bidder presented in the bid.
- c) It shall have a maximum term of five (5) years.
- d) Include the activities that the bidder will perform under the Temporary Occupancy Permit, which will be those related to the measurement and collection of data and information to establish the feasibility of the project and, if feasible, the activities

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necessary to obtain licenses and permits for the construction of the offshore wind energy generation project.

- e) Grant exclusivity over the area for the strict development of the activities described in the preceding paragraph, and for activities related to the generation of offshore wind energy.

Paragraph. Once the Temporary Occupancy Permit is granted by the DIMAR, those who require connection to the SIN, may be prioritized by the Mining and Energy Planning Unit - UPME, in accordance with the provisions of paragraph 2 of Article 4 of Resolution MME 4 0311 of 2020.

Article 6. Successful bidder’s obligations during the Temporary Occupancy Permit. The awarded bidder must comply with the following obligations during the term of the Temporary Occupancy Permit:

- a) Comply with the obligations established in the administrative act referred in Article 7 of this Resolution, regarding the Temporary Occupancy Permit.
- b) Provide the information or supports requested by the auditor to evidence the progress of the activities, according to the S-Curve and the schedule included in the bid referred in Article 18.
- c) To cover the costs of the follow-up audit of compliance with the Temporary Occupancy Permit referred to in Article 33 for the duration of the permit.
- d) To constitute and update the guarantee of compliance with the Temporary Occupancy Permit referred to in Article 30 of this resolution.
- e) Comply with the S-Curve and schedule offered.
- f) Pay the value of the procedure defined by DIMAR in application of Law 1115 of 2006.
- g) Comply with the other requirements established in the regulations in force.

Article 7. Temporary Occupancy Permit Contents. The DIMAR will establish the content of the administrative act that grants the Temporary Occupancy Permit and will publish it prior to the publication of the definitive bidding documents by the Administrator of the competitive process. This document shall contain, at least: the purpose of the permit, the successful bidder’s obligations, validity period, causes for revocation, conditions for the assignment of the Temporary Occupancy Permit in case of assignment or sale of the project, as well as the conditions for its modification.

Article 8. Relinquishment of Temporary Occupancy Permit. The successful bidder may relinquish the Temporary Occupancy Permit without penalties or execution of any guarantee, as long as he (i) demonstrates that the activities foreseen in the S-Curve and the schedule of the offer as of the date of waiver were fulfilled, and (ii) it submits a report explaining the technical or economic unfeasibility, not attributable to the successful bidder, which justifies the non-implementation of the project. In this situation, the successful bidder must hire an expert appraisal from a list to be established by the DIMAR, with the support of the Ministry of Mines and Energy, to verify the unfeasibility referred to, and the bidder must assume the cost of such appraisal.

Paragraph 1. The DIMAR will analyze the reasons and convenience of the request and, if it finds it reasonable, will accept the resignation by means of a reasoned administrative act, against which no appeal may be filed.

Paragraph 2. The awarded bidder who decides to resign must deliver to DIMAR the totality of the information collected during the time he held the Temporary Occupancy Permit, over which he will not retain any property right.

Article 9. Obtaining a Maritime Concession. The Temporary Occupancy Permit may become a Concession when the bidder, having complied with the terms and obligations of the Permit, applies for it, and presents it in a satisfactory manner to DIMAR, in accordance with the regulations governing the matter, the documentation, permits and licenses necessary for the construction of the project, which must include, at least:

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- a) Plans of the projected construction, drawn up by firms or persons authorized for this purpose, clearly indicating the coordinates of the totality of the areas to be requested, adopting the National Geocentric Reference Frame (MAGNA-SIRGAS) as the official Colombian datum.
- b) Technical studies of winds, tides, currents and bathymetry of the area of influence, taking into account the characteristics and technical conditions of the project.
- c) The environmental authorization applicable to the project, issued by the competent environmental authority.
- d) Certification on the presence or not of ethnic communities in the area of influence of the project, issued by the Directorate of the National Prior Consultation Authority of the Ministry of the Interior. In the presence of certified ethnic communities, proof of the exhaustion of the Prior Consultation must be attached.
- e) The performance guarantee associated with the term of the Maritime Concession.
- f) The decommissioning guarantee referred to in Article 32.
- g) Timeline and S-Curve for the maritime concession stage.

