



Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2021-0033]

Atlantic Wind Lease Sale 8 (ATLW-8) for Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight - Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed sale notice; request for comments.

SUMMARY: This document is the proposed sale notice (PSN) for the sale of commercial wind energy leases on the Outer Continental Shelf (OCS) in the New York Bight. The Bureau of Ocean Energy Management (BOEM) proposes to offer for sale eight lease areas (Lease Areas) using a single factor ascending-bid auction. The PSN contains information pertaining to the areas available for leasing, certain provisions and conditions of the leases, auction details, lease forms, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of any 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 on whether the proposed development should be authorized.

DATES: Comments are due by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For prospective bidders who want to participate in this lease sale: Unless you have received

confirmation from BOEM that you are qualified to participate in a lease sale in the New York Bight, your qualification materials must be submitted during the comment period and must be postmarked no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may send written comments on the PSN in one of the following ways:

- **Electronically:** <http://www.regulations.gov>. In the search box near the top of the webpage, enter “BOEM-2021-0033” and click “search.” Follow the instructions to submit public comments.
- **Mail or other delivery service:** Enclose your comments in an envelope addressed to “Comments on New York Bight PSN,” Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166.

Qualification Materials: For prospective bidders who have not been qualified by BOEM to participate in a New York Bight lease sale, submit qualification materials, with due regard to the guidance provided at <https://www.boem.gov/Renewable-Energy-Qualification-Guidelines/>, to Luke Feinberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1705, or luke.feinberg@boem.gov.

Instructions: All comments and qualification submissions must include the agency name (i.e., BOEM) and docket number (i.e., BOEM-2021-0033) for this PSN. All comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided in the comment or submission. For detailed instructions on sending comments, see “Public Participation” at section XX of the SUPPLEMENTARY INFORMATION. For treatment of confidential information, see “Protection of Privileged or Confidential Information” at section XXI of the

FOR FURTHER INFORMATION CONTACT: Luke Feinberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1705, or luke.feinberg@boem.gov.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND:

- a. Call for Information and Nominations:** On April 11, 2018, BOEM published a Call for Commercial Leasing for Wind Power on the OCS in the New York (NY) Bight (Call). The Call contained four proposed areas for development entitled “Fairways North,” “Fairways South,” “Hudson North,” and “Hudson South” (the Call Areas). BOEM received over 130 comments from the general public, Federal agencies, State and local agencies, the fishing industry, industry groups, offshore wind developers, non-governmental organizations, universities, and other stakeholders. The subjects receiving the most comments were commercial fisheries and navigation. Nine offshore wind developers submitted nominations in response to the Call. While each of the Call Areas received at least one nomination, the majority of nominations were concentrated in Hudson South.

b. **Area Identification:** After the close of the Call comment period on July 30, 2018, BOEM initiated the area identification (Area ID) process by reviewing the inputs received. Through the Area ID process, BOEM considered the following non-exclusive list of information: comments and nominations received on the Call; information from the NY Bight Intergovernmental Task Force; input from New York, New Jersey, Rhode Island, and Massachusetts State agencies; input from Federal agencies; comments from relevant stakeholders, including the maritime community, offshore wind developers, and commercial fishing industry; state and local renewable energy goals; and domestic and global offshore wind market and technological trends.

BOEM also considered multiple existing uses of the NY Bight in developing the Call Areas and subsequent Wind Energy Areas (WEAs). BOEM found that the uses that have the highest potential to interact with offshore wind development in the Call Areas are (i) commercial and recreational fishing; (ii) maritime navigation; and (iii) Department of Defense (DoD) activities. BOEM completed the Area ID on March 29, 2021, by identifying the following five WEAs within the Call Areas: Fairways North, Fairways South, Hudson North, Central Bight, and Hudson South. The Area ID announcement and map of the WEAs are available at:

<https://www.boem.gov/NY-Bight/>

c. **Environmental Reviews:** On March 29, 2021, BOEM published a notice to stakeholders (NTS) regarding its intent to prepare an environmental assessment (EA) to consider potential environmental consequences of site characterization activities (i.e., biological, archeological, geological, and geophysical surveys and core samples) and site assessment activities (i.e., installation of meteorological (met) buoys) associated with issuing wind energy leases in the WEAs. The EA also considers project easements associated with each potential lease issued and grants for subsea cable corridors in the NY Bight. As part of the EA process, BOEM sought comments on the issues and alternatives to be considered in the EA and received approximately 3,000 comments, which can be found at <http://www.regulations.gov>, under Docket No. BOEM-2021-0021.

Concurrently with its preparation of the EA, BOEM is conducting consultations under the Coastal Zone Management Act (CZMA). BOEM will initiate consultations under the Endangered Species Act (ESA) for ESA-listed species under the jurisdiction of the U.S. Fish and Wildlife Service and under the Magnuson-Stevens Fishery Conservation and Management Act for lease issuance, site assessment, and site characterization activities concurrently with the EA. BOEM has initiated consultation for site assessment and site characterization activities for ESA-listed species under National Marine Fisheries Service (NMFS)

jurisdiction. These consultation documents will be available at:

<https://www.boem.gov/environmental-consultations>.

BOEM prepared and executed a programmatic agreement (PA) to guide its consultations under section 106 of the National Historic Preservation Act. The PA provides for consultations to continue through BOEM’s decision-making process regarding the issuance of leases, rights-of-way grants, and rights-of-use and easements on the OCS. The PA also includes BOEM’s phased identification and evaluation of historic properties.

The EA and associated consultations will be concluded before and inform BOEM’s decision whether to proceed with the final sale notice (FSN). BOEM will solicit comments on the EA before it is finalized.

II. AREA PROPOSED FOR LEASING: The areas available for sale are proposed to be auctioned as eight leases, Lease OCS-A 0537 through Lease OCS-A 0544:

Lease Area Name	Lease Area ID	Acres
Central Bight	OCS-A 0537	84,688
Hudson South - B	OCS-A 0538	84,332
Hudson South - C	OCS-A 0539	80,062
Hudson South - D	OCS-A 0540	76,148
Hudson South - E	OCS-A 0541	84,688
Hudson South - F	OCS-A 0542	87,890
Hudson South - A	OCS-A 0543	85,755
Hudson North	OCS-A 0544	43,056
<i>Total</i>		<i>627,331</i>

The proposed lease areas include the entirety of the Hudson North and Central Bight WEAs, as well as subdivided portions of Hudson South

(A, B, C, D, E & F). Hudson South was subdivided so that each proposed lease area:

- is of roughly equal commercial viability and size;
- includes transit corridors to account for vessel traffic patterns, fisheries, and DoD concerns;
- is laid out in a manner to reduce wake effect; and
- facilitates fair return to the Federal Government pursuant to the OCS Lands Act through robust competition for commercially viable lease areas.

