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Part II

## Department of the Interior

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Bureau of Ocean Energy Management

Atlantic Wind Lease Sale 2 (ATLW2) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts—Final Sale Notice and Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts; Notices

**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management**

[Docket No. BOEM–2013–0014;  
MMAA104000]

**Atlantic Wind Lease Sale 2 (ATLW2)  
Commercial Leasing for Wind Power  
on the Outer Continental Shelf  
Offshore Rhode Island and  
Massachusetts—Final Sale Notice**

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts.

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of two commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Rhode Island and Massachusetts, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering Lease OCS–A 0486 (North Lease Area) and Lease OCS–A 0487 (South Lease Area) for sale simultaneously using a multiple factor auction format. The two lease areas together comprise the Rhode Island and Massachusetts Wind Energy Area (WEA) announced on February 24, 2012, (see "Areas Offered for Leasing" below for a description of the WEA and lease areas). The two lease areas are identical to those announced in the *Proposed Sale Notice (PSN)* for *Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts*, which was published on December 3, 2012, in the **Federal Register** with a 60-day public comment period (77 FR 71612). This FSN contains information pertaining to the areas available for leasing, lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the leases resulting from this lease sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

**DATES:** BOEM will hold a mock auction for the eligible bidders on July 24, 2013. The nonmonetary phase of the auction will begin on July 29, 2013. The monetary phase of the auction will be held online and will begin at 10:30 a.m. on July 31, 2013. Additional details are

provided in the section entitled, "Deadlines and Milestones for Bidders."

**FOR FURTHER INFORMATION CONTACT:**

Jessica Bradley, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or [jessica.bradley@boem.gov](mailto:jessica.bradley@boem.gov).

**Authority:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) ("the Act"), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

**Background:** The two lease areas offered in this FSN are the same areas as BOEM announced in the PSN on December 3, 2012 (77 FR 71612). BOEM received 82 comments in response to the PSN, which are available on BOEM's Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. BOEM has also posted a document containing responses to comments submitted during the PSN comment period and listing other changes that BOEM has implemented for this lease sale since publication of the PSN.

On July 3, 2012, BOEM published a Notice of Availability (NOA) (77 FR 39508) of an Environmental Assessment (EA) for commercial wind lease issuance and site assessment activities on the Atlantic OCS Offshore Rhode Island and Massachusetts with a 30-day public comment period. BOEM received 32 comments, which are available at <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. BOEM has also concluded consultations under the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA).

Based on the public comments in response to the EA, the conclusion of required consultations, and public outreach and information meetings, BOEM decided to make certain revisions to the EA originally published in July 2012. Concurrent with this notice, BOEM is publishing a NOA for the revised EA and Finding of No Significant Impact (FONSI). The *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts Revised Environmental Assessment (EA)* can be found at <http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

The two lease areas offered in Atlantic Wind Lease Sale 2 (ATLW2) comprise the Rhode Island and Massachusetts WEA described as the proposed action and preferred alternative in the EA. Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

**List of Eligible Bidders:** BOEM has determined that the following companies are legally, technically and financially qualified pursuant to 30 CFR 585.106 and 107, and are therefore eligible to participate in this lease sale as bidders.

Company name	Company No.
Deepwater Wind New England, LLC .....	15012
EDF Renewable Development, Inc .....	15027
Energy Management, Inc. ....	15015
Fishermen's Energy, LLC .....	15005
IBERDROLA RENEWABLES, Inc. ....	15019
Neptune Wind LLC .....	15011
Sea Breeze Energy LLC .....	15044
US Mainstream Renewable Power (Offshore) Inc. ....	15029
US Wind Inc. ....	15023

**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 leases pursuant to this sale.

- **Bidders Financial Form (BFF):** Each eligible bidder must submit a BFF to BOEM by June 12, 2013. Please note that the BFF has been updated since publication of the PSN. The updated BFF is available at <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. Once this information has been processed by BOEM, bidders may log into pay.gov and leave bid deposits.

- **Bid Deposits:** Each bidder must submit an adequate bid deposit by July 17, 2013.

- **Non-Monetary Package:** Each bidder must submit a non-monetary package, if it is applying for a credit, by July 17, 2013.

- **Mock Auction:** BOEM will hold a Mock Auction on July 24, 2013. The Mock Auction is not an "in-person" event. BOEM will contact each eligible bidder and provide instructions for participation. Only bidders eligible to participate in this auction will be permitted to participate in the Mock Auction.

- **Panel Convenes to Evaluate Non-Monetary Packages:** On July 29, 2013, the panel described in the "Auction

Procedures” section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, who will inform each bidder by email of the panel’s determination with respect to them.

- **Monetary Auction:** On July 31, 2013, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 10:30 a.m. 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 continue on consecutive business days, as necessary, until the auction ends according to the procedures described in the Auction Format section of this notice.

- **Announce Provisional Winners:** BOEM will announce the provisional winners of the lease sale after the auction ends.

- **Reconvene the Panel:** The panel will reconvene to verify auction results.

- **Department of Justice (DOJ) Review:** BOEM will afford the Department of Justice (DOJ) 30 days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c), which reads, in relevant part:

*Antitrust review of lease sales.* Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

- **Delivery of Leases:** BOEM will send three lease copies to each winner, with instructions on how to accept and execute the leases. The first 6-months of the first year’s rent payment is due 45 days after the winner receives the lease for execution.

- **Return the Leases:** The auction winners will have ten days from receiving the lease copies in which to post financial assurance, pay any outstanding balance of their bonus bids, and sign and return the three copies.

- **Refund Non-Winners:** BOEM will return the bid deposits of any bidders that did not win leases in the lease sale with a written explanation of why the bidder did not win.

