



PROCUREMENT SPECIFICATIONS REGARDING KRIEGERS FLAK II OFFSHORE WIND FARM

pursuant to the directive 2014/23/EU on the award of concession contracts as implemented into Danish law by the executive order no. 1080 of 29 June 2022 on award of concession contracts.



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INVITATION TO TENDER

Invitation to tender for the offshore wind farm, Kriegers Flak II. The procurement specifications provide guidelines for submission of tender, communication between the Tenderer and the Danish Energy Agency ("DEA"), specific requirements for entering into the Concession Agreement and information about the procurement procedure in general.

Defined Terms

The following terms shall be defined for the Tenderers' understanding of the guidelines and requirements in these procurement specifications. Please be aware that the terms may be defined in more detail in the contractual documents in the procurement material. Definitions in the contractual documents shall take precedence over the following definitions after the completion of the procurement procedure.

Concession Agreement, means the Annex F, (Concession Agreement), for Kriegers Flak II.

Concessionaire means as the case may be the SPV established by the Successful Tenderer before entering into the Concession Agreement with the DEA or the SPV that is the Successful Tenderer, cf. section 1.4.1.

Control means:

- a) the ownership of more than fifty (50) per cent of the voting rights in; or
- b) the ability to elect or remove a majority of the directors of; or
- c) the exercise of management control over or the control over the majority of voting rights in, a legal person, whether through contract constitutional documents or otherwise, and "Controlled" and "Change of Control" shall be construed accordingly.

State Holding means a company that will be established by the State of Denmark as a wholly owned public limited liability company (in Danish: "*aktieselskab*" or "A/S") prior to the signing of the Concession Agreement. The Danish legal name will be Statslig Vind Holding A/S.

Successful Tenderer means the Tenderer that is awarded the Concession Agreement under this procurement procedure.

Supporting Economic Operator means the economic operator(s), on which the Successful Tenderer relies on in respect of its economic or financial capacity under the procurement procedure.

Supporting Technical Operator means the technical operator(s), on which the Successful Tenderer relies on in respect of its technical and professional capacity under this procurement procedure.



Tenderer means the economic operator or as the case may be a group of economic operators (group of entities) or the SPV.

1. DESCRIPTION OF THE PROCUREMENT

The Danish Parliament has in recent years agreed on a large expansion in offshore wind farms in Denmark. The aim is to ensure the green transition and to strengthen the future security of supply of energy in Denmark. The political agreements relevant for this procurement are:

- Climate Agreement from the 29 June 2018,
- Climate Agreement from the 22 June 2020,
- The Financial Act from the 4 December 2022,
- Climate Agreement regarding green electricity and heat from the 25 June 2022, and
- Additional Agreement on the procurement details regarding 6 GW offshore wind and Energy Island Bornholm from 30 May 2023.

This procurement concerns the establishment of a new large-scale offshore wind farm, to be held in co-ownership with State Holding. State Holding shall purchase 20 per cent of the Concessionaire at the end of the investment period (6 months after signing the Concession Agreement), cf. section 1.4 below.

The name of the concerned offshore wind farm is Kriegers Flak II. Please note that the name of the offshore wind farm can be changed by the DEA. Such change will not affect the geographical location of the offshore wind farm.

The location of the concession area available for the establishment of Kriegers Flak II offshore wind farm is illustrated in Appendix 2, (Location of the Concession Area).

The Concessionaire will be obliged to establish an offshore wind farm with the production capacity of at least 1 GW before 31 December 2030, cf. Sub-Clause 7 of Annex F, (Concession Agreement), unless the Concessionaire is entitled to an extension of this deadline, cf. Sub-Clause 14.7 of Annex F, (Concession Agreement).

It is optional for the Concessionaire to connect the offshore wind farm to the grid. If the Concessionaire chooses to connect the offshore wind farm to the grid, a Grid Connection Agreement between the Concessionaire and the Danish TSO; Energinet, is a prerequisite, cf. Appendix 1, (Project Specification), section 2.2.

The Concession Agreement further enables the Concessionaire to establish further production capacity, so-called "Overplanting Capacity" within the concession area, cf. Appendix 2, (Location of the Concession Area), i.e. it is optional for Concessionaire to establish more than 1 GW production capacity within the Concession Area. Reference is made to section 2.3 of Appendix 1, (Project Specification).