The proposed transit corridor locations were informed by a report based on a workshop convened by New York State Energy Research and Development Authority (NYSERDA), New York State Department of Environmental Conservation, and the Responsible Offshore Development Alliance (RODA). The workshop focused on an analysis of fishing vessels transit and traffic patterns. The width of the proposed corridors would be 2.44 nautical miles.¹ There are some locations where portions of a lease area overlap with a proposed transit corridor. No surface occupancy will be allowed within the areas of overlap.

¹ The proposed width was calculated using the Permanent International Association of Navigation Congresses (PIANC) report (2018, March). Interaction Between Offshore Wind Farms and Maritime Navigation (MarCom WG Report No. 161 - 2918). ISBN: 978-2-87223-250-5. Pg. 24.

BOEM is aware of potential conflicts with the U.S. Coast Guard (USCG) and DoD regarding Hudson North (OCS-A 0544) and Lease Area A of Hudson South (OCS-A 0543). BOEM is working closely with USCG and DoD to ensure final lease areas are deconflicted and suitable for offshore wind development. For more information regarding the DoD's evaluation, please see the December 15, 2020, letter from the DoD Military Aviation and Installation Assurance Siting Clearinghouse to BOEM posted on our website: <https://www.boem.gov/renewable-energy/state-activities/dod-response-new-york-bight-offshore-call-areas>.

The Fairways North and South WEAs are not being considered for leasing at this time due, in part, to conflicts with the proposed USCG fairway, maritime traffic concerns, commercial fisheries, State preferences, marine protected species, and commercial viability. Additional detail on our analysis of these WEAs and potential conflicts can be found in the New York Bight Area Identification Memorandum Pursuant to 30 CFR 585.211(b) (see pages 28-32). Fairways North and South may, however, be considered for a future sale and will be analyzed in the EA.

A description of the proposed Lease Areas can be found in addendum "A" of each proposed lease, which BOEM has made available with this notice on its website at:

<https://www.boem.gov/NY-Bight/>

- a. **Map of the Area Proposed for Leasing:** A map of the Lease Areas and GIS spatial files X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's website at:

<https://www.boem.gov/NY-Bight/>.

- b. **Potential Future Restrictions for Navigational Safety:**

- i. **USCG Navigational Safety Measures:** Potential bidders should note that portions of the Hudson North Lease Area may not be available for future development (i.e., installation of wind facilities) because of navigational safety concerns. In accordance with the Ports and Waterways Safety Act, the USCG has published an Advanced Notice of Proposed Rulemaking (ANPRM), which includes traffic lanes in the vicinity of the New York Bight. This ANPRM included a shipping safety fairway to accommodate vessel traffic traveling across the Bight from the Delaware Bay area to east of Montauk. The shipping safety fairway overlaps with the proposed Hudson North Lease Area. The size and boundaries of the Hudson North Lease Area could change between now and the FSN, depending on the outcome of additional discussions between BOEM and USCG. BOEM may require additional mitigation measures upon review of a Construction and Operations Plan (COP) when the lessee's

site-specific navigational safety risk assessment is available to inform BOEM's decision-making.

In addition, in 2020, the USCG announced that it would conduct a Supplemental Port Access Route Study (PARS) for both the seacoast of New Jersey (study conducted by the Fifth USCG District) and the northern NY Bight (study conducted by the First USCG District) that, combined, would include the entirety of the NY Bight. These two PARS may result in additional east/west mitigation measures at the COP review stage.

- ii. **Vessel Transit Corridors:** Representatives of the fishing industry have requested that offshore wind facilities be designed in a manner that, among other things, provides for safe transit through facilities to fishing grounds, where relevant. BOEM has identified initial vessel transit corridors within the Hudson South WEAs and seeks comment on those corridors in response to this PSN. BOEM currently does not know if additional transit corridors will be necessary in the remaining Lease Areas, Hudson North and Central Bight. Bidders should be aware that a lease stipulation may be included in the FSN that addresses transit corridors, pending the outcome of additional discussions with stakeholders, including comments submitted in response to this PSN.

c. **Potential Future Restrictions Regarding Department of**

Defense Activities: Prospective bidders should be aware of potential conflicts with existing uses of the OCS by the DoD.

BOEM coordinates with the DoD throughout our leasing process.

A December 2020 letter from the DoD summarizes our most recent consultations and is available at:

<https://www.boem.gov/renewable-energy/state-activities/dod-response-new-york-bight-offshore-call-areas>.

i. **Height Restrictions:** Development of Lease Areas in the Hudson South WEA could adversely affect U.S Air Force Weather Divisions NEXRAD weather radar by limiting the ability to track tropical storms moving towards the region if turbine heights exceed 1,000 feet. Mitigation may include restricting turbines in the Hudson South WEA to less than 1,000 ft. above sea level. The exact restrictions could depend on site specific information, and BOEM is currently working with DoD to refine this evaluation based on the Lease Areas proposed in this PSN.

ii. **Air Surveillance and Radar:** The North American Aerospace Defense Command (NORAD) mission may be affected by the development of the Lease Areas. BOEM will coordinate with DoD and the lessee to de-conflict these potential impacts through the COP review stage. Mitigation measures or terms and conditions of a plan approval may result.

iii. **Hudson South - A (OCS-A 0543):** The Department of the Navy identified impacts to current and future training activities should the entirety of Lease Area Hudson South-A (OCS-A 0543) be developed. BOEM is continuing to work with DoD to evaluate the impacts and identify potential mitigation measures. However, bidders should be aware that portions of this Lease Area may not be available for development. Additional information will likely be published in the FSN.

III. PARTICIPATION IN THE PROPOSED LEASE SALE:

a. **Bidder Participation:** Entities which are already qualified to participate in an upcoming sale through their response to the Call or submission of qualification materials are not required to take any additional action to affirm their interest. Those entities are listed below:

Company Name	Company No.
Avangrid Renewables, LLC	15019
East Wind LLC	15076
EDF Renewables Development, Inc.	15027
Equinor Wind US LLC	15058
Horizon Wind Power LLC	15081
North River Wind, LLC	15096

RWE Offshore Wind Holdings, LLC	15061
PNE USA, Inc.	15056
US Mainstream Renewable Power Inc.	15089
US Wind Inc.	15023
Invenergy Wind Offshore LLC	15091

All other entities wishing to participate in the proposed ATLW-8 lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice.

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

BOEM considers two entities to be affiliated if (a) one entity (or its parent or subsidiary) has or retains any right, title, or interest in the other entity (or its parent or subsidiary), including any ability to control or direct actions with respect to such entity, either directly or indirectly, individually or through any other

party; or (b) the entities are both direct or indirect subsidiaries of the same parent company.

