

microFIT Program: Addressing Marketplace Issues

November 8, 2016

Disclaimer

- This presentation is intended as an overview of the microFIT program requirements and irregularities observed by the IESO's Procurement and Contract Management groups.
- Any information provided is not legal advice and is not legally binding on the IESO and does not waive or amend any of the IESO's rights or remedies under the microFIT program, at law or in equity.
- Unless otherwise indicated, this presentation uses capitalization consistent with version 4.0 of the microFIT Rules and Contract, as applicable.

Topics

1. Goals and design of the microFIT Program
2. Role of “Representatives” (as defined in the Prescribed Form: Representative & Applicant Declaration package)
3. IESO expectations of Applicants, Suppliers, and Representatives
4. Marketplace issues: application and contracting irregularities
5. Application processing timelines

microFIT Program Principles

- Intended to encourage Eligible Participants (e.g. individuals, farmers, etc.) to develop small scale renewable energy projects.
- IESO has a direct relationship with Applicants and Suppliers.
 - Representatives do not have their own Applications as they are not Eligible Participants.
 - IESO assumes no obligation or liability to the Representative.
- Consumer awareness and protection is paramount.
- IESO evolves the microFIT Program to protect consumers, maintain policy objectives and program integrity.
 - Reflected in program design as well as the recent process enhancements implemented in response to marketplace issues.

microFIT Program & Process Design

- Standard offer procurement which includes standard rules, applications, contracts, and prices.
- Continuous application intake.
- No IESO application fee to participate.
- Streamlined online application review.
- Clear milestones throughout application process to contract offer.
- Version 4.0 Applicant and Representative declarations and Representative Agreement confirming understanding of program rules, roles and responsibilities.

microFIT Program Evolution

- The IESO has continually evolved the microFIT program to provide additional clarity and enforce expectations around industry behaviours.
- The enhancements to version 4 of the microFIT Program were developed in an effort to address existing issues and continue to strengthen consumer protection and adherence to program requirements.

Role of Representatives

- A Representative's involvement is as a third party who is authorized by the Applicant to complete and submit an Application and manage the application process on the Applicant's behalf.
- Representatives do not have their own microFIT applications and are not Eligible Participants.
- The IESO may communicate directly with the Applicant and otherwise deal directly with the Applicant, Supplier, and/or Assignee to the exclusion of the Representative.
- Representatives may, but are not entitled to, receive notices, communications, and documentation pertaining to the participation of the Applicant/Supplier, including any resulting Contract.

Role of Representatives (continued)

- Representatives are not authorized to enter into a microFIT Contract on behalf of successful Applicants, or to terminate, amend, or assign such Contract.
- Representatives may not obtain any rights under the Contract.
- The IESO assumes no obligation or liability to the Representative.

Failure to comply with the conditions in the Representative Agreement may result in the Representative no longer being permitted to represent an Applicant, or in serious cases, any applicant in relation to the microFIT Program in their interactions with the IESO.

Marketplace Issues – Growing Concerns

As highlighted in a presentation made at Solar Ontario on May 17, 2016, and subsequently posted on the [microFIT website](#):

IESO has found that some Applicants:

- Are uninformed about microFIT
- Do not have access to their Application or Contract through their My microFIT Home Page
- Are not aware that Applications have been submitted on their behalf

While Representatives:

- May not be providing Applicants with sufficient or accurate program information, or login credentials so that Applicants can access their account
- Have provided incorrect Applicant contact information
- May have made declarations to the IESO improperly or led Applicants to do the same
- May be accepting Contracts and making representations and warranties as the Applicant

IESO Expectations

- As reflected in the microFIT Rules, Contracts and business processes of the IESO.
- Applicants must:
 1. Receive complete and accurate information about the microFIT Program that is not misleading
 2. Understand their role and responsibilities in relation to the IESO
 3. Provide the IESO with a complete and accurate Application
 4. Accept and manage their Contract on their own, through their My microFIT Home Page
- Suppliers must:
 5. Initiate and complete Contract amendments, assignments, and voluntary terminations on their own

Representatives must comply with all applicable laws and regulations and act in a manner consistent with the goals and expectations of the microFIT Program, and where applicable, comply with [CanSIA's Solar Business Code of Conduct](#).

microFIT Program Irregularities

- A number of irregularities continue to be observed throughout the application and contract lifecycle of microFIT projects.
- These irregularities clearly conflict with the expectations and requirements of the microFIT Program.

microFIT Program Irregularities – Expectation 1

Expectation: Applicants receive complete and accurate information about the microFIT Program that is not misleading.

