



Bureau of Ocean Energy
Management

**Pacific Wind Lease Sale 1 (PACW-1) for Commercial
Leasing for Wind Power on the Outer Continental
Shelf in California**

Questions & Answers for Bidders

November 3, 2022

1. What is the depth limit for archaeological guidelines in the PACW-1 lease area?

- BOEM’s renewable energy archaeology and historic property guidelines apply across all water depths, as it is possible to find archaeological resources like shipwrecks or sunken aircraft anywhere in submerged lands. Survey planning should consider the depth limitations of the survey instruments and the depths of the survey area. For example, BOEM’s renewable energy archaeology and historic property guidelines recommend using a gradiometer in water depths of 100 meters or less. BOEM’s current model for submerged landforms potential suggests such landforms may exist out to 130-meter depths. Please note the gradiometer is the only instrument with a depth limit recommendation in the guidelines and subsurface imaging equipment, such as sub-bottom profilers or ultra-high frequency seismic sensors, are the preferred tools for the identification of paleolandforms (page 8, <https://www.boem.gov/sites/default/files/documents/about-boem/Archaeology%20and%20Historic%20Property%20Guidelines.pdf>).

2. Can the Lease Area Use Community Benefit Agreement (CBA) go towards a regional fund, similar to what the Special Initiative on Offshore Wind (SIOW) and States are constructing for the East Coast?

- The Lease Area Use CBA bidding credit will allow a bidder to receive a credit of 5 percent of its cash bid in exchange for an existing CBA or a commitment to enter into a new CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, may be impacted by the Lessee’s potential offshore wind development. Under Section 12 of the Addendum C in the PACW-1 leases, the Lease Area Use CBA may include payments into a special purpose fund, such as payments to support gear changes, navigation technology improvements, and other efforts to improve safety and navigation, or to compensate the fishing and related industries whose use of the geographic space of the Lease Area is impacted by the Lessee’s potential offshore wind development.

3. If “Company A” and “Company B” jointly own “Company C,” which owns a lease in another region, may Company A and Company B participate as separate bidders in the PACW-1 auction?

- Not if Company C is also participating in the PACW-1 auction. However, both Company A and Company B may participate as separate bidders in the PACW-1 auction if Company C is not participating in the auction.

4. **Does the PACW-1 Final Sale Notice (FSN) definition of *affiliate* include an entity that has made a conditional agreement to invest in a qualified bidder (or parent) if the bidder is successful at auction? To be clear, at the time of the auction, the future investor is not in the ownership chain of the bidder.**
 - No.
5. **Whether or not the conditional investor in the question above is an affiliate, must the Bidder's Financial Form (BFF) disclose whether such an investor or investment agreement exists?**
 - No.
6. **If "Parent Company A" and "Parent Company B" own subsidiaries "Bidding Company A" and "Bidding Company B," respectively, does the joint ownership of "Company C" by "Parent Company A" and "Parent Company B" prevent "Bidding Company A" and "Bidding Company B" from participating as separate bidders in the PACW-1 auction?**
 - No.
7. **If in the example above "Bidding Company A" and "Bidding Company B" have employees that are blood relatives, may both companies participate in the auction?**
 - Yes. As relevant here, BOEM considers two entities to be related if *they* are relatives. This language does not purport to apply to individuals *within* bidding entities.
8. **The first step post-auction is a 30-day Department of Justice (DOJ) review period. BOEM then sends three copies of the leases to the lease winners for signature, the provisional winning bidder executes the lease, provides the required financial assurance, and pays the balance of the bonus bid within 10 days of receiving the lease copies, and, finally, BOEM executes the lease. If, under the Inflation Reduction Act, BOEM may not execute these leases until after the next oil and gas lease auction in March, when will BOEM send the copies of leases to the winning bidders?**
 - BOEM is planning to follow the same post auction procedure for the PACW-1 auction that it has followed for previous auctions and request the 30-day DOJ review after the conclusion of the monetary auction. BOEM will send copies of the leases after DOJ completes its antitrust review.
9. **Is it possible for BOEM to provide input on draft conceptual strategies prior to submission?**
 - No.

10. May a General CBA focus on advancing community-driven goals and missions that are related to offshore wind development, like community-based economic and social development?

- As BOEM noted in the FSN, the General CBA must address impacts to an impacted community arising from lease development that are not addressed by the Lease Area Use CBA. Please refer to the PACW-1 Lease, Addendum C, Section 13 for more information on the General CBA bidding credit.

11. The FSN indicates that putative bidders must file BOEM-2032 and BOEM-2033 prior to bidding. Is the relevant deadline therefore December 5, 2022?

