

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2022-0001]

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

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final sale notice.

SUMMARY: This FSN contains information pertaining to the areas available for commercial wind energy leasing on the OCS in the NY Bight. Specifically, this FSN details certain provisions and conditions of the leases, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The Bureau of Ocean Energy Management (BOEM) will offer six leases: Lease OCS-A 0537, Lease OCS-A 0538, Lease OCS-A 0539, Lease OCS-A 0541, Lease OCS-A 0542, and Lease OCS-A 0544 (Lease Areas). 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: BOEM will hold an online mock auction for potential bidders starting at 9:00 a.m. eastern standard time (EST) on February 18, 2022. The monetary auction will be held online and will begin at 9:00 a.m. EST on February 23, 2022. Additional details are provided in the section entitled "Deadlines and Milestones for Bidders."

FOR FURTHER INFORMATION CONTACT: Luke Feinberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (571) 474-7616, or luke.feinberg@boem.gov.

SUPPLEMENTARY INFORMATION:

AUTHORITY: 43 U.S.C. 1337(p); 30 CFR 585.211 and 585.216.

I. **BACKGROUND:** BOEM published a *Call for Information and Nominations* (Call) for an area of 1,735,154 acres in the NY Bight in April of 2018 (83 FR 15602). Based on the information received in response to that notice and consultation with ocean users, BOEM identified Wind Energy Areas (WEA) in March 2021 encompassing 807,383 acres. This lease sale was proposed by BOEM on June 14, 2021, through a *Proposed Sale Notice* (PSN), which encompassed 627,331 acres and was published in the *Federal Register* (86 FR 31524). A 60-day comment period followed. BOEM received 134 comment submissions in response to the PSN, which are available on regulations.gov (Docket ID: BOEM-2021-0033) at: <https://www.regulations.gov/document/BOEM-2021-0033-0001>. BOEM has posted its responses to comments submitted during the PSN comment period. The document, entitled *Response to Comments*, can be found through BOEM's website at: <https://www.boem.gov/Commercial-Wind-Leasing/NYBight/>.

In response to the comments received, BOEM made several changes from the description of the NY Bight lease sale that was published in the PSN. The primary change is a reorientation of lease area boundaries resulting in six areas being offered for sale, which is further explained in Section IV - Area Offered for Leasing. Overall, BOEM has deconflicted and reduced the initial 1,735,154 acres proposed in the Call by 72% to 488,201 acres offered for sale through this notice, including most recently a 22%

reduction from the total lease acreage in the PSN to the final lease acreage in this FSN.

This final reduction culminated an effort to address concerns raised by Tribes, partnering agencies, and the public through the comment period and targeted outreach. In addition, a number of lease stipulations were developed, or refined, based on feedback solicited in the PSN, including provisions to: advance engagement and coordination with federally recognized Tribes, ocean users, other agencies, underserved communities, and other interested stakeholders; advance flexibility in transmission planning; advance the domestic supply chain; and promote the use of project labor agreements (PLAs). In response to feedback from the PSN, BOEM will also limit the number of leases that any bidder can win to one.

II. **LIST OF ELIGIBLE BIDDERS:** BOEM has determined that the following 25 entities are legally, technically, and financially qualified to hold a commercial wind lease in the NY Bight pursuant to 30 CFR 585.106 and 107, and therefore, may participate in this lease sale as bidders subject to meeting the requirements outlined in this notice:

Company Name	Company No.
547 Energy LLC	15123
Arevia Power LLC	15129
Atlantic Shores Offshore Wind Bight, LLC	15119
Attentive Energy LLC	15115
Avangrid Renewables, LLC	15019
Bight Wind Holdings, LLC	15112
BP US Offshore Wind Energy LLC	15122
CPV Offshore Wind LP	15114
Diamond Wind North America, LLC	15113
East Wind LLC	15076
EDF Renewables Development, Inc.	15027
Equinor Wind US LLC	15058
GIG Infrastructure HoldCo, LLC	15125
GW Offshore Wind LLC	15121
Horizon Wind Power LLC	15081
Invenergy Wind Offshore LLC	15091
Mid-Atlantic Offshore Wind LLC	15118
OW Ocean Winds East, LLC	15096
PNE USA, Inc.	15056
PSEG Renewable Generation LLC	15132
RWE Offshore Wind Holdings, LLC	15061
SSE Renewables North America Offshore Wind LLC	15124
US Mainstream Offshore LLC	15120
US Mainstream Renewable Power Inc.	15089
US Wind Inc.	15023

- a. **Affiliated Entities:** On the Bidder's Financial Form (BFF) discussed below, eligible bidders must list any eligible bidders with whom they are affiliated.