IV. QUESTIONS FOR STAKEHOLDERS: Stakeholders are encouraged to comment on any matters related to this lease sale that are of interest or concern to them. BOEM has identified certain issues as particularly important in developing this lease sale and encourages comments on how to address these issues through lease terms or stipulations.

a. *Number, size, orientation, and location of the proposed lease areas.* In this PSN, BOEM proposes eight Lease Areas in the NY Bight. BOEM is seeking feedback on the proposed number, size, orientation, and location and welcomes comments on which Lease Areas, if any, should be prioritized for inclusion, or exclusion, from this lease sale or future lease sales.

i. *Lease area size:* During the April 2021 NY Bight Intergovernmental Task Force meeting, BOEM received a comment suggesting that the proposed Lease Areas should be combined to create larger (~160,000 acres) Lease Areas which would capture greater economies of scale. BOEM seeks comments regarding the preferred lease area size and if additional acreage beyond what is proposed is needed for commercial viability.

b. *Transit corridors:* BOEM has proposed an orientation of Lease Areas in the Hudson South WEA that includes vessel transit

corridors. BOEM welcomes comments on transit corridor attributes and the degree to which they meet potential users' needs. Specifically, does the proposed orientation (length, width, etc.) facilitate continuance of existing uses? If not, a) what are the additional costs of utilizing the proposed transit corridors, and b) what orientation would better balance any competing needs of renewable energy developers and existing users? BOEM asks commenters to submit technical and scientific data in support of their comments.

- c. *Benefits to Underserved Communities:* The January 20, 2021, Executive Order 13985 “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” directs advancement of equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The January 27, 2021, Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad” includes the goal of doubling offshore wind by 2030 while creating good jobs and ensuring robust protection for our lands, waters, and biodiversity.

To the extent that it is consistent and allowable within BOEM's statutory authority and applicable laws, BOEM is considering lease stipulations to direct benefits to underserved communities and to better develop the workforce needed to design, construct, operate, and maintain offshore wind farms. BOEM is soliciting

information to develop lease stipulations concerning, but not be limited to:

- i. workforce training and development.
- ii. contracting with and supporting the development minority- and women-owned businesses.
- iii. programs that promote and deliver environmental justice.

The stipulations could, for example, mandate or encourage the use of instruments, with plan reporting requirements to show compliance. Alternatively, BOEM may offer incentives in the form of auction credits or credits towards rent and operating fee obligations for investment in the aforementioned categories where appropriate. These incentives could be in the form of a credit for the amount invested in existing State-run programs with similar goals or the establishment of new programs where appropriate. BOEM invites comment on the appropriate mechanisms, evaluation metrics, and valuation of these additional lease requirements.

Commenters are encouraged to describe how these or similar measures would further development of the proposed Lease Areas and the purposes of OCS Lands Act, and provide references to any studies that support their recommendations.

d. *Creating a Domestic Supply Chain*

To the extent that it is consistent and allowable within BOEM's statutory authority and applicable laws, BOEM is also considering

mechanisms such as lease stipulations, auction credits or credits towards rent and operating fee obligations that would incentivize a durable, domestic supply chain conducive to prompt and orderly development of the Lease Area and renewable energy development on the OCS. Commenters are encouraged to describe how these or similar measures would further development of the proposed Lease Areas and the purposes of OCS Lands Act, and provide references to any studies that support their recommendations.

e. Native American Tribes, Ocean User, and Stakeholder

Engagement: In an effort to require early and regular lessee engagement with affected stakeholders, BOEM is proposing a lease stipulation that would require lessees to provide a semi-annual (i.e., every six months) progress report that summarizes engagement with ocean users potentially affected by proposed activities on the lease or proposed project easement. The progress report would identify and describe: all of the existing users; the lessee's engagement with those users; efforts to avoid, minimize or mitigate any conflict between the existing users and the lessee; and any planned next steps to engage those users and address identified conflicts. The lease stipulation specifically would require coordination with the fishing industry and consideration of potential conflicts prior to proposing a wind turbine layout in the COP. BOEM seeks comment on this concept generally, as well as comment on the contents and timing of such reports.

f. Limits on number of lease areas per bidder: BOEM recognizes the dramatic increase in market demand for offshore renewable energy development opportunities and the associated potential for higher lease sale prices. BOEM is proposing to allow each qualified entity to bid for only one lease in any given round and to ultimately acquire only one lease area from the auction. To the extent it reduces competition for individual leases, this would tend to decrease the overall bonus bids. However, a larger number of lessees would tend to increase competition for future energy procurements and drive down the cost of electricity to ratepayers. Additionally, BOEM sees value in increasing the pool of lessees to potentially have more diverse representation of developers. However, BOEM has also contemplated allowing an entity to bid for (and win) up to two lease areas. BOEM is seeking feedback on the proposed one-lease-area per bidder scheme and how different leasing scenarios may influence the advisability of such a limitation (e.g., number of lease areas offered, size of lease areas, etc.).

g. Coordinated Engagement: BOEM has received feedback that the potential addition of eight new OCS wind lessees burdens stakeholders that have limited resources and that are already seeking to engage with existing lessees. BOEM seeks comment on methods to improve coordination and engagement among lessees, Federally recognized Tribes, ocean users, and stakeholders. Specifically, BOEM is soliciting input on how to improve the

frequency, duration, sustainability, and collaborative engagement among these parties, as well as the preferred form it should take (in-person, webinar, facilitated meeting, etc.).

BOEM recognizes its responsibility under Executive Order 13175 to conduct Government-to-Government consultations with Tribal governments. Any coordinated engagement between Federally recognized Tribes and lessees that may be required in a future lease would be in addition to BOEM's responsibilities. To illustrate the intent of this question, one possible lease term to facilitate coordinated engagement could be to require lessees to hold coordination meetings at regular intervals throughout the year (i.e. quarterly, bi-annually, annually, etc.). These meetings would not substitute for Government-to-Government meetings between Tribes and Federal agencies. During these meetings, lessees would share information and updates about their activities with Federally recognized Tribes and stakeholders and solicit feedback/input from the Tribes about the lessee activities.

- h. Prescribed Layouts:* Should BOEM consider prescribing uniform and aligned turbine layouts for Lease Areas, especially in the Hudson South WEA? Does the establishment of uniform turbine layouts negate the need for established transit corridors?
- i. Rent:* BOEM is seeking feedback on a proposal to simplify the calculation for rental fees – specifically, rental fees for portions of the lease area not yet authorized for commercial operations. For leases issued in previous sales, rent is computed using a fraction of

the total nameplate capacity of the project that is not yet in operation. The simplification would divide the area authorized for commercial operations into acreage that is “generating” and “non-generating” and use the “non-generating” acreage as the basis for the rental calculation.

