

MEMORANDUM OF UNDERSTANDING
Among the
BUREAU OF OCEAN ENERGY MANAGEMENT
VINEYARD WIND, LLC
ERM-WEST, INC.

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 for Vineyard Wind, LLC's (Lessee) Construction and Operation Plan (COP). The Lessee proposes to construct an 800 megawatt (MW) wind project in waters offshore of Massachusetts under lease OCS-A 0501. The purpose of this Memorandum of Understanding (MOU) is to define the roles and obligations of BOEM, the Lessee, and the independent contractor(s) selected by BOEM, ERM-West, Inc. (referred to as the Contractor), to prepare the Draft and Final EIS and engage in other environmental compliance activities related to the COP.

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 (referred to as the Contract). This MOU provides a framework through which the Contractor will assist BOEM with preparation of the EIS and other environmental compliance activities for the Lessee's COP. 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, 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 its implementing regulations,² Executive Order 13807, Department of the Interior Secretarial Order 3355, and other environmental authorities. The parties to this MOU agree to use due diligence and best efforts to complete the environmental review process for the COP in an efficient manner, consistent with applicable law.

NEPA and related regulations provide for the use of third-party contracts to assist agencies in satisfying its requirements. In its "Forty Questions" issued in the Federal Register on 23 March 1981, the Council on Environmental Quality indicated the term "third-party contract" referred to contractors paid by the Lessee, but selected by the agency. 40 CFR 1506.5(c) further stipulates that the Contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the NEPA document is prepared with third-party contract assistance, the

¹ 42 U.S.C. §§ 4321-4370h (2017).

² 40 C.F.R. Parts 1500-1508.

responsible agency must participate in the preparation and must independently evaluate the NEPA document prior to giving its approval. The agency must also take full responsibility for the scope and contents of the NEPA document.

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

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.
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 components of the Contract. Communications on the merits of the Lessee's project may only be conducted jointly with OREP staff, subject to any 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.
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)

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 the Bureau's review.
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 Environmental 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 issues related to the executed Contract unless OREP staff is present, and subject to any 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 Brian Krevor or other designated OREP staff and prior notice to the Lessee.

E. Obligations of BOEM

1. BOEM will be the lead agency in the preparation of the EIS, and will be responsible for assuring compliance with all the requirements of NEPA, its regulations, and other applicable law.
2. BOEM will select the Contractor, based on its independent review of the technical, managerial, personnel, and OCI aspects of each proposal.
3. BOEM will set the schedule for completion of the NEPA document and all associated documents.
4. BOEM will be responsible for providing technical direction to the Contractor throughout the NEPA review process.
5. BOEM will identify all information necessary to complete its review, and will decide on the inclusion or deletion of all material in the NEPA document.
6. 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. The Contractor will notify BOEM 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 actual or implied intention or requirement 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 arrangement with other public or private agencies, organizations, or individuals.
4. Nothing in this agreement 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 privileged 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 agreement 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 invalid, 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 agreement 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 agreement, 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 days, the parties will forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

K. Points of Contact

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

Lessee: Rachel Pachter,
V.P. Permitting Affairs
Vineyard Wind
700 Pleasant Street, Suite 510
New Bedford, Massachusetts 02740

Contractor: Tim Strawn
Business Unit Managing Partner
ERM-West, Inc.
555 17th Street, Suite 1700
Denver, Colorado 80202

BOEM: Brian Krevor
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 points of contact cease to be employed by their respective employers before this MOU terminates, the affected party will notify the other parties of a new point of contact within 30 days.

L. 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 the agreement, 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 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



Signature

ERICH STEPHENS

Typed Name

CHIEF DEVELOPMENT OFFICER

Typed Title

12 FEB 2018

Date

Contractor: ERM-West, Inc.

Tim Strawn
Signature

Tim Strawn
Typed Name

Business Unit Managing Partner

Typed Title

2/13/18
Date

Bureau of Ocean Energy Management

Walter D. Cruickshank
Walter D. Cruickshank

Deputy Director, Bureau of Ocean Energy Management

2/8/2018
Date