Affiliated eligible bidders are not permitted to compete against each other in the lease sale and must decide by the start of the auction which eligible bidder (if any) will participate. One bidder may bid on behalf of a planned joint entity provided the other entity is not a participant in the lease sale. 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 they meet the definition of affiliate in 30 CFR 1206.20, as applicable, or if they are both direct, or indirect, subsidiaries of the same parent company.

III. 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.

a. FSN Waiting Period

- i. Bidder's Financial Form:** Each bidder must submit a BFF to BOEM to participate in the auction. BOEM must receive each BFF no later than January 26, 2022. If a bidder does not submit a BFF by this deadline, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's 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/renewable-energy/state-activities/new-york-bight>. Once BOEM has processed a BFF, the bidder may log into *pay.gov* and submit a bid deposit. For purposes of this auction, BOEM will not consider any BFFs submitted by bidders for previous lease sales. BOEM will only accept an originally executed paper copy of the BFF. The BFF must be executed by an authorized representative listed on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).

- ii. *Bid Deposit:* Each bidder must provide a bid deposit of \$5,000,000 no later than February 9, 2022 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.

b. Conducting the Auction

- i. *Mock Auction:* BOEM will hold a Mock Auction on February 18, 2022 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 may participate in the Mock Auction.
- ii. *Monetary Auction:* On February 23, 2022, 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 1-business day, but it may continue on consecutive business days, as necessary, until the auction ends in accordance with the procedures described in the "Auction Procedures" section of this notice.
- iii. *Announce Provisional Winners:* BOEM will announce the provisional winners of the lease sale after the auction ends.

c. From the Auction to Lease Execution

- i. Refund Non-Winners:** Once the provisional winners have been announced, BOEM will return the non-winners' 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:** BOEM will send three lease copies to each winner, with instructions for executing the lease. The first year's rent is due 45-calendar days after the winners receive 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 executed lease copies. The winners may request extensions to the 10-day deadline, and BOEM may grant such extensions if BOEM determines the delay to be caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).
- 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 the leases and will execute the leases, if appropriate.

IV. AREA OFFERED FOR LEASING: In response to comments received on the PSN and consultation with Federal agencies, BOEM is offering six lease areas totaling 488,201 acres for sale through this notice (Figure 1). The eight areas in the PSN have been