Furthermore, the Concessionaire may exploit the production capacity of electricity from the offshore wind farm for energy production, such as but not limited to innovative energy production (e.g. Power-to-X), if this is otherwise possible within the applicable legislation, and provided it takes place within the Concession Area. See further description in section 2.4 of Appendix 1, (Project Specification).

These highlights are further explained below and in the procurement documents as a whole. See the Concession Agreement and Appendix 1, (Project Specifications), etc.

1.1. Estimated value of the concession

The estimated value of the concession covered by this procurement procedure, which constitutes the expected turnover based on the requirement for the Concessionaire to establish an offshore wind farm with the production capacity of at least 1 GW, is DKK 47,000,000,000.00, based on the duration of the concession and the objective method of calculation as described below.

In addition to the concession value stated above, since the establishment of the Overplanting Capacity is voluntary, the estimated value of the Overplanting Capacity is calculated separately as the expected turnover from establishment of an expected 0,8 GW of Overplanting Capacity, constituting DKK 33,000,000,000.00, based on the duration of the concession and the objective method of calculation as described below. The expected Overplanting Capacity above is based on the assessed additional capacity that can be established in the concession area, cf. Appendix 2 (Location of the Concession Area) without imposing significant wake loss on the required production capacity of 1 GW.

If the Concessionaire chooses to establish Overplanting Capacity, the estimated total value of the concession shall constitute the expected value of both the estimated turnover generated from the required production capacity of 1 GW, as well as the estimated turnover generated by the expected potential for establishment of Overplanting Capacity.

In the following (1) the duration of the concession on which the estimated value of the concession is calculated, as well as (2) the objective method of calculation is described.

Re (1)

The estimated value of the concession as stated above, is based on the duration of the concession of 30 years, based on the duration of the electricity production license, cf. section 29 of the Renewable Energy Act (in Danish: *Lov om fremme af vedvarende energi*), statutory order no. 132 of 6 February 2024, including latest amendments (Re Act), to be issued to the Concessionaire after construction of the offshore wind farm upon compliance with the relevant legislative requirements. Furthermore, the option regarding extension of the duration of the concession up to a total of ten (10) years, subject to conditions stated in Clause 18 of Annex F, (Concession Agreement), is included in the estimated value of the concession stated above.



A duration of the concession of 30 years from the date of issuance of the electricity production license is considered necessary for the Concessionaire to reasonably be expected to recoup the investments made for the purpose of establishing and operating the offshore wind farm together with a market conform return on invested capital, although the possibility of the Concessionaire to receive a return on the invested capital is considered minimal and subject to uncertainty. Therefore the possibility of an extension of the duration of the concession period up to a total of ten (10) years, provided that the Concessionaire is granted an extension of the electricity production license, cf. section 29 (2) of the RE Act, cf. also Clause 18 of Annex F, (Concession Agreement), is considered necessary so as to enhance the possibility for the Concessionaire to receive a market conform return on the invested capital, as well as to ensure a utilization of the full technical potential of the offshore wind farm, given the technological developments.

Re (2)

The estimated value of the concession is based on the expected turnover from sales of the electricity produced from the offshore wind farm, on the market, where the expected electricity production over a 40-year period is multiplied with the projected electricity prices on the spot market.

The electricity production estimated for the offshore wind farm is based on the expected average full load hours of a range between 4200-4700 hours per year for the required production capacity of 1 GW and Overplanting Capacity, respectively, assessed for the specific location of the offshore wind farm. The electricity spot price forecast is based on model calculations on the Danish electricity sector model, Ramses. The price forecast is based on the assumptions for the electricity sector development in Denmark as presented in the DEA's AF23 report¹ covering a forecast until 2050, which establish the basis for the Danish electricity sector development plan. Regarding the price forecast for the remaining concession period after 2050, it is assessed that the price remains unchanged due to great uncertainty associated with forecasting the price on electricity for the remaining years after 2050.

