

MEMORANDUM OF UNDERSTANDING
Among the
BUREAU OF OCEAN ENERGY MANAGEMENT
DEEPWATER WIND SOUTH FORK, LLC
SWCA ENVIRONMENTAL CONSULTANTS

A. Purpose and Background

The U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM) has determined that an environmental impact statement (EIS) is required in its consideration of Deepwater Wind South Fork, LLC's (Lessee) proposed Construction and Operations Plan (COP). The Lessee proposes to construct a wind energy project, up to 15 wind turbines, on the Outer Continental Shelf offshore of Rhode Island and Massachusetts under lease OCS-A 0486 (Project). The purpose of this Memorandum of Understanding (MOU) is to describe the roles and set forth the obligations of BOEM, the Lessee, and the independent contractor(s) selected by BOEM, SWCA Environmental Consultants (the Contractor), to prepare the Draft and Final EIS, as well as other documents relating to BOEM's environmental review and consultations in its consideration of the proposed COP. The parties to this agreement are BOEM, the Lessee, and the Contractor.

To facilitate timely completion of required environmental documents, the Lessee has agreed to enter into a contract with the Contractor for preparation of the EIS and other environmental compliance activities related to the EIS development (the Contract). This MOU provides a framework for carrying out these activities while setting forth Lessee and Contractor obligations in assisting BOEM with preparation of the EIS and other environmental compliance activities relating to BOEM's consideration of the proposed COP for the Deepwater Wind South Fork wind energy project. BOEM staff of the Office of Renewable Energy Programs (OREP) will direct the activities of the Contractor in the consultation, reviews, preparation, and processing of the documents and activities within the scope of the Contract.

B. NEPA Compliance

BOEM and the Lessee intend that development and preparation of the EIS and the other environmental compliance activities related to the EIS development, as provided in this MOU and the Contract, will be consistent with the pertinent requirements and obligations of the National Environmental Policy Act (NEPA)¹ and its implementing regulations,² Executive Order 13807, Department of the Interior Secretary's Order 3355, and other environmental authorities. The parties to this MOU agree to exercise due diligence and use best efforts to complete the environmental review process and compliance activities related to the EIS development for the proposed COP in an efficient manner, consistent with applicable law.

¹ 42 U.S.C. §§ 4321-4370h (2017),² 40 C.F.R. Parts 1500-1508.

² 40 C.F.R. Parts 1500-1508.

NEPA and related regulations provide for the use of third-party contracts to assist agencies in satisfying their requirements. In its "Forty Questions" issued in the Federal Register on March 23, 1981, the Council on Environmental Quality indicated the term "third-party contract" referred to the preparation of environmental compliance activities related to the EIS development by a contractor paid by the applicant, but selected by the agency. 40 CFR 1506.5(c) further provides that the Contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the EIS is prepared with third-party contract assistance, the responsible agency must participate in the preparation and must independently evaluate the EIS prior to giving its approval. The agency must also take full responsibility for the scope and contents of the EIS.

The Contract between the Lessee and the Contractor will be executed pursuant to the third-party contracting procedures set forth in 40 CFR 1506.5(c) and as described in section 701 of BOEM's Environmental Guidance entitled, "NEPA Documents Prepared Under BOEM or Third-Party Contract" (2015), and will be consistent with this MOU.

C. Obligations of the Lessee under this MOU

1. The Lessee will certify to BOEM that the selected Contractor, to the best of its knowledge, has no financial or other interest in the outcome of the Project, other than payments made to compensate Contractor for the work contemplated by this MOU.
2. The Lessee will ensure that the Lessee and the Contractor have no relationships that could impair the Contractor's objectivity in performing work under the Contract.
3. The Lessee will ensure that all communications with the Contractor will be restricted to financial and administrative components of the Contract. Communications on the merits of the Lessee's Project may only be conducted jointly with OREP staff, subject to any applicable disclosure requirements.
4. The Lessee will be solely responsible for all Contractor and subcontractor fees, costs, and expenses.
5. The Lessee will not control or direct the activities of the Contractor, except with respect to the processing of invoices.
6. The Lessee will include the Lessee and Contractor obligations outlined in this MOU as mandatory provisions in the Contract between Lessee and Contractor.
7. The Lessee will timely respond to all communications from BOEM, including requests for additional information regarding the proposed action and/or mitigation measures beyond that which the Lessee has described in its COP.
8. The Lessee must provide BOEM with access, upon request, to any documentation, reports, analyses, and data related to execution of the Contract.
9. Pursuant to 30 CFR 585.111(a) and at BOEM's request, the Lessee will compensate BOEM for unique processing costs that BOEM incurs during its review of Contractor work product relating to the COP before BOEM.