The application must be made no later than 6 months prior to the expiration of the maximum duration of the Temporary Occupancy Permit established in paragraph c) of Article 5. It must be accompanied by the concession application for the route of the Submarine Cable and Marine Substation, together with the permits and licenses applicable to them.

Article 10. Maritime Concession. The Maritime Concession granted by the DIMAR in accordance with the provisions of the preceding article, shall take into account the following:

1. The activities to be developed under the Maritime Concession will consist of those related to the construction, operation, maintenance and decommissioning of the project, as well as the activities necessary for the generation of electric power and interconnection to the National Transmission System, if required.
2. From the beginning of the term of the Maritime Concession, the successful bidder may request modification of the Concession, associated to the increase of its extension. The foregoing, taking into account that:
 - a. It may request it one or more times, as long as the total of the extensions requested does not exceed 50% of the originally concessioned area.
 - b. With the extension of the area, the bidder has the commitment to increase the MW to maintain, at a minimum, the density in MW/km² of the offer, in accordance with Article 18.
 - c. The eventual modification of the area is not part of the product awarded in this competitive process or of the rights acquired in the Concession, so its approval will be decided at the discretion of DIMAR, who must request a concept to the Ministry of Mines and Energy, under the conditions that they provide at the time the decision is communicated. The above is not covered by resources or justification by the mentioned entities.
3. The duration of the Concession is 30 years, which may have different extensions that do not exceed a total of 15 years.
4. In order to extend the Concession, the project auditor must issue a report on the maintenance performed on the project and its actual state, which supports that the project is in a condition to operate during the additional years. The request shall be made within 3 years prior to the expiration of the concession term.
5. The Maritime Concession may be revoked by DIMAR if the audits of the construction schedule and S-Curve show a delay of two years or more, not attributable to causes referred to in Article 12.

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6. DIMAR will follow up on the construction schedule and S-Curve of the project development.

Paragraph. The DIMAR will initiate a process of return of the areas if, upon completion of the Commissioning Date indicated in this resolution, the area that was awarded in this competitive process is not used for the generation of offshore wind energy by the awarded bidder.

Article 11. Obligations of the successful bidder during the Maritime Concession stage. The successful bidder to whom DIMAR grants a Concession in accordance with the provisions of Article 9, shall have the following obligations:

1. To comply with the obligations established in the Maritime Concession.
2. To cover the costs of the follow-up audit of compliance with the schedule and S-Curve according to the conditions described in Article 33, as well as the audit for the extension of the Concession.
3. To constitute and update, as required, the Concession Performance Bond and the Decommissioning Bond referred to in Chapter VI of this Resolution.
4. Comply with the S-Curve and schedule offered.
5. After 5 years from the beginning of the concession term, the developer shall deliver to DIMAR the information and measurements collected on the maritime area. The data collected, except for wind speed data, shall be in the public domain. The wind speed data will be in the public domain at the end of the Concession.

Article 12. Modification of the schedule and S-Curve. During the term of the Temporary Occupancy Permit or Concession, the successful bidder may request a modification of the project Schedule and S-Curve, in the following cases:

- a. Delays in obtaining permits, licenses or formalities necessary for the execution of the project, due to causes beyond the due diligence of the project executor.
- b. Force Majeure.
- c. Delays in the development of the project due to reasons of public order, accredited by the competent authority or entity.

The request must be submitted in writing to the Port Captainty that has granted the Temporary Occupancy Permit or the Maritime Concession. A copy of the request shall be sent to the auditor, who shall send to the Port Captainty his opinion on the modification request, so that a decision may be adopted within 30 working days following the remission of said opinion.