It is accentuated that the assessment of the value of the concession as stated above is highly uncertain as both the amount of electricity produced from the offshore wind farm and the market price of electricity varies over a 40-year period and the assessment must therefore be considered as only indicative and connected with high uncertainty. Furthermore, in particular the value of the electricity generated from Overplanting Capacity will depend on its use without access to the grid, e.g. for Power-to-X production, and the business plan for the

¹ AF23, Energistyrelsen 2023, [Microsoft Word - AF23 - Sammenfatningsnotat.docx \(ens.dk\)](#)



Overplanting Capacity. Turnover from establishment of both the required production capacity of 1 GW and Overplanting Capacity may thus also arise from other markets and sources than the spot market for electricity, such as Power-to-X. Turnover from such markets have not been incorporated in the assessment above, in view of the long-time horizon and the rapid development of the renewable electricity capacities and associated markets in Europe. These rapid changes make assessments of income from such markets and sources extremely uncertain.

DEA cannot be held accountable if the turnover generated from establishment of the required production capacity of 1 GW and the Overplanting Capacity, respectively, during the course of the Concession Agreement does not correspond to the turnover indicated above, since the Concessionaire is subject to the operating risk associated with the establishment, operation and dismantling of the offshore wind farm, cf. Sub-Clause 1.5 of Annex F, (Concession Agreement).

1.2. Costs related to the temporary and preventive measures for the Danish Defence, etc.

Attention is drawn to the requirement, stipulated in the Construction License, cf. section 25 of the RE Act, for the Concessionaire to bear the actual costs for the temporary and permanent preventive measures implemented to prevent deteriorations in the quality of the current military radio communication and radar surveillance caused by the Offshore Wind Farm. An estimate of the aforementioned costs is stated in Annex F, (Concession Agreement), Sub-Clause 10.2.3, which is based on the best available estimate conducted by the Danish Defence (*in Danish: Forsvaret*).

The estimate is only indicative. Notwithstanding the foregoing, the total cost to be borne by the Concessionaire is maximized at DKK 200 million.

Furthermore, attention is drawn to Annex F, (Concession Agreement), Sub-Clause 10.2, where additional costs, in which the Concessionaire is subject to uphold, are listed (UXOs, etc.).

1.3. Concession Area

1.3.1. Concession Area and Strategic Environmental Assessment

In due time before the deadline for submission of tender, cf. section 3, the concession area as set out in Appendix 2, (Location of the Concession Area), may be adjusted as a result of the preparation of the environmental report for the Strategic Environmental Assessment (SEA) of the plan for Kriegers Flak II offshore wind farm. The timeline for the SEA is described further on the website of the DEA.

In case the concession area is adjusted due to the SEA, the Appendix 2, (Location of the Concession Area), will be updated and the DEA will at that time also assess whether such update may necessitate an extension



of the deadline for submission of tender, cf. section 3. The details regarding the SEA will be available on <https://ens.dk/ansvarsomraader/vindmoeller-paa-hav/udbud-af-havvindmoelleparker>.

The Tenderer should keep themselves informed on the details regarding the SEA on the DEA's website. However, if any adjustments to the concession area, cf. Appendix 2, (Location of the Concession Area), are made, the DEA will inform the Tenderers participating in the procurement procedure hereof via the electronic procurement system, cf. section 4.

The SEA is expected to be approved within the date stated on the DEA's website. Delays will be informed to the Tenderers via the electronic procurement system, cf. section 4. Should the SEA be delayed so as not to be published before the deadline for submission of tender, cf. section 3, the DEA shall inform the Tenderers via the electronic procurement system, cf. section 4, regarding any changes in the procurement procedure resulting from the delay.

Once approved, the SEA can be accessed via <https://ens.dk/ansvarsomraader/vindmoeller-paa-hav/udbud-af-havvindmoelleparker>.

1.4. Co-ownership

The award of the Concession Agreement entails an obligation for the Successful Tenderer or the shareholders of the Successful Tenderer (as the case may be) to enter into a co-ownership with State Holding. The co-ownership is regulated by Annex G, (Irrevocable Undertaking).

If the Successful Tenderer is not the SPV the following shall apply:

The award of the Concession Agreement entails an obligation for the Successful Tenderer to establish or provide a Special Purpose Vehicle (SPV), as further described below. The Successful Tenderer is furthermore obliged, after State Holding has concluded a due diligence review, to sell and transfer the number of shares in the SPV (on a fully diluted basis and in each share class, if any) which equals to 20 per cent of the share capital of the SPV to State Holding (the Investment), as further regulated in Annex G, (Irrevocable Undertaking).

