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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2013-0002]

[MMAA104000]

Atlantic Wind Lease Sale 3 (ATLW3) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Maryland—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Maryland.

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Maryland, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM proposes to offer for sale two leases, Lease OCS-A 0489 and Lease OCS-A 0490. BOEM will use a multiple-factor auction for the lease sale. In this PSN, you will find information pertaining to the areas available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites comments during a 60-day comment period following publication of this notice. The issuance of the proposed leases resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

DATES: Comments should be submitted electronically or postmarked no later than [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

All bidders interested in participating in the lease sale who have not previously been qualified by BOEM to participate in this lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically:* <http://www.regulations.gov>. In the entry entitled, “Enter Keyword or ID,” enter BOEM-2013-0002 then click “search.” Follow the instructions to submit public comments.
2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled “Comments on Maryland PSN” to: Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170.
3. *Qualifications Materials:* Those submitting qualifications materials should contact Erin C. Trager, BOEM Office of Renewable Energy Programs, 381 Elden

Street, HM 1328, Herndon, Virginia 20170, (703) 787-1320, or
erin.trager@boem.gov.

If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption, “Contains Confidential Information” and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this PSN entitled “Protection of Privileged or Confidential Information”. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Erin C. Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787-1320 or erin.trager@boem.gov.

AUTHORITY: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (“the Act”), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211 and 30 CFR 585.216.

BACKGROUND: The area described for leasing in this PSN is the same as the area described in the Maryland Call for Information and Nominations (Call) (77 FR 5552, Feb. 3, 2012). Detailed information regarding the lease areas is provided in the section entitled, “Areas Offered for Leasing.”

On February 3, 2012, BOEM published the Notice of Availability (NOA)

(77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia, pursuant to the National Environmental Policy Act. Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Final Environmental Assessment* (Mid-Atlantic EA) can be found at:

<http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

On May 29, 2012, BOEM initiated consultation with the National Marine Fisheries Service under the ESA for geological and geophysical (G&G) activities in support of oil and gas exploration and development, renewable energy, and marine minerals in the Mid- and South Atlantic Planning Areas. Formal consultation concluded with receipt of a Biological Opinion dated July 19, 2013. The Biological Opinion, along with the previous informal consultation, informed the development of this proposed sale of commercial wind leases offshore Maryland.

Additional environmental reviews will be prepared upon receipt of a Lessee's proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

Atlantic Grid Holdings LLC (ROW) Grant Request: On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a Right-of-Way grant on the OCS. Potential bidders should be aware that the unsolicited application is under consideration by BOEM, and that a portion of the project is proposed to be situated within the Maryland Wind Energy Area (WEA). Following publication of a notice for a 60-day comment period to determine interest in the grant, BOEM published its determination of no competitive interest (77 FR 28620, May 5, 2012). The nomination and associated notices can be found at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx>

DEADLINES AND MILESTONES FOR BIDDERS: This section describes the major deadlines and milestones in the auction process from publication of this PSN to execution of leases pursuant to the sale. These are organized into various stages: (1) The PSN comment period; (2) from the end of PSN comment period to publication of the FSN; (3) the FSN waiting period; (4) conducting the Auction; and (5) from the Auction Stage to Lease Execution.

1. The PSN Comment Period:

- *Submit Comments:* The public is invited to submit comments during this 60-day period.
- *Public Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format.
- *Receive Qualifications Materials:* All qualifications materials must be received by BOEM by the end of the 60-day PSN comment period. This

includes materials sufficient to establish a company's legal, technical and financial qualifications.

- *Select and Invite Panelists:* BOEM will appoint a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and verifying the results of the lease sale.

2. End of PSN Comment Period to FSN Publication

- *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.
- *Finalize Qualifications Reviews:* BOEM will complete any outstanding qualifications reviews using materials that were submitted during the PSN comment period and requested by BOEM prior to the FSN. The final list of eligible bidders will be published in the FSN.
- *Prepare the FSN:* BOEM will prepare the FSN by updating the PSN where appropriate.
- *Brief and Update the BOEM Maryland Intergovernmental Task Force:* BOEM will schedule a meeting or webinar of the BOEM Maryland Intergovernmental Task Force to discuss the FSN.

3. FSN Waiting Period

- *Publish FSN:* BOEM will publish the FSN in the *Federal Register*.
- *Bidder's Financial Form (BFF):* Within 14 days of publication of the FSN in the *Federal Register*, eligible bidders must submit a complete and signed BFF to BOEM. Once this information has been processed by BOEM, bidders may log into *pay.gov* and leave bid deposits. If BOEM does not receive the BFF

by the date mentioned in the *Federal Register*, a company may be disqualified from participating in the auction.

- *Bid Deposits*: Within 30 days of publication of the FSN in the *Federal Register*, bidders must submit a bid deposit meeting the requirements listed in the FSN. Any bidder that fails to submit the bid deposit by the deadline included in the FSN may be disqualified from participating in the auction.
 - *Non-Monetary Package*: Within 30 days of publication of the FSN in the *Federal Register*, bidders seeking a non-monetary credit must submit a non-monetary package meeting the requirements listed in the FSN.
 - *Mock Auction*: BOEM will hold a Mock Auction open to qualified sale bidders only. The Mock Auction will take place approximately one week before the lease sale. Final details of the Mock Auction will be provided in the FSN.
4. Conducting the Auction: BOEM, through its contractor, will hold an auction as described in this notice. The auction will take place no sooner than 30 days following publication of the FSN in the *Federal Register*. The estimated timeframes described in this notice assume an auction date approximately 45 days after publication of the FSN.
- *Convene Panel*: The panel will convene to consider non-monetary packages submitted by qualified bidders. The panel will send determinations of credit eligibility to BOEM, and BOEM will inform eligible bidders. Bidders will not be informed of the non-monetary credit eligibility of other bidders before the auction.