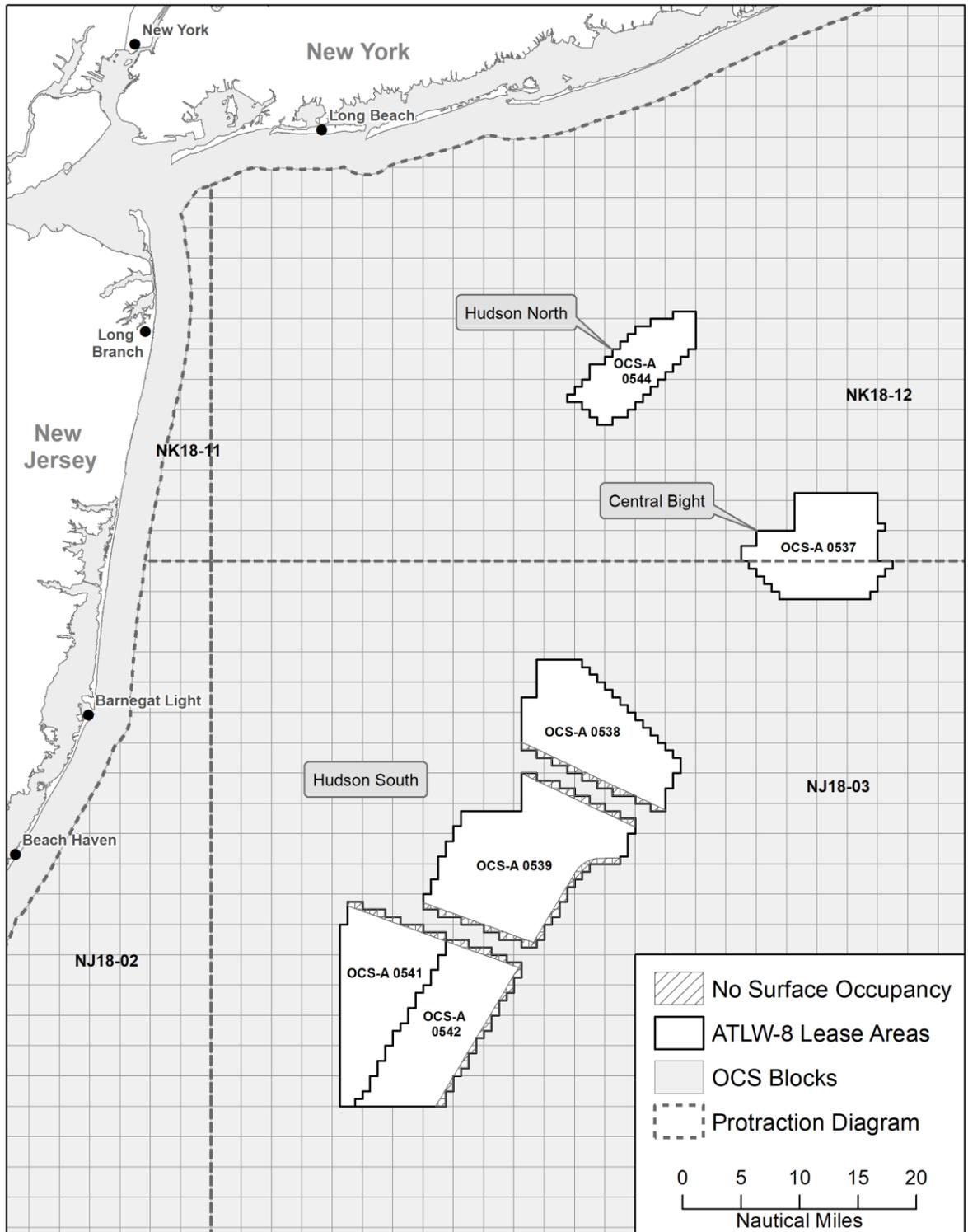
reoriented and reduced by 22% to address ocean user conflicts in response to comments and input from ocean users, including the fishing industry, the U.S. Coast Guard (USCG) and navigation interests, the National Marine Fisheries Service (NMFS), and the Department of Defense (DOD). Lease Area OCS-A 0543 as identified in the PSN will not be offered for leasing at this time in response to issues raised by the fishing industry and DOD, as well as to allow for increased flexibility in the ongoing siting of an adjacent fairway proposed by the USCG. If circumstances change, BOEM may reconsider this area in a future sale. In addition, at this time, BOEM decided to remove from leasing consideration several areas that overlap with both fishing activity and seafloor features identified by NMFS and other stakeholders as potentially sensitive to impacts from offshore wind facility construction. These removals reduced the viability of OCS-A 0540 as a standalone Lease Area. Therefore, BOEM expanded the western boundary of OCS-A 0539 and removed proposed lease OCS-A 0540. The removal of OCS-A 0543 also negated the justification for the area formerly called a “transit corridor” (running southwest by northeast) between what was previously OCS-A 0543 and OCS-A 0540. The removal of this transit corridor allowed for a westward expansion of the boundaries of OCS-A 0541 and OCS-A 0542, as depicted in the map of the areas linked below. Comments received regarding fishing activity and seafloor features also resulted in no leases being offered within 2.5 nautical miles (nmi) of the Mid-Atlantic Scallop Access Area.