- j. *Industry Standards for Environmental Protection:* Are there new industry standards (e.g., technology standards, vessel standards, etc.) for environmental protection for any phase of development that BOEM should consider?

V. DEADLINES AND MILESTONES: This section describes the major deadlines and milestones in the auction process from publication of this PSN to execution of the lease pursuant to this sale.

a. The PSN Comment Period:

- i. ***Submit Comments:*** The public is invited to submit comments during this 60-day period, which will expire on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**
- ii. ***Public Auction Seminar:*** BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM website at <https://www.boem.gov/NY-Bight/>. No registration or RSVP is required to attend.
- iii. ***Submit Qualifications Materials:*** All qualification materials must be received by BOEM by the end of the 60-

day PSN comment period [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This includes materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106 – .107.

b. End of PSN Comment Period to FSN Publication:

- i. Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.
- ii. Finalize Qualifications Reviews:* Prior to the publication of the FSN, BOEM will complete any outstanding reviews of bidder qualifications materials submitted during the PSN comment period. The final list of eligible bidders will be published in the FSN.
- iii. Prepare the FSN:* BOEM will prepare the FSN by updating information contained in the PSN where appropriate.
- iv. Publish FSN:* BOEM will publish the FSN in the *Federal Register*.

c. FSN Waiting Period: During this period, qualified bidders must take several steps to remain eligible to participate in the auction.

- i. Bidder's Financial Form:* Each bidder must submit a BFF to BOEM in order to participate in the auction. BOEM must receive each bidder's BFF no later than the date listed in the FSN. BOEM will consider extensions to this

deadline only if BOEM determines that the failure to timely submit a BFF was caused by events beyond the bidder's control. The BFF can be downloaded at: <https://www.boem.gov/NY-Bight/>. Once BOEM has processed a bidder's BFF, the bidder may log into *pay.gov* and submit a bid deposit. For purposes of this auction, you must submit new BFFs rather than rely on any BFFs submitted for previous lease sales. Until further notice, you may submit your BFF electronically in PDF format to the OREP mailbox at renewableenergy@boem.gov. Digital signatures, affixed to paper and digital copies, are also acceptable until further notice.

- a. Please accompany your submission with a transmittal letter on company letterhead.
- b. BOEM would prefer that bidders use a company email address on their BFF. (See instructions below for more details.)
- c. The BFF must be executed by an authorized representative listed on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).
- d. BOEM will consider the date an emailed submission was sent to OREP's

renewableenergy@boem.gov mailbox as the official receipt (filed) date.

*ii. **Bid Deposit:*** Each bidder must provide a bid deposit of \$5,000,000. Should the FSN allow bidders to win up to two lease areas, a bid deposit of \$10,000,000 would be required to bid on two leases. Bid deposits would be due no later than the date listed in the FSN 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.

d. Mock Auction: BOEM will hold a mock auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. Final details of the mock auction will be provided in the FSN.

e. Conduct the Auction: BOEM, through its contractor, will hold a monetary auction as described in the FSN. 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 PSN assume the auction will take place approximately 45 days after publication of the FSN. Final dates will be included in the FSN. BOEM will announce the provisional winners of the lease sale after the auction ends.

f. From the Auction to Lease Execution:

- i. Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and return their bid deposits.
- ii. 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).
- iii. Delivery of the Lease(s):* BOEM will send three copies of the relevant lease to each winner, with instructions on how to execute the lease. The first year's rent is due 45-calendar days after the winner's receipt of the lease copies for execution.
- iv. Return the Lease:* Within 10-business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their bonus bids (i.e., winning monetary bid minus applicable bid deposit), and sign and return the three lease copies. The winners may request extensions to the 10-day deadline, and BOEM may grant such extensions if BOEM determines the delay to be caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).
- v. Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of each lease and will execute each lease, if appropriate.

VI. WITHDRAWAL OF BLOCKS: BOEM reserves the right to withdraw all or portions of the Lease Areas prior to executing the leases with the winning bidders.

VII. LEASE TERMS AND CONDITIONS: BOEM has made available the proposed terms, conditions, and stipulations for the OCS commercial wind leases to be offered through this proposed sale. If and when a lease is issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a Site Assessment Plan (SAP) or COP. The proposed lease is on BOEM's website at: <https://www.boem.gov/NY-Bight/>. The lease includes the following seven attachments:

1. Addendum "A" (Description of Leased Area and Lease Activities);
2. Addendum "B" (Lease Term and Financial Schedule);
3. Addendum "C" (Lease Specific Terms, Conditions, and Stipulations);
4. Addendum "D" (Project Easement);
5. Addendum "E" (Rent Schedule Post COP Approval);
6. Appendix A to Addendum "C" (Incident Report: Protected Species Injury or Mortality); and
7. 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. Addendum "D" will be completed at the time of COP approval or approval with modifications. Addendum "E" will be completed after COP approval or approval with conditions. After

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

a. Required Plans for Potential Development of Executed Leases:

Pursuant to 30 CFR 585.601, if site assessment activities will be conducted, the lessee must submit a SAP within 12 months of lease issuance. If the leaseholder 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.

b. Revised Lease Stipulations: BOEM is proposing to add or revise the following lease stipulations or provisions as compared with previous commercial leases:

- i. Fisheries Communication Plan:* The requirement for the Fisheries Communication Plan (FCP) has been amended to specify that the FCP must include discussions with fisheries stakeholders regarding any planned facilities within 120 days of lease execution.
- ii. Native American Tribes Communication Plan:* BOEM has added a lease stipulation requiring the lessee to develop a Native American Tribes Communication Plan (NATCP). The NATCP would include a requirement for the lessee to designate a Tribal Liaison responsible for communicating with Federally recognized Tribes, to provide BOEM and Federally recognized Tribes with a draft NATCP, and to meet with Federally recognized Tribes to discuss the NATCP within 120 days of lease execution.

iii. Protected Species: In October 2018, BOEM initiated ESA section 7 formal consultation with the NMFS to update the project design criteria (PDCs) and best management practices (BMPs) to be more consistent with recent incidental harassment authorizations (IHAs) issued by NMFS under the Marine Mammal Protection Act for site survey and data collection activities. In January 2020, BOEM and NMFS agreed to convert the formal consultation to a programmatic informal consultation with NMFS limited to surveys and installation of met buoys associated with leases. Activities include geophysical and geotechnical surveys and the installation and decommissioning of met buoys in support of offshore wind energy projects.

Mitigation measures adopted during the consultation rely upon the most up-to-date science and mirror those included in recent IHAs. Adopting these measures would reduce the number of requests by the lessee to modify its lease stipulations to be consistent with their respective NMFS-issued IHAs, which in turn reduces compliance burdens on the lessee and BOEM. Thus, BOEM proposes that the lease stipulations no longer specify exclusion zones for sound propagation from geophysical survey equipment, vessel strike avoidance measures, or protected species observer procedures. BOEM intends to finalize the

programmatic informal consultation with NMFS before the FSN.