- *Monetary Auction:* The monetary auction will be conducted on the date specified in the FSN.
- *Announce Provisional Winners:* BOEM will announce the provisional winners of the lease sale after the auction ends.
- *Reconvene the Panel:* The panel will reconvene to verify auction results.

5. From Auction to Lease Execution

- *Refund Non-Winners:* BOEM will return the bid deposit of any bidder that did not win a lease in the lease sale. BOEM will provide a written explanation of why the bidder did not win.
- *Department of Justice (DOJ) Review:* BOEM will allow DOJ 30 days in which to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c), which reads, in relevant part:

Antitrust review of lease sales. Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.
- *Delivery of Leases:* BOEM will send three lease copies to each winner, with instructions on how to execute the leases. The first 6-months of the first year's rent payment is due 45 days after the winner receives the lease copies for execution.

- *Return the Leases:* The auction winners will have 10 business days from receiving the lease copies in which to file financial assurance, pay any outstanding balance of their bonus bids, and return the three executed lease copies.
- *Execution of Leases:* Once BOEM has received the signed lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the leases and will execute the leases if appropriate.

FINANCIAL TERMS AND CONDITIONS: This section provides an overview of the basic annual payments required of a Lessee that will be fully described in each lease.

Rent

The first year's rent payment of \$3 per acre for the entire lease area will be separated into two 6-month payments. The first 6-month payment is due within 45 days of the date the Lessee receives the lease for execution. The second 6-month payment is due by the first day of the seventh month after the Effective Date of the lease. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, i.e., the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged on the remaining part of the lease not authorized for commercial operations, i.e., not generating electricity. However, instead of geographically dividing the lease area into acreage that is "generating" and acreage that is "non-generating," the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity of the project that is not yet in operation. The fraction is the nameplate capacity (as defined herein) at the time payment is due, which is not yet

authorized for commercial operations, divided by the maximum nameplate capacity after full installation of the project, as defined in the COP. This fraction is then multiplied by the amount of rent that would be due for the Lessee's entire leased area at the rental rate of \$3 per acre to obtain the annual rent due for a given year.

For example, for a lease the size of 79,707 acres (the size of the entire Maryland WEA), the amount of rent payment will be \$239,121 per year if no portion of the leased area is authorized for commercial operations. If 500 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and its most recent approved COP specifies a maximum nameplate capacity of 1000 MW, the rent payment would be \$119,560.50.

The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or COP modification) that describes the project easement. Annual rent for a project easement 200-feet wide and centered on the transmission cable is \$70.00 per statute mile. For any additional acreage required, the Lessee must also pay the greater of \$5.00 per acre per year or \$450.00 per year.

Operating Fee

The annual operating fee reflects a 2% operating fee rate applied to a proxy for the wholesale market value of electricity production. The initial payment is prorated to reflect the period between the start of commercial operations and the Lease Anniversary and is due within 45 days of the start of commercial operations; thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary. The annual operating fee payment is calculated by multiplying an 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), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index.

Operating Fee Rate: The operating fee rate is set at 0.02 (i.e., 2%) during 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 nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if a Lessee has 20 turbines under commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind facility at the rated wind speed of the turbines would be 100 MW.

Capacity Factor: Capacity factor represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (i.e., where the Lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity, expressed as a decimal between zero and one. 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%) to allow for one year of installation and testing followed by five years at full availability. 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 percent of the previous period's value.

Wholesale Power Price Index: 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 – PJM West power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual State of the Markets Report with specific reference to the summary entitled, “Electric Market Overview: Regional Spot Prices.” 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 to be due based on the Lease Anniversary 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, the provisional winner 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. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements will be determined on a case-by-case basis.

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

<http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

PLACE AND TIME: The auction will be held online. The time that the auction will be held will be published in the FSN. The date has not been finalized, but will be no earlier than 30 days after publication of the FSN in the *Federal Register*.

PUBLIC SEMINAR: BOEM will host a public seminar to introduce potential bidders and other stakeholders to the auction format provided in the PSN, explain the auction rules, and demonstrate the auction process. The time and place of the seminar will be announced by BOEM and published on the BOEM website. No registration or RSVP will be required to attend.

MOCK AUCTION: BOEM will host a Mock Auction to educate qualified bidders about the procedures to be employed during the auction and to answer questions. The Mock Auction will take place between the publication of the FSN in the *Federal Register* and the date of the auction. Following publication of the FSN in the *Federal Register*, details of the Mock Auction will be distributed to those eligible to participate in the auction. All qualified bidders that intend to participate in the auction are strongly encouraged to participate in the Mock Auction. Bidders will be eligible to participate in the Mock Auction if they have been legally, technically and financially qualified to participate in the lease sale, and have submitted an adequate bid deposit as discussed herein.