- **Execution of Leases:** Once BOEM has received the signed lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the leases, and execute if appropriate.

**Areas Offered For Leasing:** The North and South Lease Areas offshore Rhode

Island and Massachusetts comprise 13 whole OCS blocks and 26 sub-blocks encompassing 164,750 acres. The North Lease Area consists of 97,498 acres, and the South Lease Area consists of 67,252 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas and lease activities can be found in Addendum “A” of each lease, which BOEM has made available with this notice on its Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>.

BOEM commissioned the Department of Energy’s National Renewable Energy Laboratory (NREL) to evaluate BOEM’s delineation of the lease areas that was published in the PSN. The final technical evaluation report is available on BOEM’s Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. One conclusion of the report is that the North and South Lease Areas have significantly dissimilar attributes and that “together these differing attributes tend to indicate that the North Lease area is a more competitive and cost effective area for near term commercial development.” Still, the report concludes, “the current RI/MA WEA delineation is logical in terms of providing two distinct developable leasing areas . . .”

Ascending bidding over the course of the auction will ensure that the relative values of the lease areas will determine the amount bidders will pay. BOEM has determined that the differences highlighted in the NREL report justify adjusting the minimum bids for the two lease areas. Accordingly, the minimum bid for the South Lease Area will be \$1 per acre, or \$67,252. The minimum bid for the North Lease Area will be \$2 per acre, or \$194,996.

**Map of the Area Offered for Leasing:** A map of the North and South Lease Areas and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>.

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1320, Fax: (703) 787–1708.

**Withdrawal of Blocks:** BOEM reserves the right to withdraw areas from this

lease sale prior to its execution of a lease.

**Lease Terms and Conditions:** BOEM has included specific terms, conditions, and stipulations for OCS commercial wind leases in the Rhode Island and Massachusetts WEA within Addendum “C” of each lease. BOEM reserves the right to apply additional terms and conditions to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. Each lease, including Addendum “C”, is available on BOEM’s Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. Each lease consists of an instrument with 18 sections and the following six attachments:

Addendum “A” (Description of Leased Area and Lease Activities);

Addendum “B” (Lease Term and Financial Schedule);

Addendum “C” (Lease Specific Terms, Conditions, and Stipulations);

Addendum “D” (Project Easement)

Addendum “E” (Rent Schedule); and Appendix A to Addendum C (Incident Report: Protected Species Injury or Mortality).

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.

**Plans:** Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 6 months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may include in its COP a request to develop its commercial lease in phases. If a leaseholder requests and BOEM approves phased development, this approval will not affect the length of the preliminary, site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development, including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements set forth in the regulatory provisions in 30 CFR 585.605–585.613 for the full commercial lease area.

**Financial Terms and Conditions:** This section provides an overview of the basic annual payments required of the Lessee, which will be fully described in each lease.

**Rent:** The first year's rent payment of \$3 per acre for the entire lease area will be separated into two 6-month payments. The first 6-month payment is due within 45 calendar days of the date the Lessee receives the lease for execution. The second 6-month payment is due 6 months after the Effective Date of the lease. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, i.e., the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged on the remaining part of the lease not authorized for Commercial Operations, i.e., not generating electricity. However, instead of geographically dividing the lease area into acreage that is "generating" and acreage that is "non-generating," the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity of the project that is not yet in operation. The fraction is the ratio of the actual nameplate capacity (as defined below) not yet authorized for commercial operations at the time payment is due divided by the maximum nameplate capacity authorized in the Lessee's most recent approved COP in any year of commercial operations on the lease. This fraction is then multiplied by the amount of rent that would be due for the Lessee's entire leased area at the rental rate of \$3 per acre to obtain the annual rent due for a given year.

For example, for a lease the size of 164,750 acres (the size of the entire WEA), the amount of rent payment will be \$494,250 per year if the entire leased area is not authorized for commercial operations. If the Lessee has 500 MW authorized under commercial operations and its most recent approved COP specifies a maximum project size of 1000 MW on the entire leased area in any year of commercial operations, the rent payment will be \$247,125.

The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement, 200-feet wide and centered on the transmission cable, is \$70.00 per statute mile. For any additional acreage required, the Lessee must also pay the greater of \$5.00 per acre per year or \$450.00 per year.

**Operating Fee:** The annual operating fee reflects a 2% operating fee rate applied to a proxy for the wholesale

market value of electricity production. The initial payment is prorated to reflect the period between the start of commercial operations and the Lease Anniversary, and is due within 45 days of the start of commercial operations; thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary. The annual operating fee payment is calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's nameplate capacity, the total number of hours in the year (8,760), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index.

**Operating Fee Rate:** The operating fee rate is set at 0.02 (i.e., 2%) during the entire life of commercial operations.

**Nameplate Capacity:** Nameplate capacity is the maximum rated electric output, expressed in megawatts (MW), that the turbines of the wind farm facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if a Lessee has 20 turbines under commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind farm facility at the rated wind speed of the turbines would be 100 MW.

**Capacity Factor:** Capacity factor represents the share of anticipated generation of the wind farm facility that is delivered to the interconnection grid (i.e., where the Lessee's facility interconnects with the electric grid) relative to the wind farm facility's generation at continuous full power operation at nameplate capacity, expressed as a decimal between zero and one. The capacity factor for the year in which the Commercial Operation Date occurs and for the first six full years of commercial operations on the lease is set to 0.4 (i.e., 40%) to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth year, the capacity factor will 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 will be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus

10 percent of the previous period's value.

**Wholesale Power Price Index:** The wholesale power price, expressed in dollars per MW hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast—Mass Hub power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual *State of the Markets Report* with specific reference to the summary entitled, "Electric Market Overview: Regional Spot Prices." The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due based on the Lease Anniversary using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis (BEA).