The area available for sale will be auctioned as six leases:

Lease	Total Acres	No Surface Occupancy (Acres)
Lease OCS-A 0537	71,522	--
Lease OCS-A 0538	84,332	12,810
Lease OCS-A 0539	125,964	11,687
Lease OCS-A 0541	79,351	3,212
Lease OCS-A 0542	83,976	7,082
Lease OCS-A 0544	43,056	--

Table 1 to Section IV - ATW-8 Final Lease Areas

ATLW-8 Lease Areas



OREP-2021-1042

Figure 1 to Section IV - ATLW-8 Final Lease Areas

- a. **Transit Corridors:** In the PSN, BOEM solicited comments on proposed transit corridors in Hudson South. USCG pointed out that the term “transit corridor” is not defined or recognized in law, regulation, or international convention. As such, the use of the term will likely add confusion. BOEM will not use the term in this sale or future lease sales or other actions. The remaining feedback BOEM received through PSN comments and meetings with the fishing community was largely positive. Therefore, the following lease areas have 2.44 nmi of unleased ocean space between them: OCS-A 0538 and OCS-A 0539 as well as between OCS-A 0539 and OCS-A0541/ OCS-A 0542. These areas remain open ocean in which BOEM is not offering a lease. The Permanent International Association of Navigation Congresses World Association of Waterborne Transport Infrastructure and Maritime Institute Netherlands calculations and guidelines as well as the USCG draft Port Access Route Study (USCG-2020-0172) were used to inform our analysis. We note that the USCG draft Port Access Route Study (USCG-2020-0172) suggests that formal establishment of shipping safety fairways or other routing measures within a wind farm are not necessary to facilitate safe transit.
- b. **Areas of No Surface Occupancy:** BOEM generally does not lease in increments smaller than an aliquot, which is defined as 1/16th of an OCS lease block (2,304 hectares or 5,693.29 acres). To accommodate the desired distances between surface structures, select portions of the lease areas in the Hudson South WEA (OCS-A 0538, 0539, 0541, 0542) will be offered for sale, but no surface

occupancy will be permitted, as described in Addendum A of each respective lease.

- c. **Habitat Avoidance and Facilitating Fishing Vessel Activity:** Commenters recommended that BOEM remove from leasing consideration habitat features that could be adversely impacted by future offshore wind facility development. These areas were primarily represented by the New Jersey Department of Environmental Protection's "Prime Fishing Area" data. Additionally, fishers have requested that offshore wind facilities be designed in a manner that, among other things, provides for safe transit and fishing through and adjacent to future offshore wind facilities. In the Hudson South and the Central Bight WEAs, BOEM removed from leasing consideration areas that met these multiple avoidance recommendations. In Hudson South, BOEM removed areas adjacent to the Mid-Atlantic Scallop Access Area and areas to the west of OCS-A 0539 that are fished by the Atlantic surfclam fishery. In the Central Bight WEA, the southern portion of OCS-A 0537 was removed due to multiple factors, including fishing activity and seafloor features.
- d. **Map of the Area Offered for Leasing:** A map of the Lease Areas, and GIS spatial files X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>. A large-scale map of the Lease Areas, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs,

45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166,

Phone: (703) 787-1300, Fax: (703) 787-1708.

- V. **ENVIRONMENTAL REVIEW:** On August 10, 2021, BOEM announced the availability of a draft Environmental Assessment (EA) that assesses the potential impacts of the issuance of commercial and research leases within the identified WEAs of the NY Bight, and the granting of rights-of-way and rights-of-use and easement in the region. The EA focuses on potential environmental consequences of site characterization activities and site assessment activities. The EA also considers project easements associated with each potential lease issued and grants for subsea cable corridors in the NY Bight. The availability of the Final EA and Finding of No Significant Impact was announced on December 16, 2021. BOEM determined that the Proposed Action would not cause any significant impacts and implementing the Proposed Action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. BOEM will conduct additional environmental reviews upon receipt of a lessee's proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).
- VI. **NEW AND MODIFIED LEASE STIPULATIONS:** Based on feedback provided, BOEM is adding lease stipulations that, though discussed conceptually, were not explicitly proposed in the lease packages associated with the PSN. BOEM also is refining certain stipulations in the PSN and previous lease packages.
- a. **Reporting requirements:** In an effort to require early and regular engagement with Tribes and ocean users, underserved communities, and other stakeholders