Article 13. Assignment of the Temporary Occupancy Permit or Maritime Concession. The Temporary Occupancy Permit or Maritime Concession may be assigned. For this purpose, the holder of the Permit or Concession shall submit an application to the DIMAR, in which it shall be accredited that the assignee:

- a) Fulfills the habilitation requirements to have participated in the competitive process.
- b) Complies with the characteristics that gave the assignor points for the award of the Temporary Occupancy Permit.
- c) It is a person empowered under Colombian law to acquire the respective obligations before the DIMAR.

If DIMAR finds it appropriate, based on the study of the documents and the qualities of the assignee, it shall authorize the assignment by means of an administrative act. The assignor shall keep in force the guarantees associated to the Temporary Occupancy Permit or Maritime Concession and shall be responsible for the compliance of such obligation until the guarantees to be granted by the assignee to DIMAR are accepted.

Article 14. Decommissioning Process. Two years prior to the end of the Concession, the bidder shall:

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- a) Inform DIMAR of the schedule for the decommissioning process and the decommissioning plan.
- b) Submit the environmental permits applicable to the decommissioning plan. It must be clearly indicated if, according to the environmental authorities, the decommissioning will be total or partial. The plan must be in accordance with DIMAR's demands and environmental requirements at the time, and the schedule must be approved by DIMAR.
- c) Submit the other permits necessary to dismantle the project, as long as an extension is not in force.

Upon completion of the decommissioning, DIMAR may carry out an inspection of the area to verify that the assets were decommissioned.

If the tenderer does not carry out the decommissioning in accordance with the plan submitted or does not submit such plan within the term provided, the DIMAR may execute the Decommissioning Guarantee referred to in Article 32 in order to take charge of this activity.

CAPÍTULO III Habilitation phase

Article 15. Qualifying requirements for bidders. Those who intend to participate in the assignment process defined in this resolution must prove compliance with the requirements set forth in this article, without prejudice to any other requirements that may be defined by the Administrator of the process.

The habilitation requirements may be corrected as long as the correction refers to information, but does not add missing documentation or information. The Administrator will define the correction period.

The Process Administrator will define the documents by means of which the Bidders must demonstrate compliance with the habilitation criteria.

Technical habilitation:

- a) Have participated in at least 3 of the following areas of development of an offshore wind energy project of at least 200 MW: i) planning, ii) design, iii) selection and contracting of suppliers, iv) implementation, or v) quality control.

This experience must be credited for a fully installed and operating project, anywhere in the world, that has complied with local requirements and has injected energy into the grid. These activities must have been carried out within the last 10 years.

- b) Have participated in at least 3 of the following areas of development of a substation connecting an offshore wind farm of at least 50MW: i) planning, ii) design, iii) selection and contracting of suppliers, iv) implementation, or v) quality control.
- c) To have an HSE certificate under an internationally recognized accreditation accepted in OECD countries.
- d) To have a risk management certificate under an internationally recognized accreditation accepted in OECD countries.

The above requirements must be met by at least one of the members of the Bidder in accordance with the percentage of participation of each of the members as defined by the Administrator.

Financial habilitation:

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- a) A credit quota or stand-by letter of credit for an amount equal to or greater than US\$600 million, accredited by a national or international financial institution that meets the eligibility requirements defined by the Administrator.

To verify this requirement, the Competitive Process Administrator may request audited financial statements and certificates of indebtedness issued by financial institutions, among others.

This requirement may be demonstrated by one of the members of the Bidder, in which case, the participation of this member may not be less than a percentage defined by the Administrator. In the event that this requirement is demonstrated cumulatively by several members of the Tenderer, the percentage of participation of each of the members shall be taken into account in accordance with the Administrator's definition.