**Financial Assurance:** Within ten days after receiving the lease copies, the provisional winner 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. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements will be determined on a case-by-case basis.

The financial terms can be found in Addendum "B" of the proposed lease, which BOEM has made available with this notice on its Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>.

**Bid Deposit and Minimum Bid:** A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than July 17, 2013, each bidder must have submitted a bid deposit of \$450,000 per unit of desired initial eligibility. Each lease is worth one unit of bid eligibility in the auction. The required bid deposit for any participant intending to bid on both leases in the first round of the auction will be \$900,000. Any participant intending to bid on only one of the leases during the auction must submit a bid deposit of \$450,000. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via [pay.gov](http://pay.gov).

Approximately 97,498 acres are offered for sale as Lease OCS-A 0486 (North Lease Area), and approximately 67,252 acres are offered as Lease OCS-A 0487 (South Lease Area) in this auction. The minimum bid is \$1 per acre for the South Lease Area and \$2 per acre for the North Lease Area. Therefore, the minimum acceptable bid, i.e., the opening asking price for the South Lease Area, will be \$67,252, and for the North Lease Area, will be \$194,996.

Each bidder must complete the Bidder's Financial Form that BOEM has made available with this notice on its Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. This form must be submitted by June 12, 2013, to BOEM, pursuant to the instructions posted with the form. Please note that the BFF has been updated since publication of the PSN. This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund the bid deposit to unsuccessful bidders.

## Auction Procedures

### Summary

For the sale of Lease OCS-A 0486 ("North") and Lease OCS-A0487 ("South"), BOEM will use a multiple-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or "variables," in determining the outcome of the auction. BOEM has appointed a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and verifying the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel will meet to consider non-monetary packages on July 29, 2013. The panel will determine whether any bidder has earned a non-monetary credit to be used during the auction, and, if one or more bidders have earned such a credit, the percentage the credit will be worth. The monetary auction will take place on July 31, 2013. The auction will balance consideration of two variables—(1) a cash bid, and (2) a non-monetary credit,

i.e., if a bidder holds a Power Purchase Agreement (PPA), or a Joint Development Agreement (JDA). In sum, these two variables comprise the "As-Bid" auction price, as reflected either in a bidder meeting BOEM's asking price or the bidder offering its own Intra-Round Bid price subject to certain conditions, as described more fully below. A multiple-factor auction, wherein both monetary and non-monetary bid variables are considered, is provided for under BOEM's regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6).

### Overview of the Multiple-Factor Bidding Format Proposed for this Sale

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider many factors as part of a bid. The regulation states that one bid proposal per bidder will be accepted, but does not further specify the procedures to be followed in the multiple-factor format. This multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulation leaves to BOEM the determination of how to administer the multiple-factor auction format in order to ensure receipt of a fair return under the Act, 43 U.S.C. 1337(p)(2)(A). BOEM has chosen to do this through an auction format that considers a non-monetary factor along with ascending bidding over multiple rounds, sharing certain useful information with bidders at the end of each auction round, such as the number of live bids associated with each Lease Area (LA), and ensuring that a bidder's live bid submitted in the final round of the auction will win the LAs included in that bid. This auction format enhances competition and reduces bidder uncertainty more effectively than other auction types that BOEM considered.

BOEM's regulations at 30 CFR 585.220(a)(4) provides for a multi-round auction in which each bidder may submit only one proposal per LA or for a set of LAs in each round of the auction. This formulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulations by enabling BOEM to benefit from both the consideration of more than one bidding factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for the North LA and an asking price for the South LA. The asking price for a bid on both LAs is the sum of the asking

prices for the North LA and the South LA. Each bidder will indicate whether it is willing to meet the asking price for one or both LAs. A bid submitted at the full asking price for one or both LAs in a particular round is referred to as a "live bid." A bidder must submit a live bid for at least one of the LAs in each round to participate in the next round of the auction. As long as there is at least one LA that is included in two or more live bids, the auction continues, and the next round is held.

A bidder's As-Bid price must meet the asking price in order for it to be considered a live bid. A bidder may meet the asking price by submitting a monetary bid equal to the asking price, or, if it has earned a credit, by submitting a multiple-factor bid—that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price. In particular, the multiple-factor bid would consist of the sum of a cash portion and any credit portion which the bidder has earned.

An uncontested bid is a live bid that does not overlap with other live bids in that round. For example, a bid for both the North and the South LAs is considered contested if any LA included in that bid is included in another bid—a bid cannot be "partially uncontested." An uncontested bid represents the only apparent interest in that bid's LA(s) at the asking price for that round. If a bidder submits an uncontested bid consisting of one LA, and the auction continues for another round, BOEM automatically carries that same live bid forward as a live bid into the next round, and BOEM's asking price for the LA contained in the uncontested bid would remain unchanged from the previous round. In other words, BOEM assumes that the bidder is willing to pay that same price for the LA in that bid in the next round as it revealed it was willing to pay for it in the current round. If the price on the LA in that bid rises later in the auction because another bidder places a live bid on that LA, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price goes up, the bidder that placed the previously carried-forward bid is free to bid on either lease area at the new asking prices.

Following each round in which either LA is contained in more than one live bid, BOEM will raise the asking price for that LA by an increment determined by BOEM. The auction concludes when neither the North nor the South LA is included in more than one live bid. The series of rounds and the rising asking prices set by BOEM will facilitate

consideration of the first variable—the cash portion of the bid.