(collectively “Tribes and parties”) that may be potentially affected by the project activities on the OCS, BOEM is building upon an existing lease stipulation to require a semi-annual progress report. Within the progress report, Lessees will identify Tribes and parties potentially affected by proposed activities and provide updates on engagement activities, impacts on or benefits to the Tribes and parties due to the proposed activities, and how, if at all, a project has been informed or altered to address those challenges or benefits, as well as any planned engagement activities during the next reporting period. In acknowledgment of the existing and growing consultation burden placed on many of the Tribes and parties, the stipulation also requires, to the maximum extent practicable, that Lessees coordinate with one another on engagement activities. It is BOEM’s intention that this requirement to coordinate engagement apply not only to meetings proposed by Lessees, but also to reasonable requests to coordinate engagement requested by Tribes and parties. In addition, the stipulation requires that the progress report incorporate separate lease requirements for the development of communication plans for fisheries (Fisheries Communication Plan (FCP)), Tribes (Native American Tribes Communication Plan), and agencies (Agency Communication Plan), which serve to guide engagement activities with those groups. Consistent with current practice, the FCP is a requirement of the lease; however, BOEM has added additional elements to include in the FCP based on comments received. Lastly, the progress report must also include an update on activities executed under any survey plan.

- b. **Transmission Planning:** BOEM is continuing a planned approach to transmission and is evaluating options including the use of cable corridors, regional transmission systems, meshed systems, and other mechanisms. Therefore, BOEM may condition COP approval on the incorporation of such methods where appropriate. BOEM encourages those who obtain leases from this sale to engage in early coordination with adjacent lessees, states, Tribal Nations, and other ocean users to identify ways to minimize impacts from transmission. In addition, BOEM has modified the lease stipulations concerning communication with Tribal Nations and parties to explicitly seek input and discussion surrounding transmission easements prior to proposing such easements.
- c. **Birds and Bats:** During Endangered Species Act (ESA) consultation, the U.S. Fish and Wildlife Service recommended in its October 15, 2021, letter to BOEM the installation of automated Motus telemetry tracking stations on meteorological buoys to help address information gaps on offshore movements of birds and bats, including ESA-listed species. Therefore, BOEM is including a stipulation requiring the use of such tracking stations.
- d. **Project Labor Agreements and Supply Chain:** BOEM is committed to a clean energy future, workforce development and safety, and establishment of a durable domestic supply chain that can sustain the U.S. offshore wind energy industry. To advance this vision, BOEM has included three lease stipulations in the NY Bight FSN that will encourage union-built projects and contribute towards establishing a domestic supply chain:

- i. The first stipulation requires lessees to make every reasonable effort to enter a project labor agreement covering the construction stage of any project proposed for the Lease Areas.
 - ii. The second stipulation requires lessees to establish a statement of goals in which the lessee will describe its plans for contributing to the creation of a robust and resilient U.S.-based offshore wind industry supply chain. The lessee must provide regular progress updates to BOEM, and BOEM will make those updates publicly available.
 - iii. The last stipulation incentivizes the lessee to procure major offshore wind energy components domestically. For the Lease Areas, BOEM will set the fee rate at 0.02 (i.e., 2%) for the entire life of commercial operations. Should the lessee satisfy the terms of the stipulation by meaningfully and substantially assembling or manufacturing major components in the United States, they may be eligible for a 1% operating fee rate for a period of five years.
- e. **Surface Structure Layout and Orientation:** Where one lease abuts a neighboring BOEM lease area, each lessee must endeavor to implement a layout of surface structures that facilitates full enjoyment of the lease and allows for a structure layout that contains two common lines of orientation across the adjacent leases (as described in Navigation and Vessel Inspection Circular 01-19). Where such a design cannot be agreed upon among adjacent lessees, each lessee will be required to incorporate a 1-nmi setback from the boundary with the neighboring lease where no surface structures will be permitted.