BID DEPOSIT: A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than the deadline provided in the FSN, each bidder

must have submitted a bid deposit of \$450,000 per unit of desired initial eligibility. Each lease is worth one unit of bid eligibility in the auction. The required bid deposit for any participant intending to bid on both leases in the first round of the auction will be \$900,000. Any participant intending to bid on only one of the leases during the auction must submit a bid deposit of \$450,000. Any bidder that fails to submit the bid deposit by the deadline described in the FSN may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov*. Following publication of the FSN, each bidder must fill out the BFF included in the FSN. BOEM has made a copy of the proposed BFF available with this notice on its website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland>. This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* website to leave a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to unsuccessful bidders.

MINIMUM BID: In this auction, approximately 32,737 acres will be offered for sale as Lease OCS-A 0489, and approximately 46,970 acres will be offered for sale as Lease OCS-A 0490. BOEM proposes for this lease sale a minimum bid of \$2 per acre for each lease area. Therefore, the minimum acceptable bid will be \$65,474 for Lease OCS-A 0489, and \$93,940 for Lease OCS-A 0490.

AREA OFFERED FOR LEASING: The area described for leasing in this PSN is the same as the area included in the Maryland Call (77 FR 5552, Feb. 3, 2012). The area proposed to be available for sale will be auctioned as two leases, Lease OCS-A 0489 [North Lease Area (North LA)] and Lease OCS-A 0490 [South Lease Area (South LA)]. The North LA consists of 32,737 acres and the South LA consists of 46,970 acres. The total area is approximately 79,707 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas can be found in Addendum “A” of the proposed leases, which BOEM has made available with this notice on its website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

Map of the Area Offered for Leasing

A map of the North and South LAs and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL:

<http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

A large scale map of these areas showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787-1320, Fax: (703) 787-1708.

Delineation of the Leasing Areas

BOEM commissioned the Department of Energy’s National Renewable Energy Laboratory (NREL) to conduct an analysis to inform BOEM’s identification and delineation of leasing areas within the Maryland WEA prior to identifying areas to

propose for leasing in the PSN. NREL's final report for the Maryland WEA, "Assessment of Offshore Wind Energy Leasing Areas for the BOEM Maryland Wind Energy Area," was released on June 26, 2013, and is available on BOEM's website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

BOEM delineated the WEA so that the South LA is slightly larger than the North LA, utilizing the results of the NREL report to inform the identification of these LAs. This delineation serves two purposes. First, it helps to offset technological challenges to development caused by deeper waters in the southeastern portion of the South LA, an issue emphasized in NREL's final report. Second, it helps to offset certain restrictions to development in the South LA that BOEM may impose in the future, if necessary, to alleviate navigational safety concerns. BOEM believes it would be preferable to give each lessee equal footing to help prevent one lessee from being unduly burdened by any future development restrictions, which are known to be more likely in the South LA.

Potential Future Restrictions to Ensure Navigational Safety

Potential bidders should note that portions of certain sub-blocks in both the North and South LAs may not be available for future development (i.e., installation of wind facilities) due to navigational safety concerns, as discussed below.

Proximity to Delaware Bay Traffic Separation Scheme

During discussions with the Maryland Intergovernmental Task Force on June 24, 2011, the U.S. Coast Guard (USCG) recommended that BOEM not approve the installation of wind facilities within 1 nautical mile of a TSS to help ensure navigational safety. This recommendation was reiterated at subsequent Task Force meetings. Moreover, the USCG has expressed that they may determine in the future that a larger

setback is necessary under certain circumstances. Tables 1 and 2 list potentially affected blocks and assume a 1 nautical mile setback from an extended Delaware Bay TSS. Maps identifying these sub-blocks are available on BOEM’s website at:

<http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

Table 1. North Leasing Area: Blocks with Potential Restrictions

Protraction Name	Protraction No.	Block Number	Sub Block
Salisbury	NJ18-05	6624	D,H
Salisbury	NJ18-05	6625	E,I,N
Salisbury	NJ18-05	6675	B,C,G,H,L,P
Salisbury	NJ18-05	6676	M
Salisbury	NJ18-05	6726	A,B,F

Table 2. South Leasing Area: Blocks with Potential Restrictions

Protraction Name	Protraction No.	Block Number	Sub Block
Salisbury	NJ18-05	6726	J,K,O,P
Salisbury	NJ18-05	6776	D,H
Salisbury	NJ18-05	6777	E,I,J,N
Salisbury	NJ18-05	6827	C,G,H,L
Salisbury	NJ18-05	6828	M

Traditional Tug, Towing, and Barge Traffic Route

On April 22, 2013, BOEM received a letter from the USCG providing analysis of tug, towing, and barge traffic that currently transits through the MD WEA. The letter

discussed potential safety implications of allowing offshore wind development in the area, particularly in the southeastern corner of the WEA, and requested that BOEM consider including two smaller LA configurations in this PSN. This letter can be found on BOEM's website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