If the Successful Tenderer is the SPV the following shall apply:

All shareholders of the SPV (Successful Tenderer) are obliged, after State Holding has concluded a due diligence review, to sell and transfer the number of shares in the SPV (on a fully diluted basis and in each share class, if any) which equals to 20 per cent of the share capital of the SPV to State Holding (the Investment), as further regulated in Annex G, (Irrevocable Undertaking).



In both situations the aim of the due diligence review is primary to identify (i) any actual or legal matter that could legally prevent State Holding from making the Investment, and (ii) any Leakage necessitating an adjustment to the Purchase Price. It should be noted that no findings identified in the due diligence review will affect State Holding's commitment to complete the Investment. However, the Investment may be postponed for a short period of time should any actual or legal matter prevent State Holding from making the Investment as further regulated in Annex G, (Irrevocable Undertaking).

1.4.1. Requirements regarding the establishment of a Special Purpose Vehicle (SPV)

If the SPV is established before submission of tender and the SPV is defined Tenderer in the procurement process the following terms a) and e) shall apply. If the SPV acts as Tenderer in the procurement process any Supporting Economic Operator's and Supporting Technical Operator's support shall be put at the SPV's disposal as Tenderer, cf. section 5. Therefore, term b-d does not apply in this situation.

If the SPV is not established before submission of tender the following shall apply: Before signing of the Concession Agreement, the Successful Tenderer shall establish or provide an entity which is fully owned and Controlled by the Successful Tenderer and which shall enter into the Concession Agreement as the sole Concessionaire responsible for the construction and operation of the offshore wind farm on the following terms a)-e).

- a) The SPV shall be a public limited liability company (in Danish: "*aktieselskab*" or "*A/S*") or a partner company (in Danish: "*partnerselskab*" or "*P/S*") in accordance with the Danish Company Act, cf. consolidated act no. 1168 of 1 September 2023, as amended.
- b) The Successful Tenderer shall put at the SPV's disposal its technical and professional resources and shall ensure that the technical and professional resources of its Supporting Technical Operator(s) are also put at the disposal of the SPV and thereby ensure that the SPV will have, as a minimum, the same technical and professional capacity as the Successful Tenderer has at its disposal;
- c) The Successful Tenderer shall assume joint and several liability with the SPV for the performance of the Concession Agreement, and shall ensure that any entity on which the Successful Tenderer relied with respect to economic and financial capacity (Supporting Economic Operator(s)) assumes joint and several liability with the SPV for the performance of the Concession Agreement on the same terms as set out in Annex F, (Concession Agreement), Sub-Clause 15.1.3;



- d) The Successful Tenderer's Supporting Economic Operator and Supporting Technical Operator, if any, shall remain supportive of the SPV on unchanged conditions in accordance with the requirements set out in the Concession Agreement.
- e) Fulfilment of the applicable terms in items a)-d) above require the DEA's prior written confirmation that the DEA is satisfied that the terms in items a)-d) above are met (as applicable). The Successful Tenderer shall be obliged to provide any documentation that the DEA may reasonably require to verify that the terms are met. The DEA's confirmation shall be provided without undue delay if the DEA is satisfied that the requirements in items a)-d) are met.

1.4.1.1. Merger Control, etc.

It is the responsibility of the Tenderer/Successful Tenderer to submit merger notification(s) and obtain any required merger filing clearance(s) if the establishment of the SPV and/or the conclusion of the Concession Agreement are subject to applicable merger filing requirements due to the organization and turnover of the founding entities.

References is also made to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the "Regulation (EU) 2022/2560 on foreign subsidies") chapter 3, especially article 21 and 22, in respect of the potential obligation to notify concentrations.

1.4.2. Contractual set-up

The establishment of the co-ownership implies the following contractual set-up.

Contract /Agreement	Parties
To be signed following award of the Concession Agreement by:	
Annex F, (Concession Agreement),	DEA and SPV The Successful Tenderer and the Supporting Economic Operator, if any, shall assume joint and several liability with the SPV for the performance of the Concession Agreement.