The second variable—a credit of up to 25% of a monetary bid for holding a PPA or JDA—will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced LA in a bidder's multiple-factor bid. This credit serves to supplement the amount of a cash bid proposal made by a particular bidder in each round. A bidder holding a qualified PPA will receive a credit of up to 25%. A bidder holding a qualified JDA will receive a credit of 20%. The total percentage credit for each bidder is limited to 25% on a single LA in the auction to address concerns about creating too large an advantage to certain bidders in the auction, as discussed in BOEM's Auction Format Information Request (76 FR 76174). BOEM has considered the overall impact on competition and the relative strength of a PPA and JDA in enabling a lessee to install a viable project on the OCS in setting the credits. In the case of a bidder holding a credit and bidding on more than one LA, the credit will be applied only on the LA with the highest asking price. More details on the non-monetary factors are found in the "Credit Factors" section below.

By way of example, assume a bidder holds a qualified PPA for the sale of 400 MW, and its live bid consists of both the North and South LAs in the current round: the South LA having an asking price of \$1,000,000 and the North LA having an asking price of \$2,000,000. Suppose the bidder receives a 25% credit, which applies only against the North LA, the higher priced LA in that round, at \$2,000,000. A live bid for these two LAs would require the bidder to submit an As-Bid price of \$3,000,000 which would consist of a monetary payment of \$1,500,000 for North, (25% less than the asking price), and \$1,000,000 for South. Hence, the monetary portion of the live bid would be \$2,500,000, and the credit portion would be \$500,000. Each bid in each round will thus be considered based on both factors—the amount of the cash bid proposed and the amount of a potential credit for holding a qualified PPA or JDA.

BOEM's regulations at 30 CFR 585.222(d) require the use of a panel to weigh the variables and to determine the winner(s) of the auction. The regulations state that BOEM "will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel . . ." 30 CFR 585.224(h). The panel will evaluate non-monetary packages consisting of any purported

PPA or qualified JDA to determine whether it is acceptable to BOEM, and therefore whether it will qualify for a credit for its holder. It is possible that the panel will determine that no bidder qualifies for a non-monetary credit during the auction, in which case the auction will otherwise proceed as described in the FSN. The panel will determine the winning bids for each LA in accordance with the procedures described below.

#### Details of the Auction Process

##### *Bidding—Live Bids*

Each bidder is allowed to submit a live bid for one LA (North or South), or both LAs based on its "eligibility" at the opening of each round. A bidder's eligibility is either two, one, or zero LAs, and it corresponds to the maximum number of LAs that a bidder may include in a live bid during a single round of the auction. A bidder's initial eligibility is determined based on the amount of the bid deposit submitted by the bidder prior to the auction. To be eligible to offer a bid on one LA at the start of the auction, a bidder must submit a bid deposit of \$450,000. To be eligible to offer a bid on both North and South in the first round of the auction, the bidder must submit a bid deposit of \$900,000. A bidder's bid deposit will be used by BOEM as a down payment on any monetary obligations incurred by the bidder should it be awarded a lease.

As the auction proceeds, a bidder's eligibility is determined by the number of LAs included in its live bid submitted in the round prior to the current round. That is, if a bidder submitted a live bid on one LA in the previous round, that bidder may submit a bid that includes at most one LA in the current round. If a bidder submitted a live bid comprised of both LAs in the previous round, that bidder may submit a live bid that also includes these two LAs in the current round. In both cases, unless a bidder has an uncontested bid that is carried forward into the next round, the bidder also may choose to submit a live bid with fewer LAs than the maximum number it is eligible to include in its bid. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

In the first round of the auction, bidders have the following options: A bidder with an initial eligibility of one (that is, a bidder who submitted a bid deposit of \$450,000) may:

- Submit a live bid on the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

A bidder with an initial eligibility of two (that is, a bidder who submitted a bid deposit of \$900,000) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

Before each subsequent round of the auction, BOEM will raise the asking price for any LA that was contained in more than one live bid in the previous round. BOEM will not raise the asking price for a LA that was in one or no live bids in the previous round.

Asking price increments will be determined by BOEM, in its sole discretion. BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude;
- Decreasing the increments as the asking price of a LA nears its final price. Because the final price for a LA is not known until the entire auction has ended, the number of bids that have included the same LA in the most recent round may be used as an imperfect indicator of how close a LA's asking price is to its final price.

BOEM has reduced the minimum bids for both LAs in this auction compared to the minimum bids announced in the PSN. Because the minimum bids have been significantly reduced, BOEM believes that it would be appropriate to raise asking prices by greater bid increments in early rounds of the auction than originally suggested. BOEM intends to use bid increments in the range of 20% to 50% in early rounds of the auction. At some point, BOEM intends to reduce the bid increments to the 5% to 20% range. BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process. Asking prices for the LAs included in multiple live bids in the previous round will be raised and rounded to the nearest whole dollar amount to obtain the asking prices in the current round.

A bidder must submit a live bid in each round of the auction (or have an uncontested live bid automatically carried forward by BOEM) for it to remain active and continue bidding in future rounds. All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of the bids they submit and can be held

accountable for up to the maximum amount of those bids determined to be winning bids during the final award procedures.

Between rounds, BOEM will release the following information:

- The level of demand for each LA in the previous round of the auction. The level of demand for a given LA is defined as the number of live bids that included the LA.

- The asking price for each LA in the upcoming round of the auction.

In any subsequent round of the auction, if a bidder's previous round bid was uncontested, and the auction continues for another round, then BOEM will automatically carry forward that bid as a live bid in the next round. A bidder whose bid is being carried forward will not have an opportunity to modify or drop its bid until some other bidder submits a live bid that overlaps with the LA in the carried forward bid. Note that in this sale a carried forward bid will always be for only one LA—if a live bid consisting of both North and South was uncontested, the auction would end. In particular, for rounds in which a bidder finds its uncontested bid is carried forward, the bidder will be unable to do the following:

- Switch to the other LA;
- Submit an Intra-Round Bid (see below for discussion of Intra-Round Bids); or

- Drop out of the auction.