BOEM gathered input regarding the area to include in this PSN from the members of BOEM's Maryland Intergovernmental Task Force during a Task Force webinar held on June 27, 2013, and received additional comments and correspondence from relevant stakeholders since that time. This includes correspondence received on August 29, 2013, from the American Waterways Operators (AWO), an organization representing the U.S. tugboat, towboat, and barge industry. In its August letter, AWO expressed concern with the Maryland WEA and its potential to disrupt traditional transit routes through the southeastern corner of the WEA. AWO stated that if full build-out were to occur in the Maryland WEA, this development could cause tugboats to navigate further east or west from their current north-south routes, which, in certain weather conditions, could put these vessels at greater risk and jeopardize safe transit due to different sea state conditions farther offshore and greater congestion closer inshore. This letter can be found on BOEM's website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

In a letter to BOEM dated September 4, 2013, the Business Network for Maryland Offshore Wind requested that BOEM refrain from making any reductions to the Maryland WEA prior to leasing. They provide responses to the points in USCG's April 22, 2013, letter and suggest that reducing the area now prior to receipt of a COP

and an associated navigational risk assessment would be premature. The letter suggests that any reduction of the area due to potential navigational safety risk and any associated costs of rerouting traffic would be best addressed during review of each lessee's COP in the context of a comprehensive Environmental Impact Statement (EIS).

After considering the issues raised by the USCG and other relevant parties and evaluating all information available to date pertaining to tug, towing, and barge traffic through the Maryland WEA, BOEM has decided not to reduce the size of the MD WEA in this PSN. BOEM will receive additional vessel traffic data and analysis in the future, which will better inform a decision regarding site-specific restrictions or mitigations to alleviate navigational concerns. Additional information that BOEM expects to have available to inform its decision would include the final navigational safety risk assessment that will be submitted with each lessee's COP, and the results of two ongoing studies: 1) the U.S. Coast Guard's Atlantic Coast Port Access Route Study (ACPARS), and 2) a BOEM-funded study, "Marine Vessel Traffic and Wind Energy Development Infrastructure on the OCS – Risk Analysis," being conducted by the Department of Energy's Pacific Northwest National Laboratory (PNNL).

BOEM welcomes comments on navigational safety during this notice's comment period and will consider all comments received prior to publishing a Final Sale Notice and holding a sale.

WITHDRAWAL OF BLOCKS: BOEM reserves the right to withdraw areas from this lease sale prior to its execution of a lease.

LEASE TERMS AND CONDITIONS: BOEM has included proposed lease terms, conditions and stipulations for OCS commercial wind leases in the Maryland WEA in

Addendum “C” of the proposed leases. BOEM reserves the right to add additional terms and conditions to any approval or approval with modifications of a SAP and/or COP.

The proposed leases, including Addendum “C”, are available on BOEM’s website at:

<http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>. Each

proposed lease includes the following six 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);
- Appendix A to Addendum “C”: (Incident Report: Protected Species Injury or Mortality).
- 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.

After considering comments on the PSN and these proposed provisions, BOEM will publish final lease terms and conditions in the FSN.

Plans

Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 6 months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

QUALIFICATIONS— WHO MAY BID: Any potential bidder that has not already submitted a complete set of qualifications materials must do so by the end of the 60-day comment period of this PSN. To be eligible to participate in the auction, each potential bidder must have been found by BOEM to be legally, technically and financially qualified under BOEM’s regulations at 30 CFR 585.106-107 by the time the FSN for this sale is published. Please note that technical and financial qualifications are lease-specific; it is not sufficient to have been technically and financially qualified to pursue a project offshore another state.

Guidance and examples of the appropriate documentation demonstrating the required legal qualifications can be found in Chapter 2 and Appendix B of *Guidelines for the Minerals Management Service Renewable Energy Framework*, available on BOEM’s website at: <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx>. Guidance regarding how bidders may demonstrate their technical and financial qualifications is provided in *Qualification Guidelines to Acquire and Hold Renewable Energy Leases and Grants and Alternate Use Grants on the U.S. Outer Continental Shelf*, available on BOEM’s website at: <http://boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx>. BOEM strongly recommends that bidders refer to this guidance before submitting their qualification materials, as the guidance is updated periodically.

Bidders must submit documentation necessary to demonstrate their legal, technical, and financial qualifications to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy. In their qualification materials, bidders must

provide a general description of the project that they would like to construct on the lease area sought in this sale, including estimates of the project area and total nameplate capacity of the proposed facilities.

Please note that it may take a number of weeks for bidders to establish their legal, technical, and financial qualifications. BOEM advises potential bidders planning to participate in a sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. Any potential bidder whose qualification package is incomplete at the time the FSN for this sale is published in the *Federal Register* will be found to have failed to establish its qualifications and will be unable to participate in the sale.

Finally, potentially interested parties should note that BOEM has the discretion to contract one or both LAs based upon comments received in response to this notice and other relevant information provided to the bureau. If a potential bidder is interested in leasing either or both LAs, whether full or partial, then that party should submit their qualifications package during the comment period of this PSN.