	The Successful Tenderer and the Supporting Economic Operator shall sign the Concession Agreement, accordingly.
Annex G, (Irrevocable Undertaking),	The owner of 100 per cent of the share capital of the SPV at the time of signing the Concession Agreement and the Irrevocable Undertaking
To be signed upon completion of the due diligence review as set out in the Annex G, (Irrevocable Undertaking) (the Investment Period):	
Investment agreement, cf. Appendix 1.1.45 of Annex G, (Irrevocable Undertaking)	State Holding and the shareholders of 100 per cent of the share capital of the SPV at the time of signing the Concession Agreement and the Irrevocable Undertaking.
Shareholder's agreement, cf. Appendix 1.1.82 of Annex G, (Irrevocable Undertaking)	State Holding and the shareholders of 100 per cent of the share capital of the SPV at the time of signing the Concession Agreement and the Irrevocable Undertaking.
Annex G, (Irrevocable Undertaking)	If the parties, for whatever reason, do not execute the investment agreement and the shareholders' agreement before the expiry of the investment period, State Holding shall accede the Irrevocable Undertaking by signing, cf. Annex G, (Irrevocable Undertaking), section 2.2.



2. DESCRIPTION OF THE PROCUREMENT PROCEDURE

The procurement procedure will be conducted pursuant to the directive 2014/23/EU on the award of concession contracts as implemented into Danish law by the executive order no. 1080 of 29 June 2022 on award of concession contracts.

The DEA must conduct the procurement procedure in accordance with the general principles of equal treatment, transparency, proportionality and the prohibition against discrimination based on nationality, cf. art. 3 (1), cf. art. 30 (1) and (2) of the directive 2014/23/EU.

The procurement procedure applicable to this procurement constitutes a procedure, where any interested economic operator, who is able to comply with the minimum requirements for eligibility set out in section 6.2, may submit a tender in response to this invitation to tender.

The DEA expects to award the Concession Agreement based on the initial tenders. However, the DEA reserves the right to enter into negotiations with the Tenderers based on the submitted initial tenders, cf. art. 37 (6) of the directive 2014/23/EU, and cf. section 10. If negotiations are initiated, the DEA will after receipt of the initial tenders inform the Tenderers hereof and describe the negotiation procedure (including, if relevant, the negotiation topics).

The procurement procedure is further described throughout the procurement specifications. Reference is made to section 10 for further information regarding the procedure of negotiation, should the DEA choose to initiate negotiations. The award of the Concession Agreement will be conditioned on the fulfilment of the requirements in section 6, and the award of the Concession Agreement will be determined on the basis of the award criterion, price, cf. section 11.

Submission of tender and evaluation of the tenders is further described in section 7 and section 11 below.

2.1. Contracting authority and contact person

The contracting authority is:

Danish Energy Agency ("DEA")
Carsten Niebuhrs Gade 43
1577 Copenhagen V
CVR no. 59 77 87 14

The contact person at DEA during the procurement procedure is:

Name: Martina Papias Nissolino



Reference is made to section 4 regarding communication in connection with this procurement procedure.

2.2. Information meeting

The DEA will host an information meeting about the procurement procedure on Kriegers Flak II offshore wind farm, cf. the time schedule in section 3.

The information meeting may be held virtually and/or at the following address:

Carsten Niebuhrs Gade 43, 1577 København V

Potential Tenderers who wish to participate in the information meeting (with physical participation) must for practical reasons, sign up via the electronic procurement system, cf. section 4, no later than five (5) days before the meeting and must state the number of representatives participating. The DEA reserves the right to reduce the number of representatives per Tenderer participating in the information meeting.

At the meeting, the DEA will explain the background for the procedure and the purpose of the concession subject to this procurement procedure. The DEA will also provide more general information about the structure of the procurement documents.

The Tenderer may ask questions during the information meeting. However, if the DEA considers that the question is not suited for a reply during the meeting, the DEA will ask the Tenderer to put the question in writing in accordance with the procedure set out in the procurement specifications, cf. section 4.