f. **Endangered Species Act Programmatic Consultation**

BOEM has completed a programmatic consultation with the NMFS under section 7 of the ESA. Federal partners that were co-action agencies on the programmatic consultation include the Bureau of Safety and Environmental Enforcement, U.S. Army Corp of Engineers, and the U.S. Environmental Protection Agency. On June 29, 2021, NMFS issued a Letter of Concurrence under the ESA (<https://www.boem.gov/renewable-energy/final-nlaa-osw-programmatic>) that covers site characterization (high resolution geophysical (HRG), geotechnical, and biological surveys) and site assessment and data collection (deployment, operation, and retrieval of meteorological and oceanographic data buoys) activities associated with Atlantic OCS leases. As a result of this consultation, project design criteria (PDCs) and best management practices (BMPs) associated with the mitigation, monitoring, and reporting conditions have been developed for those data collection activities covered in the consultation. The PDCs and BMPs pertain to mitigation, monitoring, and reporting conditions for reducing noise exposure to protected species from HRG surveys, avoiding vessel interactions with protected species, and mooring design and marine debris requirements to avoid entanglement of listed species. Similar to the requirements for threatened and endangered species and critical habitat under the ESA, BOEM requires mitigation, monitoring, and reporting conditions for all marine mammals. These PDCs and BMPs will be lease requirements for NY Bight OCS leasing activities and are found in the document *Project Design Criteria and Best Management Practices for Data Collection Associated with*

Atlantic Offshore Wind Leases found at: <https://www.boem.gov/renewable-energy/nmfs-esa-consultations>.

VII. **POTENTIAL FUTURE RESTRICTIONS:** Prospective bidders should be aware of potential conflicts with existing uses of the OCS by the DOD and USCG, among others. BOEM coordinates with the DOD and USCG throughout our leasing process. A December 2020 letter from the DOD summarizes our most recent consultations and is available at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/PUBLIC-NY-Bight-DOD.pdf>

- a. **Height Restrictions:** Development of Lease Areas in the Hudson South WEA could adversely affect U.S. Air Force Weather Division's Next Generation Weather Radar by limiting the ability to track tropical storms moving towards the region if turbine heights exceed 1,000 feet; however, DOD has informed BOEM that more analysis is needed on specific project proposals to determine the extent of interference, if any. Lessees will be expected to coordinate with the DOD Military Aviation and Installation Assurance Siting Clearinghouse as they design their proposed facilities to assess the impact on radar operations. If interference from turbines heights greater than 1,000 feet is identified, the DOD has indicated a condition of COP approval may be necessary that would require curtailment during severe weather events.
- b. **Air Surveillance and Radar:** The North American Aerospace Defense Command mission may be affected by the development of the Lease Areas. Lessees will be expected to coordinate with the DOD Military Aviation and Installation Assurance Siting Clearinghouse as they design their proposed

facilities to assess the level of impact on radar operations. Mitigation measures or conditions of a COP approval may necessitate mitigation of the identified interference.

- c. **Potential Future Conflicts with OCS-A 0544:** The PSN identified a potential conflict in the Hudson North WEA (OCS-A 0544) with a new shipping safety fairway designation, as proposed by USCG, to accommodate vessel traffic travelling across the NY Bight from the Delaware Bay area to east of Montauk. The USCG published a final Port Access Route Study on January 3, 2022 that proposed an adjusted fairway route that avoids this conflict. Potential bidders should be aware that there could be future changes or necessary mitigation measures relating to the developable area of the lease if the proposed fairway route is adjusted during the USCG's subsequent fairway rulemaking process.

VIII. **LEASE TERMS AND CONDITIONS:** BOEM has included terms, conditions, and stipulations for the OCS commercial wind leases to be offered through this sale. After the leases are issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The leases are available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>.

The leases include the following five 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); and
- Addendum "E" (Rent Schedule).

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/>.