AUCTION PROCEDURES:

Summary

For the sale of Lease OCS-A 0489 and Lease OCS-A 0490, BOEM will use a multiple-factor auction format with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or “variables,” in determining the outcome of the auction. BOEM will appoint a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and

verifying the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel will determine whether any bidder has earned a non-monetary credit to be used during the auction (i.e., if a bidder holds a Power Purchase Agreement (PPA) or a Maryland Public Service Commission (PSC)-issued Offshore Renewable Energy Certificate (OREC) Order, as defined herein), and if one or more bidders have earned such a credit, the percentage that the credit will be worth. The auction will balance consideration of two variables: (1) a cash bid, and (2) a non-monetary credit. In sum, these two variables comprise the multi-factor bid or “As-Bid” auction price. A bidder’s As-Bid price, which is the sum of its cash bid and any credit portion earned, will either meet BOEM’s asking price or be reflected in the bidder’s own Intra-Round Bid price subject to certain conditions, as described more fully herein. A multiple-factor auction, wherein both monetary and nonmonetary bid variables are considered, is allowed under BOEM’s regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6).

Overview of the Multiple-factor Bidding Format Proposed for this Sale

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider many factors as part of a bid. The regulations state that one bid proposal per bidder will be accepted, but do not further specify the procedures to be followed in the multiple-factor format. This multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulations leave to BOEM the determination of how to administer the multiple-factor auction format to ensure the receipt of a fair return under the Act, 43 U.S.C. 1337(p)(2)(A).

BOEM's regulations at 30 CFR 585.220(a)(4) allow for a multi-round auction in which each bidder may submit only one proposal per LA or for a set of LAs in each round of the auction. The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for the North LA and an asking price for the South LA. The asking price for a bid on both LAs is the sum of the asking prices for the North LA and the South LA. Each bidder will indicate whether it is willing to meet the asking price for one or both LAs. A bid submitted at the full asking price for one or both LAs in a particular round is referred to as a "live bid." A bidder must submit a live bid for at least one of the LAs in each round to participate in the next round of the auction. As long as there is at least one LA that is included in two or more live bids, the auction continues, and the next round is held.

A bidder's As-Bid price must meet the asking price in order for it to be considered a live bid. A bidder may meet the asking price by submitting a monetary bid equal to the asking price, or, if it has earned a credit, by submitting a multiple-factor bid—that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price. A multiple-factor bid would consist of the sum of a cash portion and any credit portion which the bidder has earned.

An uncontested bid is a live bid that does not overlap with other live bids in that round. For example, a bid for both the North and the South LAs is considered contested if any LA included in that bid is included in another bid—a bid cannot be "partially uncontested." An uncontested bid represents the only apparent interest in that bid's LA(s) at the asking price for that round. If a bidder submits an uncontested bid consisting of one LA, and the auction continues for another round, BOEM automatically

carries that same live bid forward as a live bid into the next round, and BOEM's asking price for the LA contained in the uncontested bid would remain unchanged from the previous round. If the price on the LA in that bid rises later in the auction because another bidder places a live bid on that LA, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price goes up, the bidder that placed the previously carried-forward bid is free to bid on either lease area at the new asking prices.

Following each round in which either LA is contained in more than one live bid, BOEM will raise the asking price for that LA by an increment determined by BOEM. The auction concludes when neither the North LA nor the South LA is included in more than one live bid. The series of rounds and the rising asking prices set by BOEM will facilitate consideration of the first variable – the cash portion of the bid.

The second variable – a credit of up to 25% of a monetary bid for holding a PPA or a Maryland OREC Order – will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced LA in a bidder's multiple-factor bid. This credit serves to supplement the amount of a cash bid proposal made by a particular bidder in each round. A bidder holding a qualified PPA or OREC Order will receive a credit of up to 25%. In the case of a bidder holding a credit and bidding on more than one LA, the credit will be applied only on the LA with the highest asking price. More details on the non-monetary factors are found in the "Credit Factors" section herein.

The panel will evaluate non-monetary packages consisting of any purported PPA or qualified OREC Order to determine whether it meets the criteria provided in the FSN,

and therefore whether it will qualify for a credit for its holder. It is possible that the panel could determine that no bidder qualifies for a non-monetary credit during the auction, in which case the auction would otherwise proceed as described in the FSN. The panel will determine the winning bids for each LA on the basis of the procedures described in the FSN.

Details of the Auction Process

Bidding – Live Bids

Each bidder is allowed to submit a live bid for one LA (North or South), or both LAs based on its “eligibility” at the opening of each round. A bidder’s eligibility is either two, one, or zero LAs, and it corresponds to the maximum number of LAs that a bidder may include in a live bid during a single round of the auction. A bidder’s initial eligibility is determined based on the amount of the bid deposit submitted by the bidder prior to the auction. To be eligible to offer a bid on one LA at the start of the auction, a bidder must submit a bid deposit of \$450,000. To be eligible to offer a bid on both the North and South LAs in the first round of the auction, the bidder must submit a bid deposit of \$900,000. A bidder’s bid deposit will be used by BOEM as a down payment on any monetary obligations incurred by the bidder should it be awarded a lease.

As the auction proceeds, a bidder’s eligibility is determined by the number of LAs included in its live bid submitted in the round prior to the current round. That is, if a bidder submitted a live bid on one LA in the previous round, that bidder may submit a bid that includes at most one LA in the current round. If a bidder submitted a live bid comprised of both LAs in the previous round, that bidder may submit a live bid that also includes these two LAs in the current round. In both cases, unless a bidder has an

uncontested bid that is carried forward into the next round, the bidder also may choose to submit a live bid with fewer LAs than the maximum number it is eligible to include in its bid. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

In the first round of the auction, bidders have the following options:

A bidder with an initial eligibility of one (that is, a bidder who submitted a bid deposit of \$450,000) may:

- Submit a live bid on the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

A bidder with an initial eligibility of two (that is, a bidder who submitted a bid deposit of \$900,000) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for either the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

Before each subsequent round of the auction, BOEM will raise the asking price for any LA that was contained in more than one live bid in the previous round. BOEM will not raise the asking price for a LA that was in only one or no live bids in the previous round.