Irregularities observed:

- Misrepresentations and/or misinformation in solar provider's marketing material
 - 'free solar', false association with the IESO, use of IESO (or former OPA) logo, and not acknowledging the microFIT Program
 - LDC settling Generation Payments directly with Representative.
- Registration ID created after the date that Representative and/or Applicant declarations were signed and commissioned
 - Applicants would have been unable to declare that they received proper login credentials for their account.
- Applicants do not have accurate login credentials for the account associated with their Application.

microFIT Program Irregularities – Expectation 2

Expectation: Applicants, Suppliers and Assignees understand their role and responsibilities in relation to the IESO.

Irregularities observed:

- In communications with the IESO, Applicants, Suppliers and Assignees indicated that they:
 - Are not aware who the IESO is or what the microFIT Program is
 - Have not been provided correct account login information
 - Have not been provided with copies of the microFIT Rules, Contract, website terms of use and/or completed Application materials
 - Use contact information different from what was provided
 - Are uncertain whether they had signed their applicant declaration before a commissioner or notary
 - Have not submitted Contract assignment forms themselves

microFIT Program Irregularities – Expectation 3

Expectation: Applications and Contract assignment requests submitted to the IESO are complete and accurate.

Irregularities observed:

- Altered forms
 - Information appears to have been erased, digitally or manually added, or changed after the declaration was signed and commissioned.
- Copied or falsified signatures
 - Signatures on declarations appear to have been photocopied or reproduced from previously submitted declarations.
- Incorrect or altered Applicant, Supplier or Assignee contact information
 - E.g. Email accounts created by Representative that prevent the IESO from having correct contact information for the Applicant, Supplier or Assignee.

microFIT Program Irregularities – Expectation 4

Expectation: Applicants must accept their contract offer on their own, through their My microFIT Home Page.

Irregularities observed:

- Applicants are not accepting their microFIT Contracts. This may indicate that Representatives are making various declarations, representations, warranties, and covenants **as** the Applicant.
- Some reps are informing Applicants that their Representative must accept the Contract.

microFIT Program Irregularities – Expectation 5

Expectation: Assignors (Suppliers) and Assignees (prospective Suppliers) must conduct Contract assignment requests and acceptance of the Novation and Assignment Agreement on their own.

Irregularities observed:

- Representatives are acting as the Assignor and/or the Assignee during the Contract assignment process, which is expressly prohibited pursuant to the terms of the microFIT Contract.

microFIT Application Processing Timelines

- As communicated when the microFIT Program initially launched, the IESO's official target for reviewing Applications that are complete is 60 days.
 - In recent years, review timelines had decreased to ~3 weeks as a result of process evolution and application volumes.
- However, due to the continued irregularities observed in microFIT version 4, the IESO is taking additional measures to confirm Application eligibility.
- Going forward the IESO will continue to target 60 days for review once a complete Application has been submitted.

Representative and Applicant Declarations

Representatives have requested information regarding the process for making declarations and the requirements for commissioning them.

The following 3 slides are provided for informational purposes only. For more information, please visit the [Ministry of Attorney General's website](#).

Making a Declaration

- Applicants and Representatives must have their respective declarations commissioned by a commissioner for taking affidavits or a notary public
- This has the same legal effect as swearing a statement under oath.
- Knowingly making a false or fraudulent declaration is a criminal offence.
- All requested information in a declaration must be filled in before it is commissioned. A declaration cannot be amended after it has been commissioned.

Commissioning a Declaration

- A notary public or commissioner for taking affidavits must witness the signing of a declaration and is required to confirm (i) the identity of the person making the declaration and (ii) that the declarant is making the declarations and believes them to be true.
- Limitations on a commissioner's appointment must be indicated by means of a stamp approved on behalf of the Attorney General, which must be affixed on every document that you sign as a commissioner.

Commissioning a Declaration (continued)

- A failure to adhere to the requirements of the *Commissioners for taking Affidavits Act* or to the limits of your appointment as a commissioner may threaten the legal validity of the declaration that you commission.
 - Commissioners may be called into court to establish that the declaration was administered properly.
- A commissioner may be found personally liable under the *Commissioners for taking Affidavits Act* and the *Criminal Code of Canada* for improperly taking a declaration.
- The Attorney General may revoke the appointment of any commissioner who breaks the law or fails to comply with their duties.