- iv. *Site Characterization:* BOEM has updated language regarding survey plans and pre-survey meetings (Section 2.1 of addendum C to the proposed lease). BOEM recommends changing the requirement for a pre-survey meeting with the lessor to be at the discretion of BOEM. BOEM also recommends removing the requirement for the lessee to meet with BOEM prior to holding Tribal pre-survey meetings, which would allow more flexibility in scheduling Tribal pre-survey meetings, possibly holding them earlier and allowing for greater opportunity for Tribal input.
- v. *Siting Conditions:* BOEM has included lease stipulations that outline those situations where the lessee may not construct surface facilities.
- vi. *Operating Fee:* BOEM is proposing several simplifications to the operating fee. The changes include eliminating the inflation adjustment, moving from a weighted peak/off-peak power price to a simple hourly average, and eliminating the 10 percent limit to the capacity adjustment every five years. These changes are designed to simplify the operating fee calculation and will have minimal impact on the amount of operating fee revenues paid by developers. BOEM is also proposing to simplify

the capacity formulation by utilizing the nameplate capacity in the Fabrication and Installation Report (FIR) rather than the COP for the operating fee calculation.

vii. *Project Labor Agreements:* BOEM is proposing the addition of a lease stipulation which would require the lessee to make every reasonable effort to enter into a project labor agreement (PLA) covering the construction stage of any project proposed for the leased area. The proposed stipulation is responsive to Executive Order 14008, “Executive Order on Tackling the Climate Crisis at Home and Abroad,” and would support BOEM’s achievement of the following OCS Lands Act factors:

- i. Expeditious and orderly development (43 U.S.C. 1332 (3)).
- ii. Safe operations conducted by well-trained personnel (43 U.S.C. 1332 (6)).
- iii. Any activity is carried out in a manner that provides for safety (43 U.S.C. 1337(p)(4)(A)).
- iv. Fair return (43 U.S.C. 1337(p)(2)(A)).

PLAs may support the achievement of these goals—including expeditious development and potentially more years of receipt of operating fees—by assuring labor stability.

viii. *Stakeholder and Ocean User Engagement Summary:* BOEM is proposing to require the lessee to include a

stakeholder and ocean user engagement summary as part of its progress reporting requirements (see section 2.2 of addendum C of the lease). This summary would include a description of all existing users, engagement activities with those users during the reporting period, and a description of efforts to minimize any conflict between the existing users and the lessee.

VIII. LEASE FINANCIAL TERMS AND CONDITIONS:

This section provides an overview of the annual payments required of the lessee that are fully described in the proposed leases and of the financial assurance requirements that would be associated with those leases.

- a. 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 (Lease Anniversary). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the leased area not authorized for commercial operations, *i.e.*, not generating electricity. The fraction of the leased area 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 maximum capacity of project approved in the

COP. The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee's entire lease area at the rental rate of \$3 per acre.

For example: For an 84,688 acre lease (the size of OCS-A 0537), the rent payment will be \$254,064 per year if no portion of the leased area is authorized for commercial operations. If 514 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation) and if the approved COP specifies a maximum project capacity of 1,028 MW, the rent payment will be \$127,032. This payment is based on the 514 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows: $514 \text{ MW} / 1,028 \text{ MW} \times (\$3/\text{acre} \times 84,688 \text{ acres}) = \$127,032$. If a COP does not propose commercial activities for the entirety of the leased area, rent for the portions of the leased area not included in the COP will be calculated at the rental rate of \$3 per acre.

If BOEM approves the lessee's application for relinquishment of a portion of its leased area, submitted within 45-calendar days following the date that the lessee receives the lease for signature, the lessee owes no rent payment on the relinquished portion of the lease area. Later relinquishments of any portion of the lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee must also pay rent for any project easement associated with the lease, commencing on the date that BOEM

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

- b. Operating Fee:** For purposes of calculating the initial annual operating fee payment pursuant to 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 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 regional wholesale power price index. For example, the annual operating fee for a 1,028 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:

$$\text{Annual Operating Fee} = 1,028\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}}$$
$$\text{Power Price} \times 0.02 = \$2,881,689.60$$

- i. Operating Fee Rate:* The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to the Office of Natural Resources Revenue as an annual operating fee. For the Lease Areas, BOEM will set the fee rate at 0.02 (i.e., 2%) for the entire life of commercial operations.
- ii. 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 available at the start of each year of commercial operations on the lease will be the capacity provided in the FIR. For example, if the lessee installed 100 turbines as documented in its FIR, and each is rated by the manufacturer at 12 MW, the nameplate capacity of the wind facility is 1,200 MW.
- iii. Capacity Factor:* The capacity factor relates to the amount of energy delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. This factor is represented as a decimal between zero and one. There are several reasons why the amount of power delivered is less than the

theoretical 100% of capacity. For a wind facility, the capacity factor is mostly determined by the availability of wind.

Transmission line loss and down time for maintenance or other purposes also affect the capacity factor.

The capacity factor for the year in which the commercial operation date occurs, and for the first six full years of commercial operations on the lease, is set to 0.4 (i.e., 40%). At the end of the sixth year, the capacity factor may be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor may be made once every five years thereafter.

- iv. 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. For the leases offered in this sale, BOEM is proposing to use the simple average of the spot price indices for NYISO New York City (Zone J).
- c. Financial Assurance:** Within 10-business days after receiving the lease copies and pursuant to 30 CFR 585.515-.516, the provisional winners of the leases must provide an initial, lease-specific bond or other approved means of meeting the initial financial assurance requirements in the amount of \$100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the

right to withdraw the money held in the account on demand. BOEM encourages the provisional winners to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

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

The financial terms described above can be found in addendum “B” of the leases, which BOEM has made available with this notice on its website at: <https://www.boem.gov/NY-Bight/>.

IX. BIDDER’S FINANCIAL FORM: Each bidder must fill out the BFF referenced in this PSN. BOEM has also made a copy of the form available with this notice on its website at:

<https://www.boem.gov/NY-Bight/>. 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 this requirement for this auction. BOEM will only consider BFFs submitted after the deadline set in the FSN if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder’s control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed

by an authorized representative listed in the qualifications package on file with BOEM as authorized to bind the company.

- X. BID DEPOSIT:** Each qualified bidder must submit a bid deposit no later than the date listed in the FSN. Typically, this deadline is approximately 30-calendar days after the publication of the FSN. 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.

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

If BOEM offers a lease to a provisional winner who fails to timely return the signed lease, to establish financial assurance, or to pay the balance of its bid, BOEM will retain the provisional winner's bid deposit. In such a circumstance, BOEM reserves the right to determine which bid would have won in the absence of the bid previously determined to be the winning bid and to offer a lease pursuant to this next highest bid.