- b) Credit rating of BBB- or higher, according to Standard & Poor's and Fitch rating, or Baa3 or higher, according to Moody's rating or an equivalent according to the rating of another internationally recognized firm. The member of the Bidder that accredits this requirement must have a minimum participation to be defined by the Manager.

All of the above can be demonstrated by certificates issued in Colombia or abroad by the competent authority or entity.

Legal habilitation:

The Administrator of the competitive process will define in the Bidding Documents and Specific Conditions, the additional legal information that will be required for the legal habilitation of the Bidders. In any case, it shall be at least:

- a) Certificate of Existence and Legal Representation of the Bidder or, if it is a foreign person, the equivalent document demonstrating its existence and indicating the name of its legal representative. The duration of the Bidder must be at least equal to the duration of the Concession and up to three more years.
- b) In case of associative scheme, documents of incorporation of the associative scheme.
- c) In the case of a promise of future company, a document of promise of incorporation prior to the granting of the Temporary Occupancy Permit, with a duration of at least the term of the Concession and up to three more years.
- d) Certificate stating that the Bidder or one of its members is domiciled in Colombia.
- e) Sworn statement of the economic ties of the Bidder and its members, showing the control situations.

The Administrator will verify the information submitted in the habilitation phase, and the result will be an opinion of COMPLIANCE or NOT COMPLIANCE. Those who comply with the habilitation requirements may participate in the bid submission phase.

CHAPTER IV
Nomination of areas

Article 16. Nomination of areas. The bidder that has passed the habilitation stage, may propose a new area, different from those defined by DIMAR, for the development of its offshore wind energy project. Such area may not exceed 270 km².

The proposal must include an exact description of the location, boundaries and extension of the nominated area, with its corresponding location plan. It must also include a list of possible overlaps with other activities developed in the marine environment and this new area may not overlap with natural reserves or areas of special protection. The corresponding certificates or concepts issued by the competent authorities must be attached to this list.

Article 17. Assessment of nominated areas. DIMAR will evaluate the nominated areas and determine which are suitable for the development of offshore wind energy projects

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and will inform only the bidder that nominated an area whether that area is suitable for the development of offshore wind energy projects.

CHAPTER V Bid submission phase

Article 18. Technical conditions of the bids submitted. The bids submitted by the bidders that comply with the habilitation referred to in Article 15 of this resolution, shall comply, as a minimum, with the following conditions:

- a) The bidder may submit 1 bid for each available area.
- b) Present the exact description of the location, boundaries and extension of the public use property requested, with the corresponding location plan.
- c) Indicate the installed capacity in MW, which must be at least 200 MW.
- d) Indicate the density in megawatts per square kilometer MW/ km², which must be at least 3 MW/km².
- e) Indicate the Date of Commissioning, which shall comply with the provisions of Article 37 b).
- f) Include the detailed schedule of activities and S-curve to be developed during the Temporary Occupancy Permit.
- g) Letter of presentation of the offer signed by the legal representative of the Bidder or by the duly authorized attorney-in-fact. It shall indicate that the offer is irrevocable and that it shall be valid for the time determined by the Administrator. In addition, the letter of presentation must expressly state the acceptance of the Bidding Documents and Specific Conditions of the process. Likewise, the Bidders must expressly state that the technical information of the projects does not correspond to fraudulent or speculative information.
- h) Submit the bid bond in accordance with the provisions set forth in Article 29.
- i) To submit the information that meets the qualification criteria mentioned in Article 22.

In addition, the proposer shall submit the following information, which shall not be binding if the proposer is awarded the contract:

- a) Declare the power per turbine and the technology to be used (example: fixed, floating or other wind structure).
- b) Estimate the capacity factor in terms of annual average.
- c) Identify at least one alternative route for the submarine cable and location of the marine substation.

Article 19. Corrections. All the elements of the proposal may be corrected. The correction cannot add information or documentation that is missing or has not been submitted in the initial bid.