Asking price increments will be determined by BOEM, in its sole discretion.

BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude; and

- Decreasing the increments as the asking price of a LA nears its apparent final price.

BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process. Asking prices for the LAs included in multiple live bids in the previous round will be raised and rounded to the nearest whole dollar amount to obtain the asking prices in the current round.

A bidder must submit a live bid in each round of the auction (or have an uncontested live bid automatically carried forward by BOEM) for it to remain active and continue bidding in future rounds. All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of the bids they submit and can be held accountable for up to the maximum amount of those bids determined to be winning bids during the final award procedures.

Between rounds, BOEM will release the following information:

- The level of demand for each LA in the previous round of the auction (i.e., the number of live bids that included the LA); and
- The asking price for each LA in the upcoming round of the auction.

In any subsequent round of the auction, if a bidder's previous round bid was uncontested, and the auction continues for another round, then BOEM will automatically carry forward that bid as a live bid in the next round. A bidder whose bid is being carried forward will not have an opportunity to modify or drop its bid until some other bidder submits a live bid that overlaps with the LA in the carried forward bid. In particular, for

rounds in which a bidder finds its uncontested bid is carried forward, the bidder will be unable to do the following:

- Switch to the other LA;
- Submit an Intra-Round Bid (see herein for discussion of Intra-Round Bids); or
- Drop out of the auction.

A bidder may be bound by that bid or, indeed, by any other bid which BOEM determines is a winning bid in the award stage. Hence, a bidder cannot drop an uncontested bid. In no scenario can a bidder be relieved of any of its bids from previous or future rounds until a determination is made in the award stage about the LAs won by the bidder.

If a bidder's bid is not being carried forward by BOEM, a bidder with an eligibility of one (that is, a bidder who submitted a live bid for either the North LA or the South LA in the previous round) may:

- Submit a live bid for either the North LA or the South LA;
- Submit an Intra-Round Bid for the same LA for which the bidder submitted a live bid in the previous round, and exit the auction; or
- Submit nothing, and drop out of the auction.

A bidder with an eligibility of two (that is, a bidder who submitted a live bid for both North and South in the previous round) may:

- Submit a live bid for both the North and South LAs;
- Submit a live bid for either the North LA or the South LA;
- Submit an Intra-Round Bid for both the North and South LAs, and a live bid for either the North LA or the South LA;

- Submit an Intra-Round Bid for both the North and South LAs, no live bids, and exit the auction; or
- Submit nothing, and drop out of the auction.

Subsequent auction rounds occur in this sale as long as either the North LA or the South LA is contested. The auction concludes at the end of the round in which neither the North LA nor the South LA is included in the live bid of more than one bidder, i.e., all live bids are uncontested.

Bidding – Intra-round Bids

All asking prices and asking price increments will be determined by the BOEM Auction Manager. Intra-round bidding allows bidders to more precisely express the maximum price they are willing to offer for the North, South, or both LAs while also minimizing the chance of ties. An intra-round bid must consist of a single offer price for exactly the same LA(s) included in the bidder's live bid in the previous round.

When submitting an intra-round bid, the bidder is indicating that it is not willing to meet the current round's asking price, but it is willing to pay more than the previous round's asking price. In particular, in an intra-round bid, the bidder specifies the maximum (higher than the previous round's asking price and less than the current round's asking price) that it is willing to offer for the specific LA(s) in its previous round's live bid.

Although an intra-round bid is *not* a live bid, in the round in which a valid intra-round bid is submitted for both LAs, the bidder's eligibility for a live bid in that same round and future rounds is permanently reduced from including two LAs to one LA. In

other words, once an intra-round bid is submitted, the bidder will never again have the opportunity to submit a live bid on as many LAs as it has bid in previous rounds.

BOEM will not consider intra-round bids for the purpose of determining whether to increase the asking price for a particular LA or to end the auction. Also, BOEM will not count or share with bidders between rounds the number of intra-round bids received for each LA.

All of the intra-round bids submitted during the auction will be preserved, and may be determined to be winning bids. Therefore, bidders are responsible for payment of the bids they submit and may be held accountable for up to the maximum amount of any intra-round bids or live bids determined to be winning bids during the final award procedures.

Determining Provisional Winners

After the bidding ends, BOEM will determine the provisionally winning bids in accordance with the process described in this section. This process consists of two stages: Stage 1 and Stage 2, which are described herein. Once the auction itself ends, nothing further is required of bidders within or between Stages 1 and 2. In practice, the stages of the process will take place as part of the solution algorithm for analyzing the monetary and credit portion of the bids, determining provisional winners, finding the LAs won by the provisional winners, and calculating the applicable bid prices to be paid by the winners for the LAs they won. This evaluation will be reviewed, checked and validated by the panel. The determination of provisional winners, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the

auction, and the absence of conduct detrimental to the integrity of the competitive auction.