- XI. MINIMUM BID:** The minimum bid is the lowest bid BOEM will accept as a winning bid, and it is where BOEM will start the bidding in

the auction. BOEM proposes a minimum bid of \$100.00 per acre for this lease sale.

XII. AUCTION PROCEDURES:

a. Ascending Bidding With Cash Bid Variable: As authorized under 30 CFR 585.220(a)(2) and 585.221(a)(1), BOEM proposes to use an ascending bidding auction with cash as the bid variable for this lease sale. BOEM proposes to start the auction using the minimum bid prices for each of the Lease Areas and increase those prices incrementally until no more than one active bidder per Lease Area remains in the auction.

During the April 2021 NY Bight Intergovernmental Task Force meeting, BOEM learned of interest in a sequential auction format. A sequential auction format would feature separate auctions for each of the Lease Areas, with one area's auction completed before the next one begins. This auction method would introduce a random and opaque valuation for each area auctioned. Sequential auctions are strategically very complex for bidders because bidders need to make final bidding decisions for "early" lease areas without knowledge of "later" lease areas' values. As a result, bidders are likely to overbid or underbid, and the relative prices for different lease areas will not reflect bidders' relative valuations. Furthermore, sequential auctions do not accommodate substitutes or complements. Sequential auctions are also more likely to lead to gamesmanship and inefficient outcomes.

In contrast, the simultaneous ascending clock auction, which BOEM has used in the past, allows the bidder to monitor bidding activity in real time, to adjust its bid and choice of lease areas, and to stop bidding in the auction accordingly. If the price for one area becomes too high, the bidder has the option to focus on a different lease area with a lower price. Simultaneous auctions allow for a rational and beneficial outcome for all parties involved. This method is highly regarded in the academic literature and serves as the best practice for optimal outcomes.

b. The Auction: Using an online bidding system to host the auction, BOEM will start the bidding for Leases OCS-A 0537 through 0544, as described below. BOEM is proposing that bidders will be able to bid for one of the offered Lease Areas in each round of the auction, and ultimately acquire only one of the Lease Areas from the auction. However, BOEM is seeking input on this decision, and the auction format in which a bidder can bid on one or two Lease Areas is described below.

i. If bidders are allowed to bid for and win only one lease area: The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each lease area. If a bidder is willing to meet the asking price for one of the Lease Areas, it will indicate its intent by submitting a bid equal to the asking price. A bid at the full asking price is referred to as a “live bid.” To participate in the next round of the auction, a bidder must

have submitted a live bid for one of the Lease Areas (or have a carried-forward bid) in each previous round.

As long as there are two or more live bids (including bids carried forward) for at least one of the Lease Areas, the auction moves to the next round. BOEM will raise the asking price for each of the Lease Areas that has received two or more live bids in the previous round. Asking price increments will be determined based on several factors, including (but not necessarily limited to) the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as appropriate.

Generally, a bidder that submitted a live bid in the previous round is free to bid on one of the eight Lease Areas in the current round. However, an exception exists. A bidder may switch its live bid from one of the Lease Areas to another in the current round only if its bid from the previous round was contested – e.g., a bidder cannot switch from OCS-A 0537 to OCS-A 0538 unless there was at least one other live bid for OCS-A 0537 in the last round. If the bid was uncontested in the previous round, the bidder cannot switch Lease Areas, and its previous round bid will be carried forward to the next round. If another bidder places a live bid on OCS-A 0537 later in the auction, BOEM will stop automatically carrying forward the

previously uncontested bid on that lease area. The bidder that placed the previously carried forward bid is then free to bid on any of the Lease Areas in the next round at the new asking prices.

A bidder remains eligible to participate in the auction if it submitted a live bid in the prior round or had a previously uncontested live bid carried forward by BOEM to the previous round. If a bidder decides to stop bidding further when its bid is contested, there remain circumstances in which the bidder could win (e.g., if the bid is ultimately selected in the winner determination that is described in detail below, or if the winning bid is disqualified at the award stage of the auction). If this happens, the bidder may be bound by its bid and thus obligated to pay the full bid amount. Bidders may be bound by any of their bids until the auction results are finalized.

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

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

round, however, a bidder may submit an “exit bid” (also known as an “intra-round bid”). An exit bid can only be submitted for the same lease area as the bidder’s contested live bid in the previous round. An exit bid is a bid that is higher than the previous round’s asking price, but less than the current round’s asking price for that lease area. An exit bid is not a live bid, and it represents the final bid that a bidder may submit in the auction. A bidder may not submit both an exit bid on one of the Lease Areas and a live bid on a different one. During the auction, the exit bid can only be seen by BOEM, and not by other bidders.

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

After the bidding ends, BOEM will determine the provisionally-winning bids for each lease area by a two-stage procedure. In Stage 1, the highest bid (live bid or exit bid) received for each lease area in the final round will be designated the provisionally-winning bid, if there is a single highest bid. In the event of a tie (i.e., if two or more bidders submitted identical highest exit bids for the same

lease area), the selection of one of the highest exit bids will be deferred until Stage 2.

In stage 2, BOEM will consider bids from all bidding rounds for Lease Areas that were not assigned in stage 1 by bidders who were not assigned one of the Lease Areas in stage 1. BOEM will select the combination of such bids that maximizes the sum of the bid amounts of the selected bids, subject to the following constraints: (1) each lease area that received multiple highest exit bids in the final round (but no live bid) is assigned to one of the bidders that submitted the highest exit bid; (2) at most one bid from each bidder can be selected; and (3) at most one bid for each lease area can be selected. If there is a unique combination of bids that solves this maximization problem, then these are deemed to be the remaining provisionally winning bids. If two or more combinations of bids tie by producing the same maximized sum of bid amounts, the auction system will select one of the combinations by generating pseudorandom numbers. The provisional winners will pay the amounts of their provisionally winning bids.

ii. If bidders are allowed to bid for and win two lease

areas: The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each of the Lease Areas. If a bidder is willing to meet

the asking price for up to two of the Lease Areas (if eligible), it will indicate its intent by submitting a bid equal to the asking price for the selected Lease Areas. A bid for one or more of the Lease Areas at the sum of their full asking prices is referred to as a “live bid.” To participate in the next round of the auction, a bidder must have submitted a live bid for at least one of the Lease Areas (or have a carried-forward bid) in each previous round.

As long as there are two or more live bids (including bids carried forward) for at least one of the Lease Areas, the auction moves to the next round. BOEM will raise the asking price for each of the Lease Areas that has received two or more live bids in the previous round. Asking price increments will be determined based on several factors, including (but not necessarily limited to) the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as appropriate.