The DEA will prepare short minutes of the information meeting, which will be communicated via the electronic procurement system to all Tenderers participating in the procurement procedure. The DEA may conduct further information meetings than indicated above, which will be communicated to the Tenderers via the electronic procurement system.

The DEA may host additional information meetings, if deemed necessary by the DEA in order to explain the different stages and elements of the procurement procedure to the potential Tenderers who wish to participate in the procurement procedure. In the event that the DEA chooses to host additional information meetings, the DEA will well in advance inform the Tenderers through the electronic procurement system, cf. section 4.



2.3. The procurement documents

The procurement documents form the basis of the Tenderer's submission of tender. The procurement documents are available via the electronic procurement system, cf. section 4.

The procurement documents consist of the following documents:

- Concession notice
- The present procurement specifications
- Annexes to the procurement specifications:
 - Annex A: Tender Submission Letter (Template for tender submission letter to be used by the Tenderer upon submission of tender)
 - Annex B: Letter of Commitment
 - Annex C: Consortia Declaration
 - Annex D: Declaration regarding sanctions against Russia
 - Annex E: Notification of processing of personal data
 - Annex F: Concession Agreement,
 - Appendices to Annex F, Concession Agreement
 - Appendix 1: Project Specifications
 - Appendix 1.1: Indicative Maps Related To Direct Lines
 - Appendix 2: Location of the Concession Area
 - Appendix 3: Social Responsibility (CSR)
 - Appendix 4: Performance Guarantee
 - Appendix 5: Parent Company Guarantee
 - Appendix 6: Form of On Demand Guarantee
 - Annex G: Irrevocable Undertaking
 - IU Appendix 1.1.25: Confidentiality Undertaking
 - IU Appendix 1.1.45: Investment Agreement
 - IA Appendix 7.1: Warranties
 - IU Appendix 1.1.82: Shareholder's Agreement
 - IU Appendix 5.1: Warranties
 - Annex H: Nettilslutningsaftale (Grid Connection Agreement), *(for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected. The Grid Connection Agreement is to be entered into between Energinet and the Concessionaire only if the off-shore wind farm is to be grid connected)*



- Bilag 1 (Appendix 1) – Nettilslutningsvilkår (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 1.1 (Appendix 1.1) - Kortslutningsniveauer og impedanskarakteristik (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 1.2 (Appendix 1.2.) - Krav til elkvalitet (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 1.3 (Appendix 1.3.) - Specifikke tekniske forhold og krav (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 2.1 (Appendix 2.1) - Design og layout (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 2.2 (Appendix 2.2) – Aftale med 3. part omkring hårdtfortrådet signaludveksling (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 2.3 (Appendix 2.3) - Tilslutningsbidrag, etableringstidsplan og kontaktpersoner (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 2.4 (Appendix 2.4) - Health, Safety and Environment (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 2.5 (Appendix 2.5) – Sikkerhedsstilling (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 3.1 (Appendix 3.1) - EON (Spændingssætningstilladelse) (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)
 - Bilag 3.2 (Appendix 3.2) - ION tilladelse (Midlertidig drifttilladelse) (*for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected*)



- Bilag 3.3 (Appendix 3.3) - FON tilladelse (Endelig drifttilladelse) *(for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected)*
- Tekniske krav til samplacerede og/eller overplantede elproducerende og forbrugende anlæg samt Energilageranlæg *(for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected)*
- Annex I: Sammenkoblingsaftale (Interconnection Agreement) *(for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected. This agreement is to be entered into between Energinet and the Concessionaire only if the off-shore wind farm is to be grid connected)*
- Annex J: Samarbejdsaftale (Cooperation Agreement) *(for information purposes only and subject to change in light of the specific project contemplated by the Successful Tenderer, where such project is to be grid connected. This agreement is to be entered into between Energinet and the Concessionaire only if the off-shore wind farm is to be grid connected)*

If the Tenderer finds elements in the Concession Agreement, and/or the Appendixes to the procurement documents that are unacceptable or clearly inappropriate, the Tenderer is encouraged to make the DEA aware of the elements concerned throughout the procurement procedure and in accordance with the communication procedure via the electronic procurement system, cf. section 4.