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

IX. 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.

- 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 as defined in 30 CFR 585.237 (the “Lease Anniversary”). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease remaining undeveloped (i.e., non-operating acreage). For a 71,522 acre lease (the size of OCS-A 0537), the rent payment will be \$214,566 per year if no portion of the lease area is authorized for commercial operations.

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45-calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on the relinquished portion of the lease area. Later relinquishments of any portion of the lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment. The lessee must also pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement as outlined in 30 CFR 585.508. 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 the 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 would be 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-megawatt (MW) wind facility operating at a 40% capacity (i.e., capacity factor of 0.4) with an annual average regional wholesale power price of \$40/megawatt hour (MWh) and an operating fee rate of 0.02 will 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. Should the lessee satisfy the terms of the stipulation by meaningfully and substantially assembling or manufacturing major components in the United States, they may be eligible for a 1% operating fee rate for a period of five years.
- 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 Fabrication and Installation Report (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 6 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 will use the simple hourly average of the spot price indices for New York Independent System Operators 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 lessor's initial financial assurance requirements, in the amount of \$100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages the provisionally winning bidder to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance on cost estimates for meeting all accrued lease obligations at the respective stages of development. BOEM will determine the required amount of supplemental and decommissioning financial assurance 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/renewable-energy/state-activities/new-york-bight>.

X. **BIDDER'S FINANCIAL FORM:** Each bidder must fill out the BFF referenced in this FSN. BOEM has also made a copy of the form available with this notice on its website at: <https://www.boem.gov/renewable-energy/state-activities/new-york-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 the requirements of this auction. If a bidder does not submit a BFF by January 26, 2022, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's failure to timely submit a 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.

XI. **BID DEPOSIT:** A bid deposit is an advance cash payment submitted to BOEM 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 \$5,000,000 no later than February 9, 2022. Any bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction.

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

If BOEM offers a lease pursuant to a provisionally winning bid and that bidder fails to timely return the signed lease form, establish financial assurance, or pay the balance of its bid, BOEM will retain the bidder's \$5,000,000 bid deposit. In such a circumstance, BOEM reserves the right to determine which bid would have won in the absence of the bid previously determined to be the winning bid and to offer a lease pursuant to this next highest bid.

XII. MINIMUM BID: The minimum bid is the lowest bid that BOEM will accept as a winning bid, and it is where BOEM will start the bidding in the auction. BOEM has established a minimum bid of \$100.00 per acre for this lease sale.

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

- a. **The Auction:** Using an online bidding system to host the auction, BOEM will start the bidding for Lease Areas OCS-A 0537 through 0539, OCS-A 0541, OCS-A 0542, and OCS-A 0544, as described below. Bidders may bid for at most one of the offered Lease Areas in each round of the auction, and ultimately acquire at most one of the Lease Areas in the auction.

Lease Area	Acres	Minimum Bid
OCS-A 0537	71,522	\$7,152,200
OCS-A 0538	84,332	\$8,433,200
OCS-A 0539	125,964	\$12,596,400
OCS-A 0541	79,351	\$7,935,100
OCS-A 0542	83,976	\$8,397,600
OCS-A 0544	43,056	\$4,305,600

- b. **Live Bids:** 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 in each previous round, or BOEM must have carried forward a bidder’s bid from a 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. If a bid is uncontested, it is automatically carried forward 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.

A bidder may switch its live bid from one Lease Area to another between rounds only if its bid from the previous round was contested. For example, 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 prior round. If the bid was uncontested in the previous round, the bidder cannot switch Lease Areas, and its bid in the previous round is 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.

If a bidder decides to stop bidding when its bid is contested, there remain circumstances in which BOEM may select the bid as the winning bid (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 and BOEM selects another bid). In these circumstances, 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 or 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.

- c. **Exit Bids:** In any round after the first round, a bidder may submit an “exit bid” (also known as an “intra-round bid”) only for the same Lease Area as the bidder's contested live bid in the previous round. An exit bid is a bid that is greater 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 Lease Area. During the auction, the exit bid can be seen only by BOEM and not by other bidders. BOEM will not raise the asking price in a Lease Area with only exit bids in a given 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, which could include an exit bid if another bidder does not bid on this area in a subsequent round), the auction is over, regardless of the number of exit bids on each area.
- d. **Determination of Provisional Winners:** 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 bids 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. 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 fails to 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 bid amounts 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.