- Yes.

12. The FSN says that each bidder must submit a bid deposit of \$5 million to be eligible to bid for one lease area. We also see that the final EFT payment instructions refer to a bid deposit of \$10 million for two leases. Given that a bidder can only be awarded one lease through this offshore wind sale, is there any circumstance whereby a bidder need submit a bid deposit of more than \$5 million?

- The final EFT payment instructions at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/PACW-1%20EFT%20Payment%20Instructions.pdf> are correct and state (on page 2) that, “[a] bid deposit payment in the amount of \$5,000,000 must be submitted by the date designated in the FSN.” A bidder may only bid for one lease area, and the necessary bid deposit is \$5 million.

13. The BFF form provides the option to submit either electronically to "renewableenergypocs@boem.gov" or by hard copy. Does BOEM prefer either option?

- Electronic submission is preferable.

14. May bidders use electronic signatures for the BFF, or does BOEM require “wet signatures”?

- Electronic signatures are acceptable for the BFF.

15. Sections 30234 and 30234.5 of the California Coastal Act generally require the protection of fishing interests. Does BOEM interpret the duplicate benefits exclusion to apply to any efforts to recognize and protect the economic, commercial, and recreational importance of fishing activities imposed by the California Coastal Act? If so, wouldn't that exclude every possible fishing CBA from eligibility for a bidding credit?

- Particular measures in a CBA are, by definition, not duplicative of generalized obligations. Conversely, BOEM would consider particular benefits and mitigation measures in a CBA to be duplicative if those particular measures were previously imposed on the Lessee through approvals or authorizations issued pursuant to the California Coastal Act.

16. The Coastal Development Permits may incorporate certain parts of a Lease Area Use CBA by reference. Would such references in Coastal Development Permits render the fishing CBA to the duplicate benefits exclusion?

- BOEM's role is limited to evaluating compliance with the conceptual strategy and other lease terms, including whether, at the time the CBA is finalized, particular CBA benefits duplicate other benefits previously imposed by or through statute. BOEM has no authority to dictate the conditions of State approvals that may later incorporate portions of the CBA, and any such incorporation (or equivalent imposition of CBA measures by other authorities) would not retroactively "duplicate" CBA benefits that were not redundant at the time they were finalized.

17. In Section 5.2.6 of its Response to Comments, BOEM states the parties to a Lease Area Use CBA define the relevant impacts (p. 28.) Is that also true for a General CBA?

- As described in the BFF Addendum, page 13, "[t]he General CBA must [...] [s]pecify how the impacted community is expected to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development; [a]ddress impacts to the impacted community arising from lease development that are not addressed by a Lease Area Use CBA; [s]pecify the monetary, material, or other benefits provided, or to be provided, by the Lessee to the impacted community, including any mitigation or other compensatory measures provided by the Lessee to the impacted community; [...] and [s]pecify plans (or strategies) to mitigate potential impacts from the proposed lease development on the impacted community."

18. Eligible Entities: For purposes of both the Lease Area Use CBA and the General CBA, BOEM states in the BFF Addendum:

To qualify for the [Lease Area Use CBA/General CBA] bidding credit, the Lessee must enter into a [Lease Area Use CBA/General CBA] with an impacted community that is a:

- Private, public, or municipal corporation, company, association, or partnership; county, city, or town (as those terms are used in the California Government Code); or other legal entity organized under the laws of any State of the United States or the District of Columbia, the law of any federally recognized Tribe or federal law applying to Tribes, or the law of any territory or insular possession subject to U.S. jurisdiction;
- Federally recognized Tribe under 25 U.S.C. § 5131; or
- State of the United States or a political subdivision thereof.

Although the yak tityu tityu yak tilhini Northern Chumash Tribe is not a federally recognized tribe, would a CBA with the ytt Northern Chumash Nonprofit (a 501(c)(3) state and federal recognized organization that serves as the legal entity for yak tityu tityu yak tilhini Northern Chumash Tribe) qualify for one or the other bidding credit?

- As the question notes, a legal entity is an appropriate counterparty for a CBA.

19. Many bidding credits contemplate that the Lessee’s application of the credit must be verifiable by BOEM. When will this verification transpire (e.g., at the time of the FDR or at the time of bidding)?

- To qualify, the bidder must describe in their conceptual strategy the process and criteria for documentation and verification of their Contribution once it has been made. The Contribution must be verifiable at the time the first FDR is submitted.

20. The BFF Addendum states that “No portion of the Contribution may also be used to meet the requirements of any other bidding credits for which the Lessee qualifies.”