- *Stage 1*

Live bids submitted in the final round of the auction are Qualified Bids. In Stage 1, a bidder with a Qualified Bid is provisionally assured of winning the LA(s) included in its final round bid, regardless of any other prior-to-final round live bids or Intra-Round Bids in any round. If both LAs are awarded to bidders in Stage 1, the second award stage is not necessary. If the North LA or the South LA received a bid but was not awarded in Stage 1 because no live bids were received in the final round of the auction, BOEM will proceed to Stage 2 to award the leases.

Following the auction, all winning bidders must pay the price associated with their winning bids, which may consist of cash and non-monetary credits or just cash.

- *Stage 2*

All bids are either Qualified Bids or Contingent Bids. Contingent bids are all live bids received before the final round, and any Intra-Round Bids received during the auction. In Stage 2, BOEM will consider Contingent Bids to see if the unawarded LA(s) can be awarded without interfering with Stage 1 awards. BOEM will award leases in Stage 2 to the bid(s) that maximize(s) the total As-Bid prices.

Any Contingent Bids that conflict with Qualified Bids will not be considered. There is one notable exception to this rule. This exception allows BOEM to accept a Contingent Bid for both LAs notwithstanding the existence of a Qualified Bid by the same bidder, provided the acceptance of the Contingent Bid for both LAs results in higher overall As-Bid prices than acceptance of only the Qualified Bid for a single LA.

In this scenario, a bidder would be awarded both LAs and would be required to pay its Intra-Round Bid price associated with its Intra-Round Bid for both LAs, even though it submitted a Qualified Bid that guaranteed only one of the LAs.

This exception represents the only situation in which BOEM will consider for award a Contingent Bid which overlaps a Qualified Bid. In contrast, there is no situation in which one bidder's Contingent Bid will be considered for award if it overlaps with any LA that is included in another bidder's Qualified Bid.

Under certain circumstances, different combinations of contingent bids may result in the same total As-Bid price. In such cases, BOEM will resolve the resulting tie with a random drawing.

In the event a bidder submits a bid for a LA that the panel and BOEM determine to be a winning bid, the bidder will be expected to sign the applicable lease documents in a timely manner and submit the full cash payment due, pursuant to 30 CFR 585.224. If a bidder fails to timely sign and pay for the lease, then BOEM will not issue the lease to that bidder, and the bidder will forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

Credit Factors

Prior to the auction, BOEM will convene a panel to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit applicable to the As-Bid auction price for one of the LAs in each

round of the auction, as described herein. Any single PPA or Maryland OREC Order cannot be used by more than one bidder in the auction.

The percentage credit is determined based on the panel's evaluation of required documentation submitted by the bidders as of the deadline specified in the FSN. Bidders will be informed by email before the monetary auction about the percentage credit applicable to their bids. The bid credit will be applicable to only one LA. Any non-monetary credit would only be applicable to the higher priced LA in a bid for both LAs. For an Intra-Round Bid containing both LAs, the higher priced LA will be determined using the previous round's asking prices. In each round, the auction system will display information showing how their As-Bid auction prices are affected by the credit imputed to their bid to determine their net monetary payment due to BOEM, should their bids prevail as winning bids in the award stages. Application of the credit percentage to the appropriate As-Bid auction price will be rounded to the nearest whole dollar amount.

The bidder's imputed credit throughout the auction and award process is limited to the greater of 25% for a Maryland OREC Order, or up to 25% for a PPA (for at least 250 MW), applied to the highest priced LA related to the bidder's latest live bid or Intra-Round Bid. During each round, bidders are informed by the BOEM Auction System how the credit applies to their live bid and any Intra-Round Bid. In the case of an Intra-Round Bid for both LAs, the credit will apply only to the higher-priced LA, but the applicable price for calculating the credit will be based on the previous round's asking prices, not on any additional amount above the previous round's asking prices as reflected in the incremental amount associated with its Intra-Round Bid.

The panel will review the non-monetary package submitted by each bidder, and determine whether bidders have established that they are qualified to receive a credit, and the percentage at which that credit will apply, based on the definitional information of a PPA and an OREC application, as described herein. If the panel determines that no bidder has qualified for a non-monetary factor, the auction will proceed with each bidder registered with no imputed credit.

Credit Factor Definitions

The definitions herein will apply to the factors for which bidders may earn a credit.

Power purchase agreement (PPA) is any legally enforceable long-term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or similar legal authority. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the state's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. To qualify, a PPA must contain the following terms or supporting documentation:

- (i) A complete description of the proposed project;

- (ii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;
- (iii) A time line for permitting, licensing, and construction;
- (iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;
- (v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;
- (vi) The term for the long-term contract;
- (vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and
- (viii) Copies of or citations to interconnection filings related to the PPA.

If the panel determines a bidder has executed a PPA for at least 250 MW, it will be eligible for the entire 25% credit. If the panel determines a bidder has executed a PPA for an amount less than 250 MW, the bidder may still be eligible for a non-monetary credit proportional to the PPA's fraction of 250 MW. The smaller percentage for a partial credit will be calculated according to the formula below:

[GPO – PHOTO GRAPHIC]

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

[END PHOTO]

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.

- Full PPA = 250 MW
- Full Credit = 25%
- Partial PPA = amount (less than 250 MW) of power under contract

Maryland OREC Order is an order issued by the Maryland PSC approving a qualifying offshore wind project and establishing an OREC pricing schedule, pursuant to Md. Public Utilities Code Ann. § 7-704.1.