- e. **Authorized Individuals and Bidder Authentication:** A company that is eligible to participate in the auction will identify on its BFF up to three individuals who are authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. After BOEM has processed the bid deposits, the auction contractor will send several emails to the authorized individuals. The emails will contain user login information and instructions for accessing the bidder manual for the auction system and the auction system technical supplement (ASTS).

The auction system will require software tokens for two-factor authentication. To set up the tokens, authorized individuals must download an app onto their smartphone or tablet via a recent operating system. One of the emails sent to authorized individuals will contain instructions for installing the app and the credentials needed to activate the software token. A short telephone conversation with the auction contractor may also be needed to use the credentials. The login information, along with the tokens, will be tested during the mock auction. If an

eligible 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.

- f. **Timing of Auction:** The auction will begin at 9:00 a.m. EST on February 23, 2022. Bidders may log in as early as 8:30 a.m. EST on that day. BOEM recommends that bidders log in earlier than 9:00 a.m. EST on that day to ensure that any login issues are resolved prior to the start of the auction. Once bidders have logged in, they should review the auction schedule, which lists the anticipated start times, end times, and recess times of each round in the auction. Each round is structured as follows:

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

The first round will last about 30 minutes, though subsequent rounds will be shorter. Recesses are anticipated to last approximately 10 minutes. This description of the auction schedule is tentative. Bidders should consult the auction schedule on the auction system during the auction for updated times. Bidding will continue until about 6:00 p.m. EST each day. BOEM anticipates

that the auction will last 1- to 2-business days, but may continue for additional business days as necessary until the auction has concluded.

- g. **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 end of the round to place bids. Bidders should place bids according to the procedures described in this notice and the ASTS. Information about the round results will only be made available after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

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

- h. **Alternate Bidding Procedures:** Redundancy is the most effective way to mitigate technical and human issues during an auction. Bidders should strongly consider authorizing more than one individual to bid in the auction—and confirming during the mock auction that each individual is able to access the auction system. A 4G card or other form of wireless access is helpful in case a company's main internet connection should fail. As a last resort, an authorized

individual facing technical issues may request to submit its bid by telephone. In order to be authorized to place a telephone bid, an authorized individual must call the help desk number listed in the auction manual *before* the end of the round. BOEM will authenticate the caller's identity, including requiring the caller to provide a code from the software token. The caller must also explain the reasons why a telephone bid must be submitted. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate bidding procedure.

- i. **Prohibition on Communications Between Bidders During Auction:** During the auction, bidders are prohibited from communicating with each other regarding their participation in the auction. Also, during the auction, bidders are prohibited from communicating to the public regarding any aspect of their participation or lack thereof in the auction, including, but not limited to, through social media, updated websites, or press releases.

XIV. POST-AUCTION PROCEDURES

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

- b. **Process for Issuing the Lease:** Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to each provisionally winning bidder. Within 10-business days after receiving the lease copies, the provisionally winning bidders must:
1. Sign and return the lease copies on the bidder's behalf;
 2. File financial assurance, as required under 30 CFR 585.515-.537; and
 3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>.

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

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

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

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

Within 45-calendar days of the date that a provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* and 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/renewable-energy/state-activities/new-york-bight>.

- c. **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.
- d. **Force Majeure:** The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program

Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (e.g., earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM website at: <http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

Bidders should call 703-787-1121 if they have concerns.

- e. **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.
- f. **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).

- XV. **Protection of Privileged or Confidential Information:** BOEM will protect privileged and confidential information that you submit, as required by the Freedom of Information

Act (FOIA). Exemption 4 of FOIA applies to “trade secrets and commercial or financial information that you submit that is privileged or confidential.” 5 U.S.C. 552(b)(4).

If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise confidential information.

Amanda Lefton
Director, Bureau of Ocean Energy Management

Date