2.4. Amendments to the procurement documents

The DEA may modify the procurement documents within the legal framework of the directive 2014/23/EU. If the DEA makes significant changes to the procurement documents, the deadline for submission of tender will be extended. However, in light of the rather long deadline for submission of tender, changes to the procurement documents – even where such changes may be significant – carried out early in the procurement process, will generally not result in extension of the deadline for submission of tender, as the DEA assesses that the Tenderers will have sufficient time to take such changes into consideration and incorporate such changes into their tenders. Whether a change should result in an extension of the deadline for submission of tender will however always be assessed by the DEA specifically on a case by case basis.

Changes to the procurement documents will be marked with “track changes” and will be communicated to all Tenderers participating in the procurement procedure through the electronic procurement system, cf. section 4.



3. INDICATIVE TIME SCHEDULE OF THE PROCUREMENT PROCEDURE

Forward of the concession notice	22 April 2024
Information meeting	7 June 2024, at 10:00 a.m.
Deadline for the Tenderer to submit questions	11 March 2025
Deadline for the DEA to submit answers to questions, before submission of tender	25 March 2025
Deadline for submission of tender, including notification or declaration pursuant to regulation (EU) 2022/2560 on foreign subsidies, cf. section 3.2	1 April 2025 at 14:00 p.m. (local Danish time)
Initiation by the Tenderer of application procedure concerning investment screening, cf. section 3.1, if relevant	1 April 2025
Documentation regarding the information stated in the ESPD	In the period April-June (cf. section 12.1)
Award of Concession Agreement	13 June 2025
Standstill-period (expiration date)	23 June 2025
Signature of the Concession Agreement	After expiration of the standstill-period and at the earliest on the 24 June 2025 (stipulated Signing Date)

The above time schedule does not include time for negotiations. If the DEA chooses to initiate negotiations, cf. sections 0 and 10, the time schedule will be updated accordingly.

In addition, the time schedule of the procurement procedure is only indicative and the DEA reserves the right to make changes herein, including but not limited to adjusting the expected date for award of the Concession Agreement if this is considered necessary pursuant to Regulation (EU) 2022/2560 on foreign subsidies, cf. section 3.2 below. Changes to the procurement documents during the procurement procedure, including but



not limited to changes necessitated by the SEA or delay in the completion of the SEA, may also lead to a postponement of the stated deadlines in the time schedule.

All changes, including changes to the above stated deadlines, will be published in accordance with section 4.

Regarding documentation for the information stated in the ESPD it should be noted that, the DEA expects to request all Tenderers to submit documentation for the information stated in their ESPD, cf. section 151(2), cf. section 5 of the executive order no 1080 on award of concession contracts. Further information on documentation is stated in section 12.1.

3.1. Investment screening

The DEA wishes to draw the Tenderers attention to the Danish Investment Screening Act. Pursuant to § 2 (1) the law applies to “special financial agreements”. The DEA has identified the Concession Agreement covered by this procurement procedure as such an agreement.

The consequence of the Concession Agreement being a special financial agreement is that a Tenderer established outside the EU/EFTA or owned by a legal or physical person outside this area is obligated to apply the Danish Business Authority (in Danish “Erhvervsstyrelsen”) for approval before the SPV can enter into the Concession Agreement.

Furthermore, according to § 5, cf. § 5 (3) of the Danish Investment Screening Act, prior approval for establishment of the SPV as required pursuant to section 1.4.1, by a Tenderer established outside the EU/EFTA or owned by a legal or physical person outside this area, will also be required.

In respect of the authorisation procedure for the establishment of the SPV such process may be initiated at any time by a Tenderer. In respect of the authorisation procedure for the SPV to enter into the Concession Agreement, a proposal to amend the Danish Investment Screening Act, which is expected to enter into force before the deadline to submit tenders, will make it possible for all Tenderers to initiate the authorisation procedure at the time of the deadline for submission of tenders.

The DEA reserves the right to award the Concession Contract to the Tenderer who has submitted the tender with the highest bid price, cf. section 11, conditional on the Tenderer obtaining the necessary authorisations pursuant to the Danish Investment Screening Act. In such case the Concession Agreement will not be concluded before finalization of the investment screening, cf. section 12.2.