Additional Information Regarding the Auction Format

Non-Monetary Auction Procedures

All bidders seeking a non-monetary auction credit will be required to submit a non-monetary auction package prior to the auction. Instructions and deadlines for submittal will be provided in the FSN. If a bidder does not submit a non-monetary package by the date specified in the FSN, then BOEM will assume that bidder is not seeking a non-monetary auction credit and the panel will not consider that bidder for a non-monetary auction credit.

Bidder Authentication

Prior to the auction, the Auction Manager will send several bidder authentication packages to each bidder shortly after BOEM has processed the BFFs. One package will contain tokens for each authorized individual. Tokens are digital authentication devices. The tokens will be 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 BFF, a bid deposit, or

does not participate in the auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be 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 Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

Monetary Auction Times

This information will be elaborated on in the FSN and further clarified at the Mock Auction to be held prior to the lease sale. Additional information will be made available in an Auction System Technical Supplement, which will be posted on BOEM's website prior to the auction.

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 the auction, it will use the messaging feature to notify bidders that a revision has been made, and direct bidders to the relevant page. BOEM will also use the messaging system for other changes and items of particular note during the auction. The auction schedule and asking price increments are in BOEM's discretion, and are subject to change at any time before or during the auction.

During the auction, bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show 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 the Auction System Technical Supplement, and as practiced at the Mock Auction. No information about the round is available until the round has closed and results have been posted, so there should be no strategic advantage to placing bids early or late in the round.

Alternate Bidding Procedures

Any bidder who is unable to place a bid using the online auction should follow these instructions:

- Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction System Technical Supplement *before* the end of the round.
- BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company.
- Explain the problem.
- BOEM may, in its sole discretion, accept a bid using the Alternative Bidding Procedure.
- The Alternative Bidding Procedure enables a bidder who is having difficulties accessing the Internet to submit its bid via an Alternative Bidding Form that must be faxed to the auction manager.
 - If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the Alternate Bidding Procedure, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion.

- If the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess.
Bidders are strongly encouraged to submit the Alternative Bidding Form before the round ends.
- If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures.
- If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Except for bidders who have uncontested bids in the current round, failure to place a bid during a round will be interpreted as dropping out of the auction. Bids in all rounds are preserved for consideration in Stage 2 of the award process. Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Intra-Round Bid for a single LA in an earlier round, or if they stopped bidding during the auction.

ACCEPTANCE, REJECTION, OR RETURN OF BIDS: BOEM reserves the right and authority to reject any and all bids. No leases will be awarded to any bidders and no bids will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the

amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy these requirements may be returned to the bidder by the Program Manager of BOEM's Office of Renewable Energy Programs and, in that case, would not be considered for acceptance.

PROCESS FOR ISSUING THE LEASES: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to each winning bidder. Within 10 business days after receiving the lease copies, a winning bidder must:

1. Execute the lease 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 of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not to include *pay.gov*) 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: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described herein, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

In the event that the provisional winner does not execute and return the leases according to the instructions in the FSN, BOEM reserves the right to reconvene the panel to determine whether it is possible to identify a bid that would have won in the absence of

the bid previously determined to be the winning bid. In the event that a new winning bid is selected by the panel, BOEM will follow the procedures in this section for the new winner(s).

BOEM will not execute a lease until (1) the three requirements above have been satisfied, (2) BOEM has accepted the winning bidder's financial assurance, and (3) BOEM has processed the winning bidder's payment. The winning bidder 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 by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 days of the date that the winning bidder receives the lease copies, the winning bidder must pay the first 6-months' rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at:

<https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>.

The Lessee must pay the remaining 6-months' rent by the first day of the seventh month following the effective date of the lease, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

ANTI-COMPETITIVE BEHAVIOR: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent

anticompetitive behavior in the marketplace. Compliance with BOEM's auction procedures will not insulate a party from enforcement of antitrust laws.

In accordance with the Act at 43 U.S.C.1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of the lease sale." If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

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

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for a particular LA;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (e.g., heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see:

<http://www.justice.gov/atr/public/business-resources.html>, or consult counsel.

BIDDER'S FINANCIAL FORM CERTIFICATION: Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False

Statements) in the Bidder's Financial Form, which can be found on BOEM's website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx>.

The form must be filled out and returned to BOEM in accordance with the "Deadlines and Milestones for Bidders" section of this notice.

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 U.S. Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease by including this term as a condition in their contracts and other transactions.

FINAL SALE NOTICE: BOEM will consider comments received or postmarked during the PSN comment period in preparing a FSN that will provide the final details concerning the offering and issuance of OCS commercial wind energy leases in the Maryland WEA. The FSN will be published in the *Federal Register* at least 30 days before the lease sale is conducted and will provide the date and time of the auction.

FORCE MAJEURE: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN 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), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders

should call 703-787-1320 or access the BOEM website at:

<http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

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). BOEM will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse 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 is submitted as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, except as required by FOIA. Please label privileged or confidential information “Contains Confidential Information” and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of a company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3(a))

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as confidential.

Dated: November 30, 2013.

Tommy P. Beaudreau,
Director, Bureau of Ocean Energy Management.

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