The Process Administrator shall establish the deadline and the dates by which it will be possible for the bidders to make corrections, and in no case will information be received after this deadline.

Article 20. Modification to the bidder's sharing structure. The Administrator shall establish the modalities of associative schemes under which the Bidders may participate in the competitive process. Likewise, it shall define rules that safeguard the process and compliance with the habilitation and qualification requirements, in case of modification in the Bidders sharing structure.

CAPÍTULO VI Qualification and awarding phase

Article 21. Qualification. The proposals received will be scored according to the criteria defined in Article 22, assigning maritime areas to a maximum of 2 projects with the highest score.

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Article 22. Qualification criteria.

i	Criteria	Qualification unit	Weight
1	Number of offshore wind projects for which it has done measurements, design and structuring. The minimum size of the projects to accredit this experience must be 200MW.	Points 1 to 10. The Tenderer with the highest number of projects will be awarded with 10 points and the Tenderer with the least experience will be awarded with 1 point. The score of the other bidders will be determined by linear approximation.	30%
2	Number of offshore wind projects for which it has executed the construction and operation. The minimum size of the projects to accredit this experience must be 200MW. This experience must be demonstrated for projects that have already started operation and have already generated the first kWh of energy.	Points 1 to 10. The Tenderer with the highest number of projects will be awarded with 10 points and the Tenderer with the least experience will be awarded with 1 point. The score of the other bidders will be determined by linear approximation.	40%
3	Demonstration of experience in construction and/or operation of electric power transmission or NCRE generation projects in emerging markets (that have joined the OECD as of 2010 or that are not members of the OECD). The projects for which the experience is accredited must already be in operation.	Experience not demonstrated: 0 points Experience demonstrated: 5 points If the experience is in Colombia: 10 points	15%
4	Maximization of the installed capacity in the offered area, according to the minimum technical conditions (MW offered).	Points 1 to 10. The Tenderer with the highest number of projects will be awarded with 10 points, and the Tenderer with the least experience will be awarded with 1 point. The score of the other bidders will be determined by linear approximation.	15%

Paragraph: Failure to submit information for the evaluation of one of these criteria, will result in a score of 0 in the evaluation of such criterion. This information must be provided in addition to the information submitted during the habilitation phase, and its purpose will be to support the fulfillment of the qualification criteria according to the units of each of these criteria.

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For this evaluation, it is sufficient that one of the members of the bidder meets these requirements and has a percentage of participation that complies with the requirements established by the Administrator of the competitive process.

Article 23. Qualification formula. The score of each bid received that meets criterion 1 of Article 22 will be evaluated with the following formula:

$$Score = \sum_{i=1}^4 c_i * p_i$$

Where

c_i : score obtained by the bidder in the evaluation of criterion i

p_i : percentage of weighting applicable to criterion i

Article 24. Allocation of Temporary Occupancy Permits on nominated and suitable areas. In the event of any overlap between different nominated areas, the Administrator will award the bidder with the highest score in accordance with the provisions of this resolution.

The Temporary Occupancy Permit on those nominated areas that do not overlap among them, shall be assigned to the bidder that nominated them, as indicated in Article 27.

Article 25. Rejection of bids and declaration of a void process. The following shall be grounds for rejection of bids:

- a) Failure to submit the bid guarantee.
- b) Failure to comply with or correct any of the minimum conditions of the proposal established in Article 18.
- c) Failure to provide non-binding information requested in Article 18.
- d) The participation of a natural or legal person in more than one Tenderer. In this case, the proposals of the Tenderers to which it belongs will be rejected.

The non-existence of a habilitated Bidder or the non submission of bids shall be grounds for declaring the process void.

Article 26. Tie-breaking criteria. In the event of a tie in the total score obtained by 2 or more Bidders, the first tie-breaking criterion will be applied, consisting on granting the right to obtain the Temporary Occupation Permit to the one that has offered the highest installed capacity.