In this scenario the bidder is effectively “frozen” through future auction rounds for as long as its bid for that LA remains uncontested. Moreover, the bidder may be bound by that bid or, indeed, for any other bid which BOEM determines is a winning bid in the award stage. Hence, the bidder cannot drop an uncontested bid, and in no scenario can the bidder be relieved of any of its bids from previous or future rounds until a determination is made in the award stage about the LAs won by the bidder.

If a bidder's bid is not being carried forward by BOEM, a bidder with an eligibility of one (that is, a bidder who submitted a live bid for either the North LA or the South LA in the previous round) may:

- Submit a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for the same LA that the bidder submitted a live bid for in the previous round and exit the auction: Or
- Submit nothing, and drop out of the auction.

A bidder with an eligibility of two (that is, a bidder who submitted a live bid for both North and South in the previous round) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for both the North and South LAs, and a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for both the North and South LAs, no live bids, and exit the auction; or
- Submit nothing, and drop out of the auction.

Subsequent auction rounds occur in this sale as long as either the North LA or the South LA is contested. The auction concludes at the end of the round in which neither the North LA nor the South LA is included in the live bid of more than one bidder, i.e., all live bids are uncontested.

#### *Bidding—Intra-Round Bids*

All asking prices and asking price increments will be determined by the BOEM Auction Manager. It is possible that multiple bidders will be willing to meet the previous round's asking price for a LA, while no bidders will be willing to meet the next round's asking price. Without some mechanism to resolve this situation, the auction could result in a tie for this LA.

Intra-Round Bidding is a mechanism to minimize the chance of ties. It also allows bidders to more precisely express the maximum price they are willing to offer for the North, South, or both LAs.

When submitting a live bid, a bidder simply indicates willingness or unwillingness to pay the asking price for each LA offered in the auction. The bidder's response is either yes or no. In contrast, when submitting an Intra-Round Bid, the bidder is indicating that it is not willing to meet the current round's asking price, but it is willing to pay more than the previous round's asking price. In particular, in an Intra-Round Bid, the bidder specifies the maximum (higher than the previous round's asking price and less than the current round's asking price) that it is willing to offer for the specific LA(s) in its previous round's live bid.

Because an Intra-Round Bid must consist of a single offer price for exactly the same LA(s) included in the bidder's live bid in the previous round, a bidder cannot submit a live bid on the North LA in the previous round and then offer an Intra-Round Bid on the South LA in the current round (or vice versa). Rather, an Intra-Round Bid from this bidder in the current round must be for the North. In the same way, if the bidder submitted a live bid which includes both the North and South LAs in the previous round, then an Intra-Round Bid in the current

round must include both the North and South LAs.

The number of LAs in a bidder's live bid will determine that bidder's eligibility in the next round. If a bidder includes two LAs in a bid in round 1, that bidder can include up to two LAs in a live bid in round 2, if the bidder chooses not to submit an Intra-Round Bid. However, if the bidder does choose to submit an Intra-Round Bid in round 2, which must be for both LAs included in the bidder's previous round's live bid, any accompanying live bid must be for only one of the two LAs. Otherwise, the bidder would be duplicating its carried forward live bid at a different price. Accordingly, although an Intra-Round Bid is *not* a live bid, in the round in which a valid Intra-Round Bid is submitted for both LAs, the bidder's eligibility for a live bid in that same round and future rounds is permanently reduced from including two LAs to one LA. In other words, once an Intra-Round Bid is submitted, the bidder will never again have the opportunity to submit a live bid on as many LAs as it has bid in previous rounds.

Because Intra-Round Bids are not live bids, and since BOEM only raises asking prices on LAs that are included in multiple live bids, BOEM will not consider Intra-Round Bids for the purpose of determining either to increase the asking price for a particular LA or to end the auction. Also, BOEM will not count nor share with bidders between rounds the number of Intra-Round Bids received for each LA.

All of the Intra-Round Bids submitted during the auction will be preserved, and may be determined to be winning bids. Therefore, bidders are responsible for payment of the bids they submit and may be held accountable for up to the maximum amount of any Intra-Round Bids or live bids determined to be winning bids during the final award procedures.

#### *Determining Provisional Winners*

After the bidding ends, BOEM will determine provisionally winning bids in accordance with the process described in this section. This process consists of two stages: Stage 1 and Stage 2, which are described below. Once the auction itself ends, nothing further is required of bidders within or between Stages 1 and 2. In practice, the stages of the process will take place as part of the solution algorithm for analyzing the monetary and credit portion of the bids, determining provisional winners, finding the LAs won by the provisional winners, and calculating the applicable bid prices to be paid by the winners for the LAs they won. This evaluation will

be reviewed, checked and validated by the panel. The determination of provisional winners, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and the absence of conduct detrimental to the integrity of the competitive auction.

#### Stage 1

Live bids submitted in the final round of the auction are Qualified Bids. In Stage 1, a bidder with a Qualified Bid is provisionally guaranteed of winning the LA(s) included in its final round bid, regardless of any other prior-to-final round live bids or Intra-Round Bids in any round. This guarantee provides bidders assurance that as long as they stay active in the bidding for a LA until the last round when the auction closes, they cannot be outbid on that LA or unexpectedly lose that LA. Not only does this provision strengthen competition and fairness in the auction, it also limits opportunities for anti-competitive tactics.

If both LAs are awarded to bidders in Stage 1, the second award stage is not necessary. If the North LA or the South LA received a bid but was not awarded in Stage 1, BOEM will proceed to Stage 2 to award remaining leases.

Following the auction, all winning bidders must pay the price associated with their winning bids, which may consist of cash and non-monetary credits or just cash.

