



Billing Code: 4310-MR

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

**[Docket No. BOEM-2018-0043]**

**Atlantic Wind Lease Sale 4A (ATLW-4A) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts - Final Sale Notice**

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts.

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Massachusetts. The Bureau of Ocean Energy Management (BOEM) will offer three leases: Lease OCS-A 0520, Lease OCS-A 0521, and Lease OCS-A 0522 (Lease Areas), which are located within the former Leases OCS-A 0502 and Lease OCS-A 0503 that were unsold during the Atlantic Wind Lease Sale-4 (ATLW-4) on January 29, 2015. BOEM will use an ascending bidding auction format. The FSN contains information pertaining to the areas available for leasing, certain provisions and conditions of the leases, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the lease(s) resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, if submitted by the lessee, would be subject to subsequent environmental, technical, and public reviews prior to a decision on whether the proposed development should be authorized.

**DATES:** BOEM will hold a mock auction for the bidders starting at 9:00 a.m. Eastern Standard Time (EST) on December 11, 2018. The monetary auction will be held online and will begin at 9:00 a.m. EST on December 13, 2018. Additional details are provided in the section entitled "Deadlines and Milestones for Bidders."

**FOR FURTHER INFORMATION CONTACT:** Jeff Browning, BOEM, Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1577 or [Jeffrey.Browning@boem.gov](mailto:Jeffrey.Browning@boem.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)), as amended by section 388 of the Energy Policy Act of 2005, and the implementing regulations at 30 CFR Part 585, including sections 211 and 216.

**Background:** BOEM proposed this lease sale on April 11, 2018, in the *Atlantic Wind Lease Sale 4A (ATLW-4A) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts – Proposed Sale Notice (PSN)*, which was published in the *Federal Register* (83 FR 15618). A 60-day comment period followed. BOEM received 21 comment submissions in response to the PSN, which are available on regulations.gov (Docket ID: BOEM-2018-0016) at: <https://www.regulations.gov/docket?D=BOEM-2018-0016>. BOEM has posted its responses to comments submitted during the PSN comment period. The document, entitled *Response to Comments*, can be found through BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

In response to the PSN, BOEM received new qualification materials from thirteen entities that BOEM has determined to be qualified to participate in this sale, and four affirmations of interest from entities that were qualified to participate in the first Massachusetts Lease Sale

(ATLW-4) in January of 2015. In addition, the two entities that submitted unsolicited lease requests for the Lease Areas have also qualified, resulting in a total of 19 qualified entities.

BOEM made several changes from the description of the lease sale format and leases that were published in the PSN. The primary changes are: the lease sale no longer contains a non-monetary bidding credit, and will instead use a straight ascending bid format; the two proposed lease areas have been re-divided into three Lease Areas; each lease now contains conditions related to vessel transit corridors and setbacks between adjacent leases; and the operations term of each lease has been extended from 25 years to 33 years.

**List of Eligible Bidders:** BOEM has determined that the following entities are legally, technically, and financially qualified to hold a commercial wind lease offshore Massachusetts pursuant to 30 CFR 585.106 and 107, and therefore may participate in this lease sale as bidders subject to meeting the requirements outlined in this notice:

<b>Company Name</b>	<b>Company No.</b>
Avangrid Renewables, LLC	15019
Camellia Wind Energy LLC	15077
CI III Blue Cloud Wind Energy II LLC	15079
Cobra Industrial Services, Inc.	15073
Deepwater Wind New England, LLC	15012
East Wind LLC	15076
EC&R Development, LLC	15080
EDF Renewables Development, Inc.	15027
EDPR Offshore North America LLC	15074
Enbridge Holdings (Green Energy) L.L.C.	15065
Innogy US Renewable Projects LLC	15061
Mayflower Wind Energy LLC	15082
Northeast Wind Energy LLC	15078
Northland Power America Inc.	15068
PNE WIND USA, Inc.	15056
Equinor Wind US LLC	15058
Vineyard Wind LLC	15010
Wind Future LLC	15067
wpd offshore Alpha LLC	15060

**Affiliated Entities:** On the Bidder's Financial Form (BFF) discussed below, eligible bidders must list any eligible bidders with whom they are affiliated. Affiliated eligible bidders are not permitted to compete against each other in the lease sale, and must decide by the start of the auction which eligible bidder (if any) will participate. If two or more affiliated bidders participate in the auction, BOEM may disqualify some or all such bidders from the auction.