- 1. Does this mean that a workforce training program established pursuant to a Lease Area Use CBA or General CBA (e.g., to identify potential employment opportunities and provide specialized training in support of Project Developers) cannot receive Contributions?**
 - 2. Would a bidder be disqualified from the workforce training bidding credit if it were to offer economically reasonable retraining to members of the CBA-party Organizations that seek to be employed by the bidder?**
- CBAs and Contributions may only qualify for one credit. Where there is potential for proposed CBAs or Contributions to meet the criteria of more than one credit, it is incumbent on the bidder to identify to which credit the proposed CBA or Contribution should apply.

21. There is some overlap in workforce training between fixed and floating. Would the bidder be disqualified from the workforce or supply chain credit if the investments could apply to both fixed and floating field, such as Wind Turbine Generator (WTG) technical training course or crane operator training?

- The Contribution must support workforce training programs for the U.S. floating offshore wind industry, development of a U.S. domestic supply chain for the floating offshore wind industry, or both. The Contribution does not need to be specific to the floating aspect of floating offshore wind but must be relevant to a floating offshore wind facility (i.e., it must not solely focus on fixed bottom foundations).

22. Could BOEM provide clarity as to whether there is a deadline by which funds must be allocated, even if the investment will occur later in the project life during operation, years from auction?

- If the Contribution will be made into a fund, funds must be established and contributions must be made no later than the Lease's first FDR; however, outlaying expenses from the fund may occur after submittal of the first FDR.

23. Refund of Bid Deposit—The FSN discusses refunding the bid deposit to auction participants, but does not speak to entities who make a bid deposit but do not participate. Are bid deposits by entities who ultimately elect not to participate in the auction refunded, and on the same timeline as unsuccessful bidders?

- Per the Final Sale Notice, bid deposits will be refunded to all “non-winners,” regardless of participation in the auction.

24. General BFF Addendum Privacy – Carolina Long Bay bidder conceptual strategies have not yet been made public to our knowledge. Will the conceptual strategy submissions for California be made public?

- BOEM will release conceptual strategies to the extent it is allowed under BOEM's regulations and other relevant authorities (e.g., Freedom of Information Act).

25. Bid credit execution deadline – BOEM has extended the deadline by which developers must submit verification documents for all bid credits to the first FDR submission. Can you please clarify whether this means an FDR submission after COP approval, rather than a preliminary Draft FDR submission prior to approval.

- The documentation must be provided by the time of the first FDR submission, not a draft FDR.

26. Will BOEM provide an opportunity to address comments from the Multi Factor bid credit committee to adjust conceptual strategies to meet requirements and be eligible?

- No.

27. It appears that there is a cell reference link between the named person in Section I (that is responsible for setting up the pay.gov profile) and the named Authorized Person in Section VI. Please confirm whether or not those two named individuals need to be the same person.

- The person named in Section I of the BFF is the pay.gov user, and the person named in item 1 of Section VI is the Authorized Officer certifying on behalf of the company. The pay.gov user need not be the Authorized Officer. BOEM will accept BFFs that have been modified to list different individuals as the pay.gov user in Section I and the Authorized Officer in Section VI.

28. Previous BFFs requested bank account information that would be used to facilitate a refund. How will BOEM refund a bid deposit without such information in the current form?

- The Office of Natural Resources Revenue (ONRR) is responsible for information relating to finance. BOEM previously collected information for refunds on ONRR's behalf. For this lease sale, ONRR will contact any entities requiring a refund and will coordinate receipt of the appropriate banking information directly.

29. If a developer were to be awarded a California lease area, and post-auction build out a commercial-scale offshore wind in a phased approach, with the first phase on an earlier permitting and construction pathway, is the California FSN bidding credits description for “deferring the fulfillment of the commitment until the first FDR,” on a pro rata basis? Hypothetically, what happens if a developer decides to divide their awarded California lease area into two separate lease assignments? Would the developer need to submit an application to BOEM for a new, separate sub-divided lease assignment where a scalable portion of the total bidding credit(s) is required at the first FDR for the earlier Commercial Operation Date project phase, and the subsequent project phase(s) fulfilling the remainder of the commitment?

- The bidding credit is awarded pursuant to the lease issued in the sale. If the lease is subdivided or developed in a phased approach, the entire bidding credit obligation must be met before the submittal of the first FDR for the lease awarded in the PACW-1 auction.

30. What, if any, are the requirements of timing of payments for the Lease Area Use CBA? Can you please confirm that the requirements are specific to entering into a Lease Use Area CBA by FDR, and that there are not any specific payment requirement deadlines for that particular CBA?