Each bidder is allowed to submit a live bid for up to two of the Lease Areas based on its “eligibility” at the opening of each round. A bidder’s eligibility is either two, one, or zero Lease Areas, and it corresponds to the maximum number of Lease Areas 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 of the Lease Areas at the start of the auction, a bidder must submit a bid deposit of \$5,000,000. To be eligible to offer a bid on two of the Lease Areas, a bidder must submit a bid deposit of \$10,000,000. 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 Lease Areas 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 of the Lease Areas in the previous round, that bidder may submit a bid that includes at most one of the Lease Areas in the current round. If a bidder submitted a live bid that included two Lease Areas in the previous round, the bidder may submit a live bid that includes at most two of the Lease Areas in the current round. When a bidder authorized to submit two bids submits one live bid, the bidder's eligibility is permanently reduced. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

Generally, a bidder that submitted a live bid in the previous round is free to bid on one or two (depending on its eligibility) of the eight areas in the current round. However, an exception exists. A live bid in the previous

round is deemed to be uncontested if there were no other live bids by other bidders that included any of the Lease Areas in the live bid. (For example, suppose that a bidder placed a live bid for OCS-A-0537 and OCS-A-0538. If no other bidder placed a live bid that included either OCS-A-0537 or OCS-A-0538, then the bid is deemed to be uncontested.) If a bid was uncontested in the previous round, the bid will be carried forward to the next round, and the bidder cannot place any other bids in that next round. (However, continuing the example, once another bidder places a live bid that includes either OCS-A 0537 or OCS-A 0538 later in the auction, BOEM will stop automatically carrying forward the previously uncontested bid. Starting in the next round, the bidder that placed the previously carried forward bid is then free to place any live bid or intra-round bid permitted by the rules, and the bidder is then not required to stay on either OCS-A-0537 or OCS-A-0538.)

A bidder remains eligible to participate in the auction if it submitted a live bid in the prior round or had a previously uncontested live bid carried forward by BOEM to the current round. If a bidder decides to stop bidding further when its bid is contested, there are still circumstances in which the bidder could win (e.g., if the bid is ultimately selected in the winner determination that is described in

detail below or if the winning bid is disqualified at the award stage of the auction). If this happens, the bidder may be bound by its bid and thus obligated to pay the full bid amount. Bidders may be bound by any of their bids until the auction results are finalized.

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

A bidder is eligible to continue bidding in the auction only if it has submitted a live bid (or had a bid carried forward) in the previous round. In any round after the first round, however, a bidder may submit an “intra-round bid.” An intra-round bid is similar to an “exit bid.” An intra-round bid consists of a single offer price for exactly the same Lease Areas on which the bidder placed a live bid in the previous round. The single offer price must be greater than the sum of the asking prices for the Lease Areas bid on in the previous round and less than the sum of the asking prices for these Lease Areas in the current round. A bidder may not submit an intra-round bid in the current round if its previous round bid was uncontested.

A bidder that has submitted a live bid for two of the Lease Areas in the previous round may choose to submit an intra-round bid in the current round (consisting of those two Lease Areas) and may also submit a live bid at the current round's asking price on one of the Lease Areas in the bidder's intra-round bid or on another of the Lease Areas entirely. After a bidder submits an intra-round bid for two Lease Areas, all subsequent bids placed by the bidder can include at most one of the Lease Areas. A bidder that has submitted a live bid for one of the Lease Areas in the previous round may choose to submit an intra-round bid in the current round (consisting of that one lease area).

Placing an intra-round bid that includes one of the Lease Area terminates the bidder's ability to submit subsequent bids.

Intra-round bids are not considered to be live bids for the purpose of determining whether to conclude the auction, for determining whether to increase the asking price for a particular lease area, or for disclosing the demand for a lease area. During the auction, an intra-round bid can only be seen by BOEM, and not by other bidders.

For example, consider the case of a bidder who has bid on two of the Lease Areas in previous rounds and hence is eligible to continue bidding on two areas in the current round. Suppose that the asking prices for Hudson South E

and F were \$750,000 and \$600,000 in the previous round and are now \$800,000 and \$600,000 in the current round, respectively. These results reflect that in the previous round the bidder had competition for Hudson South E (because the asking price was increased in the current round), but not for Hudson South F. The bidder may only enter a single, intra-round bid for both areas that it bid on in the previous round. This single offer price must be more than \$1,350,000 and less than \$1,400,000. If the bidder wishes to continue to place bids in the auction, the bidder must also place a live bid for a single lease area in the same round. The bidder can satisfy this requirement by choosing to submit (along with its intra-round bid) a single live bid of \$800,000 for the Hudson South E or a \$600,000 bid for the Hudson South F area or a single live bid for any of the other Lease Areas. Alternatively, the bidder may choose not to submit any live bid, precluding the ability to place bids in future rounds.

If the bidder had only bid on one of the Lease Areas in the previous round, it may be eligible to submit an intra-round bid during the current round. If its previous round's bid was for Hudson South E, the bidder could submit an intra-round bid for that area of more than \$750,000 and less than \$800,000, reducing its live bid eligibility to zero and precluding bids in subsequent rounds. Alternatively, if the

bidder's previous round's bid was on Hudson South F, it cannot submit an intra-round bid (or any other bid), because the previous round's bid was uncontested. In this case, since the bidder had no competition for Hudson South F, its sole bid of \$600,000 from the previous round is automatically recorded by BOEM as a submitted live bid of the same amount in the current round.

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 ends, nothing further is required of bidders within or between stages 1 and 2. (In practice, the stages of the process will be determined by the auction software, which will analyze the bids, determine the provisional winners, and calculate the applicable prices.)

- Stage 1

In stage 1, a bidder with a live bid in the final round is provisionally assured of winning the Lease Areas included in its final-round live bid, regardless of any other bids. If all of the Lease Areas receive live bids in the final round, they are awarded to bidders with the live bid in stage 1, and the rest of this determination is not necessary. Otherwise, BOEM will select the combination of final-round bids that maximizes the sum of the bid amounts of the selected bids,

subject to the following constraints: (1) a bidder must win all the Lease Areas included in its final-round live bid (if any); (2) either a bidder's live bid or intra-round bid, but not both, can be selected; and (3) the selected bids must be feasible, in that each of the Lease Areas cannot be included in more than one of the selected bids. If there is a unique combination of bids that solves the maximization problem of the previous sentence, then these are deemed to be the qualified bids. If two or more combinations of qualified bids tie by producing the same maximized sum of bid amounts, the tie is broken by: first, bringing each of these combinations forward into the stage 2 and selecting the combination that produces the largest value in the stage 2; and second, if two or more of these combinations tie in producing the largest value, the auction system will select one of the combinations by generating pseudorandom numbers. If any of the Lease Areas is not assigned in stage 1, BOEM will proceed to stage 2 to attempt to assign the remaining Lease Areas.