#### Stage 2

All bids are either Qualified Bids or Contingent Bids. Contingent bids include all of the live bids received before the final round, and any Intra-Round Bids received during the auction. In Stage 2, BOEM will consider Contingent Bids, to see if the unawarded LA(s) can be awarded without interfering with Stage 1 awards. BOEM will make Stage 2 awards to the bid(s) that maximize(s) the total As-Bid prices.

Any Contingent Bids that conflict with Qualified Bids will not be considered. That is, if there was a Qualified Bid for the North LA (i.e., a live bid in the final round for the North LA), BOEM will not consider any Contingent Bid that contains the North LA. Only one bid per bidder may win. Accordingly, BOEM will not consider a Contingent Bid from any bidder that received a Stage 1 award for submitting a Qualified Bid.

There is one notable exception to the rule described in the preceding paragraph. This exception allows BOEM to accept a Contingent Bid for both LAs notwithstanding the existence of a Qualified Bid by the same bidder,

provided the acceptance of the Contingent Bid results in higher overall As-Bid prices than acceptance of only the Qualified Bid. Suppose, for example, that a bidder submitted an Intra-Round Bid for the North and South LAs, and a live bid in the same round for the South LA. Suppose as well that the live bid turned out to be the only live bid submitted in that round, i.e., it is a Qualified Bid because the auction closes at the conclusion of that round. Without the exception, the Intra-Round Bid for both the North and South LAs would not win, because the Qualified Bid (for the South LA) overlaps with part of the Contingent Intra-Round Bid (for the North and South LAs), so BOEM would award the bidder only the South LA based on its Qualified Bid as provisionally awarded in Stage 1. In cases such as this, and related ones where the same bidder's Contingent Bid occurs in other than the final auction round where it has submitted an overlapping Qualified Bid, there are sound reasons to prefer the Contingent Bid to the Qualified Bid if the Contingent Bid results in higher As-Bid prices.

Based on the bids received, if the bidder values the Contingent Bid on both LAs more than the Qualified Bid on one LA:

- Awarding the Qualified Bid could discourage bidders from submitting live bids that compete with their own Intra-Round Bids, and
- Awarding the Qualified Bid could result in undersell, if one of the LAs would otherwise not be awarded in Stage 2.

The exception discussed here would prevent these adverse results.

In the example, the Intra-Round Contingent Bid could prevail, in which case the bidder would win both the North and South LAs. Note that all winning bidders must pay the As-Bid price associated with the winning bid, which may consist of cash and non-monetary credits or just cash. This means that the bidder would be required to pay its Intra-Round Bid price associated with its Intra-Round Bid, even though it submitted a Qualified Bid that guaranteed the South LA would be provisionally awarded to that bidder. In other words, the guarantee (that the bidder that submitted a Qualified Bid will be awarded the LA(s) associated with that bid) does not extend to the price the bidder might have to pay for the South LA if that LA is ultimately awarded through a Stage 2 evaluation in which the South LA was a subset of the North and South LAs awarded provisionally to that bidder in Stage 2.

This exception represents the only situation in which BOEM will consider for award a Contingent Bid which overlaps a Qualified Bid, i.e., when a bidder's Contingent Bid overlaps its own Qualified Bid. In contrast, there is no situation in which one bidder's Contingent Bid will be considered for award if it overlaps with any LA that is included in another bidder's Qualified Bid.

If more than one combination of Contingent Bids exist that would yield the same highest As-Bid price total, while preserving the LAs originally awarded in Stage 1, the resulting tie in the allocation of these LAs would be settled by a random draw.

In the event a bidder submits a bid for a LA that the panel and BOEM determine to be a winning bid, the bidder is expected to timely sign the applicable lease documents and submit the full cash payment due. If the bidder fails to timely sign and pay for the lease, then BOEM will not issue the lease to that bidder, and the bidder will forfeit its bid deposit. BOEM may consider failure of the bidder to timely pay the full amount due an indication that a bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

#### Credit Factors

Prior to the auction, BOEM will convene a panel to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit applicable to the As-Bid auction price for one of the LAs in each round of the auction, as described below. Any single JDA or PPA cannot be used by more than one bidder in the auction.

The percentage credit is determined based on the panel's evaluation of required documentation submitted by the bidders as of July 17, 2013. Bidders will be informed by email before the monetary auction about the percentage credit applicable to their bids. The bid credit will be applicable to only one LA. Any non-monetary credit would only be applicable to the higher priced LA in a bid for both LAs. For an Intra-Round Bid containing both LAs, the higher priced LA will be determined using the previous round's asking prices. In each round, the auction system will display information showing how their As-Bid auction prices are affected by the credit imputed to their bid to determine their net monetary payment due to BOEM, should their bids prevail as winning bids in the award stages. Application of the credit percentage to the appropriate As-Bid auction price will be rounded to



the nearest whole dollar amount. This entire process is conceptually similar to one in which the multiple bid factors are combined into an aggregate score for the purpose of awarding LAs, but is more transparent to bidders and facilitates the bidding process in a dynamic, multiple-factor, multiple round auction process.

The bidder's imputed credit throughout the auction and award process is limited to the greater of 25% for a PPA or 20% for a JDA, applied to the highest priced LA related to the bidder's latest live bid or Intra-Round Bid. During each round, bidders are informed by the BOEM Auction Manager how the credit applies to their live bid and any Intra-Round Bid. In the case of a live bid for both LAs, the credit will apply only to the LA having the highest current round asking price. In the case of an Intra-Round Bid for both LAs, the credit will also apply only to the higher-priced LA, but the applicable price for calculating the credit will be based on the previous round's asking prices, not on any additional amount above the previous round's asking prices as reflected in the incremental amount associated with its Intra-Round Bid.