- BOEM does not require that the Lease Area Use CBA include monetary payments. The CBA parties must negotiate timing of all benefits provided, including any disbursements. The Lease Area Use CBA must “[s]pecify any monetary, material, or other benefits provided, *or to be provided* [emphasis added], by the Lessee to the impacted community, including any mitigation or other compensatory measures provided by the Lessee to the impacted community, such as the establishment of any special purpose funds and the mechanisms through which monies therein will be disbursed.” The Lease Area Use CBA must be executed and be provided to BOEM no later than at the time the first FDR is submitted.

31. When our team calculated the Annual Operating Fee using the example on p. 31 of the FSN and came up with a number that is lower than the stated amount of \$2,736,820.22. Our calculation is shown in yellow below.

Calculation	976	8760	0.4	40	0.02	\$ 2,735,923.20
BOEM example						\$ 2,736,820.22
						\$ (897.02)

- There difference results from a rounding error when applying the nameplate capacity (976 vs. 976.32). The bidder’s calculation is correct. Please note that the formula in the FSN was an example only and would be adjusted for the actual nameplate capacity dependent upon the Lessee’s actual project design.

32. Regarding the Principal Point of Contact and the individuals authorized to bid (to be designated in the BFF), must these individuals be located in the United States? Or is it acceptable to have individuals located in other countries listed?

- The bidder's Principal Point of Contact and Individuals Authorized to Bid need not be located in the United States.

33. Additionally, may the payment of the bid deposit and/or lease payment (if the bidder is successful) be paid from a UK-based bank account of the parent entity of the bidding entity (rather than the bank account of the bidding entity itself)?

- ONRR/BOEM will accept payments from the bidding entity or any other entity on their behalf. However, bid deposits, balances, and other lease payments must be made from a U.S. financial institution.

34. How should we submit BOEM forms 2032/2033 – is it all electronic over email or do you also want a hard copy?

- Forms BOEM-2032 and BOEM-2033 may be submitted electronically.

35. We wanted to clarify whether the conceptual strategy has to be appended to the BFF, or whether we can submit these two documents as separate pdf documents, albeit attached to the same email?

- Submission of the BFF and conceptual strategy(ies) as separate PDF documents is acceptable.

36. Would BOEM allow the BFF to be amended after November 4, 2022?

- No.

37. Are two, or more, qualified bidders permitted to initiate or continue potential partnership discussions after the BFF submission deadline?

- Please note that bidding behavior in this sale is subject to Federal antitrust laws. If a provisionally winning bidder is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM will reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense to violations of antitrust laws. However, BOEM's definition of "affiliate" does not necessarily prevent entities in potential partnership discussions from participating in sale, so long as the definition of affiliated entities is otherwise met.

38. In BOEM's opinion, what is the threshold for when companies have begun to formally enter into a partnership that may preclude individual companies from then proceeding on their own in the auction if the partnership did not materialize before the auction?

- Should an agreement change a bidder's affiliation (as that term is defined in the FSN) between submittal of the BFF and the sale date, BOEM should be notified as soon as possible. Please note that all bidders are subject to laws governing anticompetitive behavior.

39. In BOEM's first round of response to questions, BOEM indicated that qualified bidders who have existing limited joint ventures/partnerships in other U.S. regions

would be precluded from participating in the California auction on December 6. This response presupposes that companies, who have limited partnerships in other U.S. regions, know whether and how said partners are going to participate in this auction. Companies, both bidders and non-bidders, cannot and should not (for anti-trust reasons) know the intentions of its partners in opportunities other than where they are explicitly partnered. With this response, does BOEM intend to exclude companies with limited partnerships in other regions from bidding in the California auction if their partner from the other regions also bids in the California auction?

- Please see response to question #3.

40. What does BOEM mean by “region?”

- In the PACW-1 leases, the term “Regional Lessees” identifies two regions that currently exist offshore California, the North Coast Region, and the Central Coast Region. The California North Coast Region includes leases OCS-P 0561 and OCS-P 0562. California Central Coast Region includes leases OCS-P 0563, OCS-P 0564, and OCS-P 0565. BOEM may amend the regions at a future time if, for example, conditions change.

41. A bidder’s authorized signatories are based in a number of different regions outside the United States. On this basis, would it be acceptable for us to submit one version of the form per authorized signatory. I propose that a separate version is electronically signed on behalf of the other authorized signatories. Could you please confirm whether this is acceptable?

- This is acceptable. Please note, the Authorized Officer in BFF Section VI (Certification) must be an authorized signatory listed on the qualification card on file with BOEM. Updates to the qualification card may be accepted at any time.