BOEM considers two entities to be affiliated if (a) one entity (or its parent or subsidiary) has or retains any right, title, or interest in the other entity (or its parent or subsidiary), including any ability to control or direct actions with respect to such entity, either directly or indirectly, individually or through any other party; or (b) the entities are both direct or indirect subsidiaries of the same parent company.

**Deadlines and Milestones for Bidders:** This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of the lease pursuant to this sale. These are organized into various stages: the FSN Waiting Period; Conducting the Auction; and From the Auction to Lease Execution.

- FSN Waiting Period

- *Bidder's Financial Form:* Each bidder must submit a BFF to BOEM in order to participate in the auction. BOEM must receive each bidder's BFF no later than November 2, 2018. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit a BFF was caused by events beyond the bidder's control. The BFF can be downloaded at:

<https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

Once BOEM has processed a bidder's BFF, the bidder may log into *pay.gov* and submit a bid deposit. For purposes of this auction, BOEM will not consider any BFFs

submitted by bidders for previous lease sales. BOEM will only accept an originally executed paper copy of the BFF. The BFF must be executed by an authorized representative listed on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).

- *Bid Deposit:* Each bidder must provide a bid deposit of \$450,000 no later than November 16, 2018 in order to participate in the mock auction and the monetary auction. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control. Further information about bid deposits can be found in the "Bid Deposit" section of this notice.
- Conduct the Auction
  - *Mock Auction:* BOEM will hold a Mock Auction on December 11, 2018 beginning at 9:00 a.m. EST. The Mock Auction will be held online. BOEM will contact each bidder that has timely filed a BFF and bid deposit and provide instructions for participation. Only bidders that have timely submitted BFFs and bid deposits will be permitted to participate in the Mock Auction.
  - *Monetary Auction:* On December 13, 2018, BOEM, through its contractor, will hold the auction. The first round of the auction will start at 9:00 a.m. EST. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. BOEM anticipates that the auction will last one business day, but it may continue on consecutive business days, as necessary,

until the auction ends in accordance with the procedures described in the “Auction Procedures” section of this notice.

- *Announce Provisional Winners:* BOEM will announce the provisional winners of the lease sale after the auction ends.
- From the Auction to Lease Execution
  - *Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners a written explanation of why they did not win and return their bid deposits.
  - *Department of Justice (DOJ) Review:* DOJ will have 30 days in which to conduct an antitrust review of the auction, pursuant to 43 U.S.C 1337(c).
  - *Delivery of the Lease:* BOEM will send three lease copies to each winner, with instructions on how to execute the lease. The first year’s rent is due 45 calendar days after the winners receive the lease copies for execution.
  - *Return the Lease:* Within 10 business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their bonus bids (i.e., winning monetary bid minus applicable bid deposit), and sign and return the three executed lease copies. The winners may request extensions to the 10-day deadline, and BOEM may grant such extensions if BOEM determines the delay to be caused by events beyond the requesting winner’s control, pursuant to 30 CFR 585.224(e).

- *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

**Area Offered for Leasing:** The area available for sale will be auctioned as three leases: Lease OCS-A 0520, Lease OCS-A 0521, and Lease OCS-A 0522. Lease OCS-A 0520 consists of 128,811 acres, Lease OCS-A 0521 consists of 127,388 acres, and Lease OCS-A 0522 consists of 132,370 acres. These Lease Areas lie within the same area that BOEM announced on April 11, 2018 and published in the PSN. In response to comments received on the PSN, however, BOEM re-divided the available area into three leases.

**Map of the Area Offered for Leasing:** A map of the Lease Areas, and GIS spatial files X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

A large scale map of the Lease Areas, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, Phone: (703) 787-1300, Fax: (703) 787-1708.

