



Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2016-0045]

Atlantic Wind Lease Sale 7 (ATLW-7) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Kitty Hawk, North Carolina - Final Sale Notice

MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Kitty Hawk, North Carolina.

SUMMARY: This document is the Final Sale Notice (FSN) for the sale of one commercial wind energy lease on the Outer Continental Shelf (OCS) offshore Kitty Hawk, North Carolina, pursuant to 30 CFR 585.216. The Bureau of Ocean Energy Management (BOEM) will offer Lease OCS-A 0508 for sale using an ascending bidding auction format. The FSN contains information pertaining to the area available for leasing, provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the lease 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 to authorize any such development.

DATES: BOEM will hold a mock auction for the bidders starting at 9:00 a.m. Eastern Standard Time (EST) on March 14, 2017. The monetary auction will be held online and will begin at 9:00 a.m. EST on March 16, 2017. Additional details are provided in the section entitled "Deadlines and Milestones for Bidders."

FOR FURTHER INFORMATION CONTACT: Will Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1320 or Will.Waskes@boem.gov.

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 August 16, 2016, in the *Proposed Sale Notice and Request for Interest (PSN/RFI) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore North Carolina (Kitty Hawk)*, which was published in the *Federal Register* (81 FR 54591). A 60-day comment period followed. BOEM received 19 comment submissions in response to the PSN/RFI, which are available on regulations.gov (Docket ID: BOEM-2016-0045) at: <https://www.regulations.gov/docket?D=BOEM-2016-0045>. BOEM has posted a document containing responses to comments submitted during the PSN/RFI comment period. The document, entitled *Response to Comments*, can be found through BOEM's website at: <http://www.boem.gov/North-Carolina>.

In response to the Request for Interest, BOEM received one affirmation of interest from an existing legally, technically, and financially qualified entity. In addition to this affirmation of interest, eight new entities submitted qualifications in response to the PSN and have been determined to be qualified to participate in the North Carolina (Kitty Hawk) lease sale. Accordingly, BOEM has determined that competitive interest in OCS-A 0508 continues to exist, and BOEM is proceeding with a competitive leasing process as set forth in 30 CFR 585.211 through 585.225.

Environmental Reviews

On January 23, 2015, BOEM published a Notice of Availability (NOA) of an Environmental Assessment (EA) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore North Carolina with a 30-day public comment period (80 FR 3621). In response to the NOA, BOEM received 195 comments, which are available at <http://www.regulations.gov>, Docket No. BOEM–2015–0001. Many of the comments focused on mitigation measures to protect wildlife, specifically marine mammals. Based on the comments received in response to the EA, public outreach, information meetings, and new information received, BOEM made revisions to the EA originally published in January 2015. As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI) on September 18, 2015, (80 FR 56494). The revised EA and FONSI can be found at: <http://www.boem.gov/North-Carolina/>.

In addition, BOEM has concluded consultations under the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS), and under the Magnuson-Stevens Fishery Conservation and Management Act with NMFS, relating to the lease sale, associated site characterization surveys, and subsequent site assessment activities. In October 2016, the States of North Carolina and Virginia concurred with BOEM’s consistency determination under the Coastal Zone Management Act.

On May 23, 2013, BOEM executed a programmatic agreement (PA) with the State Historic Preservation Officer of North Carolina and the Advisory Council on Historic Preservation to guide consultation under section 106 of the National Historic Preservation Act for renewable energy activities offshore North Carolina. The PA provides for consultation to continue throughout BOEM’s commercial leasing process and the decision-making process regarding the approval, approval with modification, or disapproval of a lessee’s Site Assessment

Plan (SAP) and/or Construction and Operations Plan (COP). In addition, the PA allows for phased identification and evaluation of historic properties. The PA can be found at:

<http://www.boem.gov/South-Atlantic-Renewable-Energy-Activities/>.

On May 7, 2015, BOEM completed its section 106 review for issuing commercial leases within the North Carolina Wind Energy Areas (WEA) and published a *Finding of No Historic Properties Affected For the Issuance of Commercial Leases within the Kitty Hawk, Wilmington East and Wilmington West Wind Energy Areas For Wind Energy Development on the Outer Continental Shelf Offshore North Carolina*. The Finding can be found at:

<http://www.boem.gov/NC-WEAs-Lease-Issuance/>.

Through its environmental review process, and in consideration of the comments received in response to the EA, BOEM developed measures to mitigate potential impacts from site characterization surveys and site assessment activities. Mitigation measures designed to reduce or eliminate impacts from survey activities will be enforced through the terms, conditions, and stipulations included in Addendum “C” of Lease OCS-A 0508. Mitigation measures related to the installation and operation of meteorological towers and/or buoys would be included as terms and conditions of the eventual lessee’s SAP approval. This suite of mitigation measures was developed using the best available science, and BOEM will continue to work with affected stakeholders and assess ongoing and future research relating to potential survey, site assessment, and construction and operations impacts, including potential mitigation measures. Additional environmental reviews and consultations will be conducted as necessary upon receipt of the lessee’ SAP and COP.