In the event that the installed capacity offered by the Tenderers that present a tie in their qualification is equal, the Administrator will apply the second tie-breaking criterion, consisting on the drawing of lots with ballots, with the Tenderer with the highest number of ballots being the one with the right to be awarded.

Article 27. Formalization of the Temporary Occupancy Permit. The awarded Bidder shall deliver the Performance guarantee referred to in Article 30 no later than 20 working days after the award.

In the event that the successful bidder does not deliver the Performance guarantee within this term, the Temporary Occupation Permit will be awarded to the next bidder in order of eligibility who has complied with the requirements of the bid and the evaluation. If there is no other bidder, the process will be declared void.

CHAPTER VII Guarantees

Article 28. Requirements. The guarantees established in this resolution must cover the Nation for all the concepts arising within the competitive process to be borne by the

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participants and must be issued by an entity authorized to do so, which should be domiciled in Colombia.

Article 29. Bid Guarantee. The promoter must submit a bid guarantee or bid policy issued by a financial institution authorized for this purpose.

- a) The Nation - Ministry of National Defense - DIMAR must be listed as beneficiary.
- b) The value of the guarantee or policy shall be defined by the Administrator in the bidding documents.
- c) It must be in force uninterruptedly from the date of submission of the bid until 1 month after the maximum date for submission of the Performance guarantee for the Temporary Occupation Permit.
- d) Other requirements and demands shall be established by the Administrator.

The Bid guarantee will be executed in the following events:

- a) If the awarded Tenderer revokes the offer or intends to unilaterally modify the conditions defined in this resolution.
- b) When the future company promised in the habilitation phase is not incorporated.
- c) When, after all procedures have been exhausted, the awarded bidder does not submit the Performance guarantee for the Temporary Occupation Permit.

Article 30. Temporary Occupation Permit Performance Guarantee. The successful Bidder shall deliver a Performance guarantee in favor of the Nation -Ministry of National Defense - DIMAR- for the obligations acquired in the Temporary Occupation Permit. The obligations covered by this guarantee include compliance with the activities and schedule in accordance with the offer submitted.

The amount and term will be those established by DIMAR.

The guarantee of compliance with the Temporary Occupation Permit will be executed in the following events:

- a) For the delay of more than 2 years in the S-curve and the schedule of the selected bid, either by the scope, characteristics and execution times of the activity, unless the delay is by virtue of the events referred to in Article 12.
- b) If the Bidder submitting the application for the maritime concession does not deliver the decommissioning guarantee and the Concession Performance guarantee within the established deadlines.
- c) Failure to comply with any of the obligations contained in the Temporary Occupation Permit.

Paragraph. The guarantee of compliance with the Temporary Occupation Permit shall cover the activity of submitting the concession application to DIMAR under all the obligations and the requirements set forth in Article 9 in the event that the Temporary Occupation Permit is not waived.

Article 31. Maritime Concession Performance Guarantee. The successful bidder shall deliver a Performance guarantee together with the maritime concession application, in accordance with the obligations acquired to obtain the maritime Concession with the characteristics defined in the marine Concession referred to in Article 10 of this resolution, in favor of the Nation - Ministry of National Defense - DIMAR -.

The obligations covered by this guarantee must comply with the activities and schedule of the project, in accordance with the bid submitted.

The amount and term will be those established by DIMAR.

The guarantee of performance of the concession will be executed in the following events:

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- a) For the delay of more than 2 years in the S-Curve of the Maritime Concession stage and the schedule of activities associated with the construction of the project, as well as all those that precede the commercial operation of the power generation project, either by the scope, characteristics and execution times of the activity, unless the delay is due to events referred to in Article 12, in which case it shall proceed in accordance with Article 13.
- b) If the Bidder applies for the maritime concession, due to the failure of the successful bidder to deliver the Decommissioning Guarantee and the Concession Performance Guarantee within the established deadlines.
- c) If, in the auditor's verifications, it is evidenced that the density (in MW/ Km²) or the installed capacity (in MW) offered is not complied with.
- d) Failure to comply with any of the obligations contained in the maritime Concession.