The reason for using the previous round asking price in this situation is the difficulty of determining the precise LA As-Bid price attributable to each individual LA in an Intra-Round Bid that contains both LAs. The amount of the Intra-Round Bid attributable to each LA is not directly available when the bidder makes an Intra-Round Bid on both LAs. The individual LA bid amounts are available at the previous round asking prices. For this reason, the

imputed credit is calculated based on the highest asking price of a LA included in the Intra-Round Bid submitted in the round preceding the round in which the Intra-Round Bid was made.

The panel will review the non-monetary package submitted by each bidder, and determine whether bidders have established that they are qualified to receive a credit, and the percentage at which that credit will apply, based on the definitional information regarding the PPA and JDA. If the panel determines that no bidder has qualified for a non-monetary factor, the auction will proceed with each bidder registered with no imputed credit.

*Credit Factor Definitions:* The definitions below will apply to the factors for which bidders may earn a credit.

*Power purchase agreement (PPA)* is any legally enforceable long term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or similar legal authority. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the State's public utility commission or

other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. In order to qualify, a PPA must contain the following terms or supporting documentation:

(i) A complete description of the proposed project;

(ii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;

(iii) A time line for permitting, licensing, and construction;

(iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

(v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;

(vi) The term for the long term contract;

(vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and

(viii) Copies of or citations to interconnection filings related to the PPA.

The panel will assign a 25% non-monetary credit to any bidder that establishes in its non-monetary package that it meets the criteria described above for a PPA for the sale of 350 MW of power. The panel will assign a smaller percentage credit to any bidder that establishes in its non-monetary package that it meets the criteria described above for a PPA for the sale of less than 350 MW of power. The smaller percentage credit will be calculated according to the formula below:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 350 MW
- Full Credit = 25%
- Partial PPA = amount (less than 350 MW) of power under contract

*Joint Development Agreement (JDA)* is a binding agreement between a state and a legal entity that proposes to develop renewable (wind) energy, which sets forth the rights, obligations, and certain economic development activities of the parties in connection with the development of an offshore wind project. The legal entity named in a JDA must be selected through a competitive selection process, such as a request for

proposals that is conducted by a state adjacent to the wind energy area issuing and entering into the JDA, where the subsequent submitted proposals are evaluated by a state agency, committee or public utility board. To apply for a non-monetary credit, the bidder must send the agreement to BOEM by July 17, 2013, in its non-monetary package. The JDA will qualify if the panel determines that the agreement includes the following identifiable factors: (1) Sufficient specificity to the size, timing, and location of the proposed project on the OCS; (2) the financial commitment of the state, the identified legal entity, and/or a third party (buyer of power), if applicable, included in the agreement;

(3) the developmental, financial, and/or regulatory processes through which the state will support the identified legal entity that proposes to develop renewable (wind) energy; (4) significant project milestones; (5) the ramifications for not meeting said milestones; and (6) any exclusionary rights awarded to said identified legal entity. Please clearly designate all information that BOEM should treat as business confidential. The panel will assign each holder of a qualifying JDA a credit of 20%.

## Additional Information Regarding the Auction

### Non-Monetary Auction Procedures

All bidders seeking a non-monetary auction credit are required to submit a non-monetary auction package. If a bidder seeks a non-monetary auction credit, this submission must contain information sufficient to establish the bidder's eligibility to receive a non-monetary credit in the monetary phase of the auction. Further information on this subject can be found in the section of this notice entitled, "Credit Factor Definitions." If a bidder does not submit a non-monetary package by July 17, 2013, to BOEM, then BOEM will assume that bidder is not seeking a non-monetary auction credit and the panel will not consider that bidder for a non-monetary auction credit.

### Bidder Authentication

The Auction Manager will send several bidder authentication packages to each bidder shortly after BOEM has processed the Bidder Financial Forms. One package will contain tokens for each authorized individual. Tokens are digital authentication devices. The tokens will be mailed to the address of record that BOEM has on file for each company, care of the Primary Point of Contact indicated on the Bidder's Financial Form. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. Bidders are to ensure that each token is returned within three business days following the auction. An addressed, stamped envelope will be provided to facilitate this process.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the Bidder's Financial Form for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the mock auction.

### Monetary Auction Times

This section will describe, from a bidder's perspective, how the monetary phase of the auction will take place. This information will be elaborated on and clarified in the Mock Auction to be held on July 24, 2013, and an Auction System Technical Supplement that will be made publicly available on BOEM's Web site at: <http://www.boem.gov/Renewable-Energy-Program/State->

*Activities/Rhode-Island.aspx*. The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

The monetary auction will begin at 10:30 a.m. on July 31, 2013. Bidders may log in as early as 8:30 a.m. on that day. We recommend that bidders log in no later than 9:30 a.m. on that day to ensure that any login issues have been resolved in time. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round 1 Bidding Begins;
- Bidders enter their bids;
- Round 1 Bidding Ends and the first Recess begins;
- Sometime during the first Recess, Round 1 results are posted;
- Bidders review the Round 1 results and prepare their Round 2 bids;
- Round 2 Bidding Begins \* \* \*

The first round will last about 30 minutes, though subsequent rounds may be closer to 20 minutes in length. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are for informational purposes only. Bidders should consult the auction schedule on the bidding Web site for updated times. Bidding will continue until about 5 p.m. each day. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

The schedule and asking price increments are in BOEM's discretion, and are subject to change at any time before or during the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging feature to notify bidders that a revision has been made, and direct bidders to the relevant page. BOEM will also use the messaging system for other changes and items of particular note during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled

time to place bids. Bidders should do so according to the procedures described in the Auction System Technical Supplement, and practiced at the Mock Auction. No information about the round is available until the round has closed and results have been posted, so there should be no strategic advantage to placing bids early or late in the round.