LIST OF ELIGIBLE BIDDERS: BOEM has determined that pursuant to 30 CFR 585.106 and 107, the following entities are legally, technically, and financially qualified to hold a commercial wind lease offshore North Carolina, and therefore may participate in this lease sale as bidders subject to meeting the requirements outlined in this notice.

Company Name	Company No.
Avangrid Renewables, LLC	15019
Enbridge Holdings (Green Energy) L.L.C.	15065
Shell WindEnergy Inc.	15066
Northland Power America Inc.	15068
Wind Future LLC	15067
Outer Banks Ocean Energy, LLC	15008
PNE Wind USA, Wind Inc.	15056
Statoil Wind US LLC	15058
wpd offshore Alpha LLC	15060

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 (BFF):* 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 February 2, 2017. 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: <http://www.boem.gov/North-Carolina/>. Once the BFF has been processed, bidders 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 as shown 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 February 16, 2017, 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.
- *Mock Auction:* BOEM will hold a Mock Auction on March 14, 2017, 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.
- *Conducting the Auction:* BOEM, through its contractor, will hold an auction as described in this notice.
- *Auction:* On March 16, 2017, 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 Format"

section of this notice. The monetary bidding will end in the first round in which BOEM receives one or zero bids at the asking price.

- *Announce Provisional Winner:* BOEM will announce the provisional winner of the lease sale after the auction ends.
- From the Auction to Lease Execution
 - *Refund Non-Winners:* Once the provisional winner has 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 the winner, with instructions on how to execute the lease. The first year's rent is due 45 calendar days after the winner receives the lease copies for execution.
 - *Return the Lease:* Within 10 business days of receiving the lease copies, the auction winner must post financial assurance, pay any outstanding balance of its bonus bid (i.e., winning monetary bid minus applicable bid deposit), and sign and return the three executed lease copies. The winner 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 winner's control, pursuant to 30 CFR 585.224(e).
 - *Execution of Lease:* Once BOEM has received the lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the lease and will execute the lease, if appropriate.

AREA OFFERED FOR LEASING: The area available for sale will be auctioned as one lease, Lease OCS-A 0508, (Kitty Hawk Lease Area (LA)). The Kitty Hawk LA consists of 122,405 acres. The Kitty Hawk LA is the same as the Kitty Hawk WEA that BOEM announced on August 11, 2014, and published in the PSN. A description of the Kitty Hawk LA can be found in Addendum “A” of the lease, which along with the Area Identification announcement and PSN, are available with this notice on the BOEM website at: <http://www.boem.gov/North-Carolina/>.

Map of the Area Offered for Leasing:

A map of the Kitty Hawk LA, 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: <http://www.boem.gov/North-Carolina/>.

A large scale map of the Kitty Hawk LA, 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.

WITHDRAWAL OF BLOCKS: BOEM reserves the right to withdraw all or portions of the Kitty Hawk LA prior to executing the lease with the winning bidder, based upon relevant information provided to BOEM.

LEASE TERMS AND CONDITIONS: BOEM has included terms, conditions, and stipulations for the OCS commercial wind lease to be offered through this sale. After the lease is issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The lease is available on BOEM’s website at: <http://www.boem.gov/North-Carolina/>. The lease includes 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/>.

Potential bidders should note that BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) are in the process of reassigning regulations relating to safety and environmental oversight and enforcement responsibilities for offshore renewable energy projects from BOEM to BSEE. Once this administrative reassignment is finalized, BOEM may make ministerial and non-substantive amendments to the lease to conform it to the regulatory revisions.

Plans: Pursuant to 30 CFR 585.601, the leaseholder wishing to submit a SAP must do so within 12 months of lease issuance. If the lessee intends to continue its commercial lease with an 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. However, instead of geographically dividing the leased area into acreage that is "generating" and "non-generating," 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 LA at the rental rate of \$3 per acre.

For a 122,405 acre lease (the size of the Kitty Hawk LA), the rent payment will be \$367,215 per year if no portion of the LA is authorized for commercial operations. If 300 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and the approved COP specifies a maximum project size of 500 MW, the rent payment will be \$146,886. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows: $200\text{MW}/500\text{MW} \times (\$3/\text{acre} \times 122,405 \text{ acres}) = \$146,886$.