Article 32. Decommissioning Guarantee. The successful Bidder shall deliver a decommissioning guarantee in favor of the Nation - Ministry of National Defense - DIMAR - in order to cover the decommissioning and dismantling of the equipment and infrastructure associated with the project that was built in the assigned area, with the environmental permits applicable to this activity. The conditions and amount of this guarantee will be established in the administrative act of Concession.

This guarantee will be subscribed and requested at the time of formalizing the concession of the maritime area upon completion of the Temporary Occupancy Permit.

The amount and term will be those established by DIMAR.

The decommissioning guarantee will be executed in the following events:

- a) For partial or total non-compliance with the scope and schedule of the decommissioning plan submitted to the DIMAR.
- b) Failure to deliver or incomplete delivery of the documentation and information required by the competent authorities for the execution of the decommissioning, as well as failure to submit the plan to DIMAR.
- c) For the existence of damages caused by the decommissioning activities of the project.
- d) For other causes of noncompliance as defined by DIMAR.

Article 33. Follow-up and supervision. In accordance with the obligations assumed by the selected Bidder or Bidders, DIMAR will monitor the execution of activities to be carried out during the term of the Temporary Occupancy Permit, as well as during the term of the maritime concession.

The DIMAR will require audit reports that account for compliance with the milestones, activities and characteristics according to the S-curve and schedule presented in the offer for obtaining the temporary occupancy permit, as well as the S-curve and schedule presented for the formalization of the maritime concession.

These reports shall be made every 6 months, starting from the date the Temporary Occupancy Permit is signed, and until the Start-Up Date of the project associated to the assigned Concession.

The variations and eventual non-compliance with these obligations, after an administrative sanctioning procedure, may give rise to fines, penalties, and the revocation of the Temporary Occupancy Permit or of the Concession itself, according to the terms of the corresponding administrative acts and of the guarantees subscribed.

Likewise, in the FPO, the audit must report the density in MW/km² and the installed capacity, to verify that these values are, at least, the values offered.

The auditors for both the duration of the Temporary Occupancy Permit and the Concession will be selected by DIMAR and the cost of the audits will be covered by the awarded Bidder.

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The Temporary Occupancy Permit may be revoked by DIMAR if the audits of the S-Curve and the schedule show a delay of 2 years or more not attributable to the causes established in Article 12 that affect the development of the project. Likewise, the Temporary Occupancy Permit or the Concession may be revoked if the awardee does not comply with the obligations established in Article 6 and Article 11 respectively.

CHAPTER VIII

Organization of the competitive process

Article 34. Responsibilities and Duties of the Competitive Process Administrator.

The Competitive Process Administrator shall have, among others, the following obligations with respect to the organization of the Competitive Process:

- a) Prepare, in the event that the DIMAR does not do so, the The Specific Bidding Documents and Bases of Conditions of the competitive process in spanish, as the official language, and in english.
- b) Stablish, operate and maintain the electronic system for the organization and management of the competitive process, which will allow the phases of habilitation, qualification, presentation of bids and awarding, as well as the exchange of communications between the Competitive Process Administrator and the Bidders.
- c) Keep historical records in electronic media of all the operations carried out in the development of the process, in accordance with the legal provisions in force regarding the conservation of documents.
- d) Deliver to the Ministry of Mines and Energy and the DIMAR all the records and information resulting from the competitive process within 15 days following the selection of the successful bidder(s) of the competitive process.
- e) Offer and provide the necessary training and assistance to all agents in the handling and operation of the system for the organization and management of the competitive process.
- f) Inform the competent authorities of any situation that may be considered irregular that may arise in the competitive process, without prejudice to the functions attributed to the Auditor.
- g) Contract the Process Auditor at least 15 days prior to the date scheduled for the habilitation phase. The costs of the audit shall be assumed by the Competitive Process Administrator.
- h) Suspend the competitive process when required by the Auditor of the process in accordance with the provisions contained in this resolution.
- i) Inform the Tenderers that participated in the habilitation phase of their results.
- j) Declare the closing of the competitive process and inform the Bidders that submitted bids.
- k) Publish on its web page: the Tenderers, the areas and the capacities associated with these, which have been awarded.
- l) All the information resulting from the competitive process, the documentary and technological production generated in the same is the property and domain of the Nation - Ministry of Defense - DIMAR.
- m) Submit to the Ministry of Mines and Energy and the DIMAR a report, within 10 days after the end of the process, in which it evaluates, in a complete and detailed manner, the awarding of the competitive process and the results obtained.
- n) To administer the bid guarantees.
- o) The Competitive Process Administrator shall prepare the documents deemed necessary to carry out the activities entrusted, which must be submitted to the Ministry of Mines and Energy and DIMAR for their non-objection, prior to the publication of the documents.