**Environmental Reviews and Lease Stipulations:** The PSN explains that the existing June 2014 Revised Massachusetts Environmental Assessment (EA) and associated consultations adequately assess the reasonably foreseeable environmental effects of the issuance of commercial leases and associated site characterization activity in the Massachusetts Wind Energy Area (WEA), which includes the areas that BOEM will lease pursuant to this FSN.

Although this FSN represents a change in the number and size of the leases to be sold compared to the PSN, the scope of activities anticipated as a result of the lease sale still falls within the range analyzed in the EA because, among other things, those leases still fall within the boundaries of former Leases OCS-A 0502 and OCS-A 0503.

BOEM will conduct additional environmental reviews upon receipt of a lessee's proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP). As conditions of plan approval, Lessees may be required to contribute to regional environmental monitoring programs that are presently being developed jointly between state and Federal authorities and stakeholder groups. For Lease OCS-A 0522, BOEM may require terms and conditions of project approval aimed at mitigating, minimizing, or avoiding impacts to sea ducks. During the development of the Massachusetts WEA, BOEM took steps to protect sea ducks (among other species) by removing lease blocks. Recent information suggests that high concentrations of sea ducks may forage in the easternmost lease blocks (6251, 6252, & 6302) during the winter months.

BOEM is also adding additional lease stipulations that were not contained in the leases offered in ATLW-4.

**Fisheries Communication Plan:** In order to facilitate interactions between lessees and commercial fisheries and maintain consistency with its most recent lease sale, BOEM is once again including a lease stipulation to ensure the Lessee coordinates and communicates with commercial and recreational fishermen. BOEM has determined that this stipulation is prudent for the leases in this sale, given the importance of fishing to the economies of Southern New England states. The lease stipulation states as follows:

*Fisheries Communications Plan (FCP) and Fisheries Liaison. The Lessee must develop a publicly available FCP that describes the strategies that the Lessee intends to use for communicating with fisheries stakeholders prior to and during activities in support of the submission of a plan. The FCP must include the contact information for an individual retained by the Lessee as its primary point of contact with fisheries stakeholders (i.e., Fisheries Liaison). If the Lessee does not develop a project website, the FCP must be made available to the Lessor and the public upon request.*

**Best Available Technologies for Meteorological Buoys:** BOEM has included a lease stipulation aimed at requiring the Lessee to use best available technologies in designs for meteorological buoys and other similar floating devices to ensure entanglement risks to marine protected species are minimized to discountable levels. Although this is a new lease stipulation, it is intended to provide clarification for existing buoy requirements contained in the 2013 Biological Opinion issued to BOEM by NOAA for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy and discussed in the 2014 EA. The lease stipulation states as follows:

*The Lessee must ensure that any structures or devices attached to the seafloor for continuous periods greater than 24 hours use the best available mooring systems for minimizing the risk of entanglement or entrainment of marine mammals, manta rays and sea turtles, while still ensuring the safety and integrity of the structure or device. The best available mooring system may include, but is not limited to, vertical and float lines (chains, cables, or coated rope systems), swivels, shackles, and anchor designs.*

*All mooring lines and ancillary attachment lines must use one or more of the following measures to reduce entanglement risk: shortest practicable line length, rubber sleeves, weak-links, chains, cables or similar equipment types that prevent lines from looping or wrapping around animals, or entrapping protected species.*

*Any equipment must be attached by a line within a rubber sleeve for rigidity. The length of the line must be as short as necessary to meet its intended purpose. If an entangled live or dead marine protected species is reported, the Lessee must provide any assistance to authorized stranding response personnel as requested by BOEM or NMFS.*

**Vessel Transit Corridors:** Fishermen have requested that offshore wind facilities be designed in a manner that, among other things, provides for safe transit through the facility to fishing grounds. Current BOEM leaseholders offshore Rhode Island and Massachusetts (Leases OCS-A 0486, OCS-A 0487, OCS-A 0500, and OCS-A 0501) are presently working with stakeholders, and the United States Coast Guard to identify those transit routes and establish corridors in their plan submittals. BOEM has determined that such corridors are only effective if they continue, as appropriate, through the Lease Areas. As such, BOEM has added the following lease term:

*In its COP project design, Lessee must extend any BOEM-approved vessel transit corridors in adjacent lease areas, unless BOEM determines that such corridors are not necessary or can be modified. Lessee may not construct any surface structures in such vessel transit corridors.*

**Surface Structure Setback:** In response to comments received on the PSN, BOEM will require lessees to incorporate a setback of 750 meters (m) from any shared lease boundary into future COP submittals, unless both adjacent lessees agree to a decreased setback. The 750 m setback for each lease results in a minimum distance of 1,500 m between turbine locations of adjacent

leases. BOEM has added a term setting forth this obligation in Addendum A of Leases OCS-A 0520, OCS-A 0521, and OCS-A 0522 which reads as follows:

*In its COP project design, the Lessee must incorporate a 750 m setback from any shared lease boundary within which the Lessee may not construct any surface structures, unless the Lessee and the adjacent lessee agree to a smaller setback, the Lessee submits such agreement to BOEM, and BOEM approves it.*

**Withdrawal of Blocks:** BOEM reserves the right to withdraw all or portions of the Lease Areas prior to executing the leases with the winning bidders.

**Lease Terms and Conditions:** BOEM has included terms, conditions, and stipulations for the OCS commercial wind leases to be offered through this sale. After the leases are issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The leases are available on BOEM's website at: <http://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>. The leases include the following seven attachments:

- Addendum "A" (Description of Leased Area and Lease Activities);
- Addendum "B" (Lease Term and Financial Schedule);
- Addendum "C" (Lease Specific Terms, Conditions, and Stipulations);
- Addendum "D" (Project Easement);
- Addendum "E" (Rent Schedule post-COP approval);
- Appendix A to Addendum "C" (Incident Report: Protected Species Injury or Mortality); and
- Appendix B to Addendum "C" (Required Data Elements for Protected Species Observer Reports).

Addenda “A,” “B,” and “C” provide detailed descriptions of lease terms and conditions. Addenda “D” and “E” will be completed at the time of COP approval or approval with modifications.

The most recent version of BOEM’s renewable energy commercial lease form (BOEM-0008) is available on BOEM’s website at: <http://www.boem.gov/BOEM-OCS-Operation-Forms/>.

**Plans:** Pursuant to 30 CFR 585.601, a leaseholder wishing to submit a SAP must do so within 12 months of lease issuance. If the lessee intends to continue to hold the lease into its operations term, the lessee must submit a COP at least 6 months before the end of the site assessment term.

**Financial Terms and Conditions:** This section provides an overview of the annual payments required of the lessee that will be fully described in the lease, and the financial assurance requirements that will be associated with the lease.

**Rent:** Pursuant to 30 CFR 585.224(b) and 585.503, the first year’s rent payment of \$3 per acre is due within 45 calendar days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the effective date of the lease (the “Lease Anniversary”). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.*, not generating electricity. Instead of geographically dividing the leased area into acreage that is “generating” and “non-generating,” however, the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by

multiplying this fraction by the amount of rent that would have been due for the lessee's entire lease area at the rental rate of \$3 per acre.

For a 128,811 acre lease (the size of OCS-A 0520), the rent payment will be \$386,433 per year if no portion of the lease area is authorized for commercial operations. If 500 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and the approved COP specifies a maximum project size of 800 MW, the rent payment will be \$144,912. This payment is based on the 300 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows:  $300\text{MW}/800\text{MW} \times (\$3/\text{acre} \times 128,811 \text{ acres}) = \$144,912$ .

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on the relinquished portion of the lease area. Later relinquishments of any portion of the lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee must also pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable is \$70 per statute mile. For any additional acreage required, the lessee must also pay the greater of \$5 per acre per year or \$450 per year.

**Operating Fee:** For purposes of calculating the initial annual operating fee payment pursuant to 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the

commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for an 800 MW wind facility operating at a 40% capacity (i.e., capacity factor of 0.4) with a regional wholesale power price of \$40/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 800\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{Power Price} \times 0.02 = \$2,242,560$$

***Operating Fee Rate:*** The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to the Office of Natural Resources Revenue as an annual operating fee. For the Lease Areas, BOEM will set the fee rate at 0.02 (i.e., 2%) for the entire life of commercial operations.