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 Kitty Hawk LA. Later relinquishments of any portion of the Kitty Hawk LA will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must 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 lease 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 and pursuant to 30 CFR 585.506, an operating fee rate is applied 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 a 100 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:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{Power Price} \times 0.02 = \$280,320$$

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 Kitty Hawk LA, 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, that 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 20 turbines in its COP, and each is rated by the manufacturer at 5 MW, the nameplate capacity of the wind facility is 100 MW.

Capacity Factor: The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered in a year will always be less than the theoretical 100% capacity, largely because of the variability of wind speeds, transmission line loss, and downtime for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and 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. BOEM has set the capacity factor for the year in which commercial operations commence and the six full years thereafter at 0.4 (i.e., 40%). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor 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: 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 PJM Dominion zone 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 to be 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 winner of the Kitty Hawk LA must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements. The provisional winner 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 requirements 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 lease, which BOEM has made available with this notice on its website at: <http://www.boem.gov/North-Carolina/>.

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: <http://www.boem.gov/North-Carolina/>. 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 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 who has been identified 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 February 16, 2017. 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, the balance of the bid deposit will be refunded 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. 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 monetary bidding. BOEM has established a minimum bid of \$2.00 per acre, or \$244,810, 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 sale. Using an online bidding system to host the auction, BOEM will start the bidding for Lease OCS-A 0508 at \$244,810, and increase that price incrementally until no more than one active bidder remains in the auction.

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 LA. If a bidder is willing to meet that asking price for the LA, it will indicate this by submitting a bid equal to the asking price, *i.e.*, a live bid.

To participate in any round of the auction, a bidder must have submitted a live bid in the previous round. As long as there are two or more live bids for the LA, the auction will proceed to the next round. Between rounds, BOEM will raise the asking price for the LA by an increment that it determines appropriate. Asking price increments are within BOEM's sole discretion, but may be based on a number of factors, including the number of bidders still active in the auction and BOEM's best estimate of how many rounds may remain before the auction is resolved.

As the auction proceeds, a bidder will retain its eligibility to continue bidding as long as that bidder submitted a live bid in the previous round. Between rounds, BOEM will release information indicating the number of live bids in the previous round of the auction (i.e., the level of demand) and the asking price in the upcoming round of the auction. Bidders may be bound by any of their bids until the auction results are finalized.

Exit Bidding

In any round after the first round of the auction, a bidder may submit an exit bid that is higher than the previous round's asking price, but less than the current round's asking price. If a bidder submits an exit bid, it is not eligible to participate in any subsequent rounds of the auction. During the auction, exit bids will be seen only by BOEM and not by other bidders.

If the LA receives only exit bids in a round, no bidders will be eligible to bid in the next round, and the auction will conclude.

Determining the Provisional Winner

The auction will end in the first round in which at most one live bid is received. If there is one live bid in the final round, that bid is the provisionally winning bid. If there are no live bids, the highest exit bid is the provisionally winning bid. If there is a tie for the highest exit bid,

BOEM's tie-breaking procedures will resolve the tie. If BOEM receives no live or exit bids, then there is a tie among all bidders that had submitted live bids in the previous round and BOEM's tie-breaking procedures will determine the provisionally winning bid.

Ties are resolved by a random process. The auction system generates a random number for each bidder. In the event of a tie, these numbers are compared, and the tied bidder with the highest random number is deemed the provisional winner.

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 necessary for allowing 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.

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: <http://www.boem.gov/North-Carolina/>. 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 **March 16, 2017**. 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 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 may continue until about 6:00 p.m. each day. BOEM anticipates that the auction will last one business day, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve 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. When BOEM changes the schedule during an auction, it uses the messaging feature to notify bidders that a revision has been made, and directs bidders to the relevant page. BOEM also uses the messaging system for other changes and 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. No information about the round results is available until the round has closed and results have been posted, so there is no strategic advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the ASTS. The ASTS describes auction procedures that are incorporated by reference in this notice, unless the procedures described in the ASTS directly contradict this notice. 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. Additionally, during the auction, bidders are prohibited from communicating to the general public, including, but not limited to, through social media, updated websites, or press releases, regarding any aspect of their participation or lack thereof in the auction.

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: <http://www.boem.gov/North-Carolina/>.

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 bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject the 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: <http://www.justice.gov/atr/public/business-resources.html>, 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 the provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidder 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: <http://www.boem.gov/North-Carolina/>.

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 the 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 the 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. In such an event, BOEM reserves the right to identify the next highest bid submitted during the lease sale and offer the lease pursuant to that bid.

Within 45 calendar days of the date that the 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: <http://www.boem.gov/North-Carolina/>.

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 or 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 will be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise confidential information.

January 10, 2017

Walter D. Cruickshank
Acting Director, Bureau of Ocean Energy Management

Date

[FR Doc. 2017-01059 Filed: 1/17/2017 8:45 am; Publication Date: 1/18/2017]