D. Obligations of the Contractor (and all subcontractors, as appropriate) under this MOU

1. The Contractor, with BOEM's approval and prior notice to the Lessee, may employ other contractors and experts (collectively referred to as Subcontractor(s)), as required, for the adequate development and preparation of the work described in the Contract.
2. The Contractor will provide, through its staff and/or by Subcontractor(s), the expertise, staffing, and technical capabilities required for the preparation of the work described in the Contract, and will perform such work to BOEM's specifications, which will be mutually agreed upon in writing among BOEM, the Lessee, and the Contractor.
3. All work performed by the Contractor will be under BOEM's direction, and will meet any timeframes established by OREP staff and mutually agreed to in writing by the Contractor.
4. The Contractor must certify that it has no conflict of interest in performing the work required under the Contract, and must certify that it has no financial or other interest in the outcome of BOEM's review of the COP.
5. The Contractor must certify that its Organizational Conflict of Interest (OCI) Statement provided to BOEM for review prior to selection is accurate.
6. The Contractor will have a continuing obligation to identify conflicts of interest that may arise for any reason, including changes in corporate identity, affiliation, structure, or ownership, or changes to the Contract throughout the actual performance period of the work. Therefore, the Contractor must renew the OCI Statement on an annual basis, and more frequently if the Contractor's business relationships have changed in a manner that affects the previously submitted OCI Statement.
7. In the event an OCI is discovered after award of the Contract, the Contractor certifies that it will immediately notify the OREP Environment Branch for Renewable Energy (EBRE) Branch Chief about the OCI and must submit a plan to mitigate the conflict. The mitigation plan must be submitted to OREP for review and written determination as to whether the plan can be implemented within 30 days of the identification of an OCI.
8. The Contractor agrees to communicate with the Lessee only about financial and administrative issues related to the executed Contract unless OREP staff is present, and subject to any applicable disclosure requirements.
9. The Contractor must not replace its Project Manager, assistant Project Manager, or other key employee, and Subcontractor(s) must not replace its key personnel, without the prior approval from Mary Boatman or other designated OREP staff and prior notice to the Lessee.

E. Obligations of BOEM under this MOU

1. BOEM will be responsible for assuring compliance with all the requirements of NEPA, its regulations, and other applicable law.
2. BOEM will set the schedule, in coordination with the Lessee and Contractor, with key milestones for completion of the NEPA document and all associated documents.
3. BOEM will be responsible for providing scientific and technical direction to the Contractor throughout the NEPA review process.

4. BOEM will direct the scope, content, and quality of the Contractor's work. BOEM will provide oversight of the NEPA document preparation process on a bi-weekly basis or more frequently if needed. BOEM will verify that the Contractor has considered existing data, environmental descriptions, and analysis available from the Lessee, BOEM, and other sources, and that the Contractor does not duplicate work already completed unless BOEM determines that the existing work is not adequate for the purposes of the EIS.
5. BOEM will keep the Lessee regularly informed on the progress of the EIS, as well as any data needs or changes.
6. BOEM will take full responsibility for the scope, contents, and adequacy of the NEPA document, will identify all information necessary to complete its review, and will decide on the inclusion or deletion of all material in the EIS, including the range of reasonable alternatives, relevant environmental issues and impacts, including cumulative impacts.
7. BOEM staff has the right, at any time and in their sole discretion, to have any personnel of the Contractor, or Subcontractor(s), either temporarily or permanently dismissed from the project.

F. Meetings

1. To facilitate the development and preparation of the EIS, joint meetings among BOEM, the Lessee, and the Contractor may be held. BOEM will direct the contractor to arrange for such meetings and BOEM will notify the Lessee of any substantive meetings that are scheduled and of their purpose to allow for attendance by any party, as determined by BOEM.
2. BOEM reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations. The Lessee and/or the Contractor may participate in some or all of these meetings, as determined by BOEM.

G. Administrative Provisions

1. Nothing in this MOU may be construed to obligate the U.S. Government to make any current or future expenditure of resources either in advance of the availability of appropriations from Congress or when funds are available.
2. This MOU does not create an obligation for BOEM to enter into a future contract or an assistance agreement.
3. This MOU in no way restricts BOEM from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
4. Nothing in this MOU may be interpreted to imply that the United States, the Department of the Interior, or BOEM endorses any product, service, or policy of the Contractor or Lessee. The Contractor/Lessee will not take any action or make any statement that suggests or implies such an endorsement.
5. Any information furnished by or to the government under this MOU is subject to the Freedom of Information Act, 5 U.S.C. §§ 552, *et seq.*, and implementing policies and

regulations. Any confidential information provided must be identified as such at the time it is provided to BOEM.

6. Unless otherwise agreed to in an amendment to this MOU or in another agreement, any information provided to BOEM under this MOU will be considered an agency record. If any information is to be provided to BOEM under a license or other restricted-use agreement, such an agreement will be reviewed by the Office of the Solicitor, Division of General Law, Branch of Acquisitions and Intellectual Property before BOEM may give its approval to the agreement.
7. Use, reproduction, or redistribution of any party's brands, trademarks, and logos is strictly prohibited without written permission from the party owning or controlling such brands, trademarks, and logos. Any such written permission that would be granted to or by BOEM will be reviewed by the Office of the Solicitor, Division of General Law, Branch of Acquisitions and Intellectual Property before BOEM may accept or grant any permission.