***Nameplate Capacity:*** Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity available at the start of each year of commercial operations on the lease. For example, if the lessee specifies 100 turbines in its COP, and each is rated by the manufacturer at 8 MW, the nameplate capacity of the wind facility is 800 MW.

**Capacity Factor:** The capacity factor relates to the amount of energy delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. This factor is represented as a decimal between zero and one. There are several reasons why the amount of power delivered is less than the theoretical 100% of capacity. For a wind facility, the capacity factor is mostly determined by the availability of wind. Transmission line loss and down time for maintenance or other purposes also affect the capacity factor.

The capacity factor for the year in which the Commercial Operation Date occurs, and for the first six full years of commercial operations on the lease, is set to 0.4 (i.e., 40%). At the end of the sixth year, the capacity factor may be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor may be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10% of the previous period's value.

**Wholesale Power Price Index:** Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast – Massachusetts Hub for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

**Financial Assurance:** Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515-516, the provisional winners of the leases must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements, in the amount of \$100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages the provisionally winning bidder to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum “B” of the leases, which BOEM has made available with this notice on its website at:

<https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

**Bidder’s Financial Form:** Each bidder must fill out the BFF referenced in this FSN. BOEM has also made a copy of the form available with this notice on its website at:

<https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>. BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in *pay.gov* (if it has not already done so).

BOEM will not consider BFFs submitted by bidders for previous lease sales to satisfy the requirements of this auction. BOEM will also only consider BFFs submitted after the deadline (November 2, 2018) if BOEM determines that the failure to timely submit the BFF was caused

by events beyond the bidder's control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative listed in the qualifications package on file with BOEM as authorized to bind the company.

**Bid Deposit:** A bid deposit is an advance cash payment submitted to BOEM in order to participate in the auction. After creating an account in *pay.gov* (if necessary), bidders may use the Bid Deposit Form on the *pay.gov* website to leave a deposit. Each bidder must submit a bid deposit of \$450,000 no later than November 16, 2018. Any bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction.

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, BOEM will refund the balance of the bid deposit to the bidder. BOEM will refund bid deposits to non-winners once BOEM has announced the provisional winner.

If BOEM offers a lease pursuant to a provisionally winning bid, and that bidder fails to timely return the signed lease form, establish financial assurance, and/or pay the balance of its bid, BOEM will retain the bidder's \$450,000 bid deposit. In such a circumstance, BOEM reserves the right to determine which bid would have won in the absence of the bid previously-determined to be the winning bid, and to offer a lease pursuant to this next highest bid.

**Minimum Bid:** The minimum bid is the lowest bid BOEM will accept as a winning bid, and it is where BOEM will start the bidding in the auction. BOEM has established a minimum bid of \$2.00 per acre for this lease sale.

## **Auction Procedures:**

### *Ascending Bidding With Cash Bid Variable*

As authorized under 30 CFR 585.220(a)(2) and 585.221(a)(1), BOEM will use an ascending bidding auction with cash as the bid variable for this lease sale. BOEM will start the auction using the minimum bid prices for each lease area, and increase those prices incrementally until no more than one active bidder per lease area remains in the auction.

### *The Auction*

Using an online bidding system to host the auction, BOEM will start the bidding for Lease OCS-A 0520 at \$257,622, Lease OCS-A 0521 at \$254,776, and for Lease OCS-A 0522 at \$264,740. Each bidder may bid on only one lease area at a time, and can win at most one of the three Lease Areas offered in this sale.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each lease area. If a bidder is willing to meet the asking price for one of the lease areas, it will indicate its intent by submitting a bid equal to the asking price. A bid at the full asking price is referred to as a “live bid.” To participate in the next round of the auction, a bidder must submit a live bid for one of the lease areas in each previous round. As long as there are two or more live bids for at least one lease area, the auction moves to the next round. BOEM will raise the asking price for each lease area that has received two or more live bids in the previous round. Asking price increments will be determined based on several factors, including (but not necessarily limited to) the expected time needed to conduct the auction, and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as appropriate.