- Stage 2

In stage 2, BOEM will consider bids from all bidding rounds to determine if the Lease Areas not awarded in stage 1 can be awarded in stage 2. The combination of bids selected in stage 1 are qualified bids. BOEM will select the combination of bids from all bidding rounds that

maximizes the sum of the bid amounts of the selected bids, subject to the following constraints: (1) a bidder must win all Lease Areas included in its qualified bid (if any); (2) either a bidder's live bid or intra-round bid from a single bidding round, but not both, can be selected; and (3) the selected bids must be feasible, in that each of the Lease Areas cannot be included in more than one of the selected bids. If there is a unique combination of bids that solves the maximization problem of the previous sentence, then these are deemed to be the provisionally winning bids. If two or more combinations of bids tie by producing the same maximized sum of bid amounts, the auction system will select one of the combinations by generating pseudorandom numbers. The provisional winners will pay the amounts of their provisionally winning bids.

iii. Provisional Winners

Provisional winners may be disqualified if they are subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder will be expected to sign the applicable lease documents, establish financial assurance, and submit the cash balance of its bid (i.e., winning bid amount minus the bid deposit) within 10-

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

BOEM will publish the provisionally winning bids and provisional winners. The bid results, including exit bids, will be published on BOEM's website after review of the results and announcement of the provisional winners.

c. Additional Information Regarding the Auction Format

- i. ***Bidder Authentication:*** For the online auction, BOEM will require two-factor authentication. After BOEM has processed the bid deposits, the auction contractor will send several bidder authentication packages to the bidders. One package will contain the digital authentication tokens needed to allow access to the auction website. (Note: BOEM may decide to use software tokens instead of hardware tokens, in which case they will not be mailed or included in packages.) 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. Up to three individuals can be selected to bid for each bidder.

- ii. ***Bidder Tokens:*** 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. If a bidder fails to submit a bid deposit or does not participate in the auction, BOEM will de-activate that bidder's tokens and login information, and the bidder will be asked to return its tokens. Under certain circumstances (for example, if the authorized bidders are geographically dispersed and the ability for the primary point of contact to timely distribute the materials is in question), BOEM may send all materials directly to the authorized bidders instead of the primary point of contact.

The second package contains login credentials for authorized bidders. The login credentials are mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703-787-1121. BOEM may also utilize separate email to provide login credentials. This package will contain user login information and instructions for accessing the Bidder Manual for the auction system and the Auction System Technical Supplement (ASTS). The login information,

along with the tokens, will be tested during the mock auction.

- iii. ***Timing of Auction:*** The FSN will provide specific information regarding when bidders can enter the auction system and when the proposed auction will start.
- iv. ***Messaging service:*** BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during an auction, it will use the messaging feature to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging system for other updates during the auction.

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

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

- v. ***Alternate Bidding Procedures:*** It is the responsibility of the bidder to ensure it has a working internet connection and backup procedures in place in case its internet connection goes down during the auction. Such backup procedures can include having redundant internet connections, having more than one individual authorized to place bids on behalf of the company, having one individual who is authorized to bid on behalf of the company located in a different site (with a different internet connection), and placing bids using a 4G mobile data connection as a backup. It is the responsibility of the bidder to test its backup procedures ahead of time. This can be done during the mock auction, for example.

XIII. 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.

- XIV. ANTI-COMPETITIVE REVIEW:** Bidding behavior in this sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of bids and the issuance of leases, BOEM will “allow the Attorney General, in consultation with the Federal

Trade Commission, 30 days to review the results of the lease sale.” 43 U.S.C. 1337(c). If a provisionally winning bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject its provisionally winning bid. Compliance with BOEM’s auction procedures and regulations is not an absolute defense to violations of antitrust laws.

Anti-competitive behavior determinations are fact-specific.

However, such behavior may manifest itself in several different ways, including, but not limited to:

1. An express or tacit agreement among bidders not to bid in an auction or to bid a particular price;
2. An agreement among bidders not to bid or not to bid on one of the Lease Areas;
3. An agreement among bidders not to bid against each other; or
4. Other agreements among bidders that have the potential to affect the final auction price.

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

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

XV. PROCESS FOR ISSUING THE LEASE: Once all post-auction reviews have been completed to BOEM’s satisfaction, BOEM will issue three unsigned copies of the lease to each provisionally winning bidder. Within 10-business days after receiving the copies, the provisionally winning bidders must:

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

BOEM will not execute a lease until the three requirements above have been satisfied. BOEM may extend the 10-business-day deadline for signing the copies of the lease, filing the required financial assurance, and paying the balance of the bonus bid if BOEM determines the delay was caused by events beyond the provisionally winning bidder’s control.

If a provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right not to issue the lease

to that bidder. In such a case, the provisionally winning bidder will forfeit its bid deposit. Also in such a case, BOEM reserves the right to identify the next highest bidder who has not won one of the other Lease Areas and to offer the lease to that bidder pursuant to its bid.

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

Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments," available on BOEM's website at: <https://www.boem.gov/NY-Bight/>

XVI. 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 parts 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.

XVII. FINAL SALE NOTICE: The development of the FSN will be informed the EA, related consultations and comments received during the PSN comment period. The FSN will provide the final details

concerning the offering and issuance of OCS commercial wind energy leases in the New York Bight. 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.

XVIII. CHANGES TO AUCTION DETAILS: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction detail specified in the FSN, including the date and time, if the Program Manager deems that events outside BOEM's control 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, and blizzards), wars, riots, act of terrorism, fire, strikes, civil disorder, Federal Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM's website at: <https://www.boem.gov/NY-Bight/>. Bidders should call 703-787-1121 if they have concerns.

XIX. APPEALS: The appeals and reconsideration 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). The Director 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).

XX. PUBLIC PARTICIPATION: BOEM does not consider anonymous comments: please include your name and address as part of your submittal. You should be aware that your entire comment, including your name, address, and any other personal identifying information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing on [regulations.gov](https://www.regulations.gov).

In order for BOEM to withhold from disclosure your PII, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury or other harm. BOEM is unable to guarantee that your PII will be protected from public disclosure because a court may determine that the benefits of disclosure about who may influence public policy outweigh possible harms.

XXI. 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) and 30 CFR 585.113. Exemption 4 of FOIA applies to “trade secrets and commercial or financial information that you submit that is privileged or confidential.” 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise non-confidential information.

- a. Access to Information (54 U.S.C. 307103):** 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 and provide the reasons why BOEM should do so.

AUTHORITY: This PSN is published pursuant to section 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) and the implementing regulations at 30 CFR part 585, including sections 585.211 and 585.216.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2021-12442 Filed: 6/11/2021 8:45 am; Publication Date: 6/14/2021]