### Alternate Bidding Procedures

Any bidder who is unable to place a bid using the online auction should follow these instructions:

- Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction System Technical Supplement before the end of the round.

- BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company.

- Explain the problem.
- BOEM may, in its sole discretion, accept a bid using the Alternative Bidding Procedure.

- The Alternative Bidding Procedure enables a bidder who is having difficulties accessing the Internet to submit its bid via an Alternative Bidding Form that can be faxed to the auction manager.

- If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the Alternate Bidding Procedure, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion.

- If the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess. Bidders are strongly encouraged to submit the Alternative Bidding Form before the round ends.

- If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures.

- If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Except for bidders who have uncontested bids in the current round, failure to place a bid during a round will be interpreted as dropping out of the auction. It is possible that bids entered before the bidder stopped entering bids may be awarded one or

both LAs pursuant to BOEM's stage 2 procedures. Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Intra-Round Bid for a single LA in an earlier round, or if they stopped bidding during the auction.

**Acceptance, Rejection or Return of Bids:** BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) The bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and not considered for acceptance.

**Process for Issuing the Lease:** If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to each winning bidder. Within 10 business days after receiving the lease copies, each winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by EFT the balance of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not to include pay.gov) 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 Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>.

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

In the event that the provisional winner does not execute and return the leases according to the instructions in this notice, BOEM reserves the right to reconvene the panel to determine whether it is possible to identify a bid

that would have won in the absence of the bid previously determined to be the winning bid. In the event that a new winning bid is selected by the panel, BOEM will follow the procedures in this section for the new winner(s).

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has processed the winning bidder's payment. The winning bidder 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 by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the Lessee receives the lease copies, the Lessee must pay the first 6-months' rent using the pay.gov Renewable Energy Initial Rental Payment Form available at: <https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>. The Lessee must pay the remaining 6-months' rent by the first day of the seventh month following the effective date of the lease, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's Web site at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>.

**Anti-Competitive Behavior:** In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anticompetitive behavior in the marketplace. Compliance with BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and 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."

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest

itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for a particular Lease Area;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (e.g., heavily concentrated market, etc.).

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

**Post-Auction Certification:** Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False Statements) in the Bidder's Financial Form, which can be found on BOEM's Web site: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>. The form must be filled out and returned to BOEM in accordance with the "Deadlines and Milestones for Bidders" section of this notice.

**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 U.S. Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

**Force Majeure:** The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN 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), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703-787-1320 or access the BOEM Web site at: <http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

**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 adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

*Protection of Privileged or Confidential Information:* BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Dated: May 24, 2013.

**Tommy P. Beaudreau,**  
Director, Bureau of Ocean Energy  
Management.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[Docket No. BOEM-2013-0008;  
MMAA104000]

#### Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of the Availability of a revised Environmental Assessment and a Finding of No Significant Impact.

**SUMMARY:** BOEM has prepared a revised environmental assessment (EA) considering the reasonably foreseeable environmental and socioeconomic impacts of issuing renewable energy leases and subsequent site characterization activities (geophysical, geotechnical, archaeological, and biological surveys needed to develop specific project proposals on those leases) in an identified Wind Energy Area (WEA) on the OCS offshore Rhode Island (RI) and Massachusetts (MA). The revised EA also considers the reasonably foreseeable impacts associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued in the identified WEA.

As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI). The FONSI concluded that the reasonably foreseeable impacts associated with the preferred alternative would not significantly impact the environment; therefore, the preparation of an environmental impact statement (EIS) is not required.

The purpose of this notice is to inform the public of the availability of the revised EA and FONSI, which can be accessed online at: <http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

**Authority:** This notice is published pursuant to 43 CFR 46.305.

#### FOR FURTHER INFORMATION CONTACT:

Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170-4817, (703) 787-1340 or [michelle.morin@boem.gov](mailto:michelle.morin@boem.gov).

**SUPPLEMENTARY INFORMATION:** On July 3, 2012, BOEM published a Notice of Availability (NOA) for an EA, which requested public comments on

alternatives considered in the 2012 EA, as well as measures (e.g., limitations on activities based on technology, distance from shore, or timing) that would mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment in and around the Call Area (76 FR 51391). The Call Area is located within the Area of Mutual Interest, as described in a Memorandum of Understanding between the Governors of RI and MA dated July 2010.

The 2012 EA considered the entire WEA for leasing and approval of site assessment plans (SAPs) as the proposed action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370f). Comments received in response to the NOA can be viewed at: <http://www.regulations.gov> by searching for Docket ID BOEM-2012-0048.

Based on comments received and the results of required consultations (e.g., Endangered Species Act), BOEM has revised the 2012 EA. BOEM will use the revised EA to inform decisions to issue leases in the WEA and to subsequently approve SAPs on those leases. BOEM may issue one or more commercial wind energy leases in the WEA. The competitive lease process is set forth at 30 CFR 585.210-585.225, and the noncompetitive process is set forth at 30 CFR 585.230-585.232 (as amended by a rulemaking effective as of June 15, 2011).

A commercial lease, whether issued through a competitive or non-competitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process. See 30 CFR 585.600 and 585.601. In the event that a particular lease is issued, and the lessee subsequently submits a SAP, BOEM would then determine whether the revised EA adequately considers the impacts of the activities proposed in the lessee's SAP. If BOEM determines that the analysis in the revised EA adequately considers these impacts, then no further analysis under NEPA would be required before BOEM could approve a SAP. If, on the other hand, BOEM determines that the analysis in this revised EA is inadequate for that purpose, BOEM would prepare additional NEPA analysis before it could approve the SAP.