Generally, a bidder that submitted a live bid in the previous round is free to bid on any of the three areas in the current round. However, there is an exception. A bidder may switch its live bid from one lease area to another in the current round only if its bid from the previous round was contested – *e.g.*, a bidder cannot switch from OCS-A 0520 to OCS-A 0521 unless there was at least one other live bid for OCS-A 0520 in the last round. If the bid was not contested in the previous round, the bidder cannot switch lease areas, and its previous round bid will be carried forward to the next round. If another bidder places a live bid on OCS-A 0520 later in the auction, BOEM will stop automatically carrying forward the previously uncontested bid on that lease area. The bidder that placed the previously carried forward bid is then free to bid on that lease area or either of the other two lease areas in the next round at the new asking prices. A bidder remains eligible to participate in the auction if it submitted a live bid in the prior round, or had a previously uncontested live bid carried forward by BOEM to the current round. If a bidder decides to stop bidding further when its bid is contested, there are still circumstances in which the bidder could win (*e.g.*, if the winning bid is disqualified at the award stage of the auction). If this happens, the bidder may be bound by its bid and thus obligated to pay the full bid amount. Bidders may be bound by any of their bids until the auction results are finalized.

Between rounds, BOEM will disclose to all bidders that submitted bids in the first round of the auction: (1) the number of live bids (including bids carried forward) for each lease area in the previous round of the auction (*i.e.*, the level of demand); and (2) the asking price for each lease area in the upcoming round of the auction.

A bidder is only eligible to continue bidding in the auction if it has submitted a live bid (or had a bid carried forward) in the previous round. In any round after the first round, however,

a bidder may submit an “exit bid” (also known as an “intra-round bid”). An exit bid is a bid that is higher than the previous round’s asking price, submitted for the same lease area as the bidder’s contested live bid in the previous round, but less than the current round’s asking price. An exit bid is not a live bid, and it represents the final bid that a bidder may submit in the auction.

During the auction, the exit bid can only be seen by BOEM, and not by other bidders.

A lease area with only exit bids in a given round will not have its asking price raised in the next round, since BOEM only raises asking prices when a lease area receives multiple *live* bids. As soon as all three Lease Areas have one or zero live bids (including bids carried forward), the auction is over, regardless of the number of exit bids on each area.

After the bidding ends, BOEM will determine the provisionally winning bids for each lease area. The provisionally winning bid for a lease area will be the highest bid (live bid or exit bid) received for that lease area, except that no bidder may win more than one lease area. The award procedures described here could result in a tie, for example if two bidders submit identical high exit bids. In such cases, BOEM would resolve the tie by randomized means subject to the constraint of no bidder winning more than one lease area. After the last round of the auction, there will be a listing of all scenarios that would generate the same maximum revenue. This can include multiple ties. Each of those scenarios is given an equal probability of winning. The selection of the winning scenario is determined by pseudorandom numbers.

Provisional winners may be disqualified if they are subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder will be expected to sign the applicable lease documents, establish financial assurance, and submit the cash balance of its bid (i.e., winning bid amount minus the

bid deposit) within 10 business days of receiving the lease copies, pursuant to 30 CFR 585.224. BOEM reserves the right not to issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise comply with applicable regulations or the terms of the FSN. In that case, the bidder would forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due to be an indication that the bidder may no longer be financially qualified to participate in other lease sales under 30 CFR 585.106 and 585.107.

### **Additional Information Regarding the Auction Format**

#### *Bidder Authentication*

For the online auction, BOEM will require two-factor authentication. After BOEM has processed the bid deposits, the auction contractor sends several bidder authentication packages to the bidders. One package will contain digital authentication tokens needed to allow access to the auction website. As a general practice, tokens are mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. ***Bidders are to ensure that each token is returned within three business days following the auction.*** An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the auction, BOEM will de-activate that bidder's tokens and login information, and the bidder will be asked to return its tokens. Under certain circumstances (for example, if the authorized bidders are geographically dispersed and the ability for the Primary Point of Contact to timely distribute the materials is in question), BOEM may send all materials directly to the authorized bidders instead of sending to the Primary Point of Contact.