Article 35. Responsibilities and Duties of the Competitive Process Auditor. The Competitive Process Auditor shall be a natural or legal person with recognized experience in auditing processes, who shall be in charge of the following responsibilities:

- a) Verify the correct application of the regulations in force for the development of the competitive process.

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- b) Verify that communications between the participating agents and the Competitive Process Administrator are carried out solely and exclusively through the formal communication channels established by the latter.
- c) Verify that the steps and rules established in this resolution are expressly followed during the competitive process.
- d) To request the Competitive Process Administrator to suspend the Competitive Process when it considers that there is non-compliance with the provisions contained in the regulations in force.
- e) Submit to the Ministry of Mines and Energy and to the DIMAR, within 5 days following the day of the awarding process, a report establishing, in a complete and detailed manner, the compliance or non-compliance with the regulations in force in said process.
- f) In those cases in which the auditor establishes that the competitive process did not comply with the requirements set forth in this resolution, the process carried out shall not be effective. The foregoing, without prejudice to the criminal and/or civil actions and administrative proceedings that may be applicable for non-compliance with the requirements of this resolution.

Article 36. System for the organization and management of the competitive process.

The communication, delivery of documents and information as part of this Competitive Process will be carried out by digital means. The Administrator of the Competitive Process shall define the minimum requirements that the technological platform required to carry out the Competitive Process must comply with. Likewise, the Administrator shall define the contingency mechanisms associated with the possible problems that the above mentioned system may present.

CHAPTER IX

First round of areas assignment

Article 37. Call for the competitive process. DIMAR, in coordination with the Ministry of Mines and Energy, calls for the first round of allocation of Temporary Occupancy Permits for the areas referred to in Annex 1 of this resolution, and those proposed by interested parties. Offshore wind energy projects for this round must have the following characteristics:

- a) Installed capacity equal to or greater than 200 MW.
- b) Commissioning date of maximum 7 years from the effective date of the Temporary Occupancy Permit.

Article 38. Deadline for the first competitive process. For the first round, the Administrator will award the Temporary Occupancy Permits referred to in this resolution, within 8 months after the entry into force of this resolution.

CHAPTER X

Other provisions

Article 39. Other Provisions. Once this joint resolution becomes final, DIMAR will proceed to repeal the regulations applicable to the maritime concession process, especially Resolution 794 of 2020, and will establish, if appropriate, a transition regime for those applications that have obtained pre-feasibility during its validity. All of the above, as the entity in charge of the direction, coordination and control of maritime activities, in accordance with Article 4 of Decree Law 2324 of 1984.

Article 40. Validity. This resolution is effective as of the date of its publication in the Official Gazette.

PUBLISH AND COMPLY

Given in Bogotá D.C. on the

Continuation of the Resolution “Whereby it is defined the competitive process for the granting of the Temporary Occupation Permit over maritime areas for the development of offshore wind energy generation projects, calls for their execution and other provisions are enacted”