H. No Personal Liability

No officer or employee of any party to this MOU may be charged personally with any liability under any terms of this MOU, because of its execution or attempted execution, or because of any breach or alleged breach.

I. No Rights for Non-Parties

This MOU creates no rights or privileges for any party that is not a signatory of this MOU.

J. Conflicts

Nothing herein is intended to conflict with or supersede any law, policy, or regulation of the U.S. Government. If the terms of this MOU are inconsistent with any applicable law, regulation, or policy of the U.S. Government, then those portions of this agreement which are determined to be inconsistent will be unenforceable, but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect. At the first opportunity for review of the MOU after such an inconsistency has been determined, all necessary changes will be made, in the interest of all parties, by: 1) an amendment to this MOU; 2) entering into a new MOU; or 3) terminating this MOU.

Should disagreement arise about the interpretation of the provisions of this MOU, or amendments and/or revisions thereto, that cannot be resolved at the staff level, the area(s) of disagreement will be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty (30) days, the parties will forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Points of Contact

The following individuals are the points of contact for activities relating to the execution of the Contract and this MOU:

Lessee: Stephanie Wilson
Deepwater Wind South Fork, LLC
56 Exchange Terrace, Suite 101
Providence, Rhode Island 02903

Contractor: SWCA Environmental Consultants
Sue Wilmot
6200 UTSA Boulevard, Suite 102
San Antonio, TX 78249

BOEM: Mary Boatman
NEPA Coordinator
Department of the Interior
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Drive, VAM-OREP
Sterling, Virginia 20166

If any of these individuals cease to be employed by their respective employers before this MOU terminates, the affected party will notify the other parties and identify the new point of contact within 30 days.

K. Limitations

In executing this MOU and taking any other action contemplated hereby, the parties do not waive any rights they otherwise have.

L. No Discrimination

In carrying out the terms of this MOU, no party may discriminate against any person because of race, creed, color, sex, gender identity and expression or national origin.

M. Confidentiality. The parties hereby agree to:

- I. Maintain as confidential and protect from unauthorized disclosure all confidential commercial information as well as any privileged, deliberative, and/or predecisional information, documents and records created (by or for) and/or shared among the parties as part of the collaboration established in this MOU (hereinafter, referred to as "Confidential Information"), accordance with applicable law;

- II. Exercise the same degree of care – but not less than a reasonable degree of care – they would exercise with their confidential information to prevent its unauthorized disclosure;
- III. Unless otherwise required by law (e.g., Freedom of Information Act, 5 U.S.C. § 552), not disclose Confidential Information to the general public, provided that the parties may disclose or provide access to the Confidential Information to those employees, consultants, or personnel who have a need to know such information in order to accomplish the purposes of this MOU. The parties will ensure that their employees consultants, or personnel adhere to the terms of this section.

These confidentiality provisions apply to all Confidential Information, including but not limited to: e-mail messages; notes to the file; agendas, pre-meeting materials, presentations, and meeting notes or summaries; letters; technical studies (e.g., modeling); review evaluations; and all documents prepared by or for the parties, and/or a contractor or sub-contractor of either, as part of the collaboration established in this MOU. The parties' obligation to protect from disclosure Confidential Information provided pursuant to this MOU will survive the expiration or termination of this MOU. The parties have the right to expressly waive any privilege with regard to such Confidential Information and will do so by advising the other party in writing of its decision to waive the privilege.

N. Effective Date, Period of Agreement, Amendments, and Termination

This MOU becomes effective upon the signature of all three parties and expires following completion of the contracted scope of work, as agreed to by the parties to this MOU, or three years, whichever occurs first. The term of this MOU may be extended prior to termination with the written consent of all three parties.

This MOU may be amended with the written consent of all three parties. An amendment will become effective upon signature of all three parties.

This MOU may be terminated prior to expiration of its term by the Lessee if it ceases development of the Project. This MOU may also be terminated prior to expiration of its term with the written consent of all three parties. Any party may initiate termination upon thirty (30) days written notice to the other parties. Notice of termination will be in writing and will be delivered by postage-prepaid mail, personal delivery, facsimile or e-mail, and shall be addressed to the points of contact listed above. During the intervening 30 days, the parties agree to actively attempt to resolve any outstanding disputes or disagreements. In the event of termination prior to expiration, the Lessee has a continuing obligation to compensate BOEM for unique processing costs that BOEM incurs during its review of the COP pursuant to 30 CFR 585.111.

SIGNATURES OF AGREEMENT

Lessee

Aileen Kenney

Signature

Aileen Kenney

Typed Name

Senior Vice President - Development

Typed Title

July 3, 2018

Date

Contractor: SWCA Environmental Consultants

Joseph J. Fluder III

Signature

Joseph J. Fluder III

Typed Name

Chief Executive Officer

Typed Title

August 2, 2018

Date

Bureau of Ocean Energy Management

Walter D. Cruickshank

Walter D. Cruickshank

Deputy Director, Bureau of Ocean Energy Management

7-2-2018

Date