The second package contains login credentials for authorized bidders. The login credentials are mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Bidder Manual for the auction system, the Auction System Technical Supplement (ASTS) and the Alternative Bidding Form, all of which are available on BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>. The login information, along with the tokens, will be tested during the Mock Auction.

#### *Timing of Auction*

The auction will begin at 9:00 a.m. EST on **December 13, 2018**. Bidders may log in as early as 8:30 a.m. on that day. We recommend that bidders log in earlier than 9:00 a.m. on that day to ensure that any login issues are resolved prior to the start of the auction. Once bidders have logged in, they should review the auction schedule, which lists the anticipated start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the Recess begins;
- During the Recess, previous Round results and next round asking prices are posted;
- Bidders review the previous Round results and prepare their next Round bids; and
- Next Round bidding begins.

The first round will last about 30 minutes, though subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The description of the auction schedule included with this FSN is tentative. Bidders should consult the auction schedule on the

bidding website during the auction for updated times. Bidding will continue until about 6:00 p.m. EST each day. BOEM anticipates that the auction will last one business day, but may be extended for additional business days as necessary until the auction is complete.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during an auction, it will use the messaging feature to notify bidders that a revision has been made, and will direct bidders to the relevant page. BOEM will also use the messaging system for other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock shows how much time remains in the round. Bidders have until the scheduled time to place bids. Bidders should do so according to the procedures described in this notice, and the ASTS. Information about the round results will only be made available after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The ASTS will elaborate on the auction procedures described in this FSN. In the event of an inconsistency between the ASTS and the FSN, the FSN is controlling.

#### *Prohibition on Communications Between Bidders During Auction*

During the auction, bidders are prohibited from communicating with each other regarding their participation in the auction. Also during the auction, bidders are prohibited from communicating to the general public regarding any aspect of their participation or lack thereof in the auction, including, but not limited to, through social media, updated websites, or press releases.

### *Alternate Bidding Procedures*

Alternate Bidding Procedures enable a bidder who is having difficulty accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

In order to be authorized to use an Alternate Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the bidder. The bidder must explain the reasons for which he/she is forced to place a bid using the Alternate Bidding Procedures. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

**Rejection or Non-Acceptance of Bids:** BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the auction, the FSN, or applicable regulations and statutes.

**Anti-Competitive Review:** Bidding behavior in this sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of bids and the issuance of leases, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale." 43 U.S.C. 1337(c). If a provisionally winning bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense to violations of antitrust laws.

Anti-competitive behavior determinations are fact-specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid;
- An agreement among bidders not to bid against each other; or
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award a lease pursuant to 43 U.S.C. 1337(c) if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease would be inconsistent with the antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see <https://www.justice.gov/atr/business-resources> or consult legal counsel.

**Process for Issuing the Lease:** Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to each provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidders must:

1. Sign and return the lease copies on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on

BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder's payment.

BOEM may extend the 10 business day deadline for signing a lease, filing the required financial assurance, and/or paying the balance of the bonus bid if BOEM determines the delay was caused by events beyond the provisionally winning bidder's control.

If a provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right not to issue the lease to that bidder. In such a case, the provisionally winning bidder will forfeit its bid deposit. Also in such a case, BOEM reserves the right to identify the next highest bid for that lease area submitted during the lease sale by a bidder who has not won one of the other lease areas, and to offer the lease to that bidder pursuant to its bid.

Within 45 calendar days of the date that a provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at: <https://www.pay.gov/public/form/start/27797604/>.

Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments," available on BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/Massachusetts/Lease-Sale-4A/>.

**Non-Procurement Debarment and Suspension Regulations:** Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400.

The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

**Force Majeure:** The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (e.g., earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM website at:

<http://www.boem.gov/Renewable-Energy-Program/index.aspx>. Bidders should call 703-787-1320 if they have concerns.

**Appeals:** The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

**Protection of Privileged or Confidential Information:** BOEM will protect privileged or confidential information that you submit, as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to “trade secrets and commercial or financial information that you submit that is privileged or confidential.” 5 U.S.C. 552(b)(4).

If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA.

Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise confidential information.

Dated: October 15, 2018.

**Walter D. Cruickshank,**

*Acting Director,*

*Bureau of Ocean Energy Management.*

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