In order not to delay the conclusion of the Concession Agreement the DEA strongly recommends that Tenderers who are established outside the EU/EFTA or owned by a legal or physical person outside this area as early as possible initiate the required authorisation procedures pursuant to the Danish Investment Screening Act.



For more details on the authorisation procedure including the relevant information to be provided to the Danish Business Authority, the DEA refers to the Danish Business Authority webpage or via this link: <https://business-indenmark.virk.dk/topics/Economy/Investments/>. Further, the Danish Business Authority can be reached by e-mail fdi-screening@erst.dk for further guidance.

Reference is furthermore made to section 12.2.

3.2. The European-Parliament and Council Regulation no 2022/2560

Pursuant to chapter 4 in Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the “Regulation (EU) 2022/2560 on foreign subsidies”), a notifiable foreign financial contribution in a public procurement procedure shall be deemed to arise where the economic operator, including its subsidiary companies without commercial autonomy, its holding companies, and, where applicable, its main subcontractors and suppliers involved in the same tender in the public procurement procedure was granted aggregate financial contributions in the three years prior to notification or, if applicable, the updated notification, equal to or greater than EUR 4 million per third country, cf., article 28(1) and (2).

As a consequence, economic operators participating in the procurement procedure shall pursuant to article 29(1) notify or declare as part of its tender all foreign financial contributions as defined in Article 28(1), point (b). The DEA is obligated to forward the notification or declaration to the EU Commission cf., article 29(2). The Commission will carry out a preliminary review cf., article 30(2) and decide whether to initiate an in-depth investigation cf., article 30(3) with a subsequent decision cf., article 31.

The DEA must refrain from awarding the Concession Agreement to a Tenderer while a preliminary review or an in-depth investigation of such Tenderer pursuant to Regulation (EU) 2022/2560 on foreign subsidies is ongoing unless the time limits for the EU Commission’s preliminary review or in depth-investigation respectively has lapsed. The process pursuant to Regulation (EU) 2022/2560 on foreign subsidies may hence result in a change to the tentative time schedule set out above.

Concerning the submission of notifications and declarations please see section 7.

4. COMMUNICATION AND QUESTIONS

The procurement procedure will be conducted through the electronic procurement system, EU-Supply.

All procurement materials, including the procurement documents, amendments to the procurement documents, submitted questions and answers etc. will be communicated electronically through the electronic procurement system. Additional information, e.g. regarding SEA, will be found on the DEA’s website.



The electronic procurement system is accessed via the link https://eu.eu-supply.com/app/rfq/rwlen-trance_s.asp?PID=399416&B=

The DEA encourages Tenderers to keep themselves updated on the electronic procurement system throughout the procurement procedure.

All communication in connection with the procurement procedure, including questions regarding the procurement documents, must be in English and must be submitted via the electronic procurement system.

Questions regarding the procurement documents or the procurement procedure in general must be submitted in writing through the “Questions & Answers”-module in the electronic procurement system. Questions submitted through the “Messages”-module or other ways of communication are not sure to be answered.

If the Tenderer finds elements in the Concession Agreement, and/or the Appendixes to the procurement documents are unacceptable or clearly inappropriate, the Tenderer is encouraged to make the DEA aware of the elements concerned throughout the procurement procedure by using the “Questions & Answers”-module in the electronic procurement system.

Questions should be submitted no later than the date listed in section 3.

In connection with submission of new or revised tender(s) and/or final tender(s), where the DEA uses the option to enter into negotiations, cf. section 0 and 10, the deadline for submission of questions will be communicated to the Tenderers in the electronic procurement system.

Questions asked after the date listed in section 3 will be answered if they are received in time for the DEA to obtain the information required and communicate the answers at the latest six (6) days before expiry of the deadline for submission of tender, cf. section 3. Questions received later than six (6) days before expiry of the deadline for submission of tender cannot be expected to be answered, unless the deadline for submission of tender is also postponed.

The written questions of the Tenderers and the DEA's answers will be communicated regularly, and at the latest six (6) days before submission of tender, cf. section 3, in anonymized form, via the electronic procurement system to all Tenderers participating in the procurement procedure.



5. SUPPORT AND ASSOCIATIONS

5.1. When the Tenderer relies upon the capacity of other entities

A Tenderer may rely on the economic and financial and/or technical and professional capacity of other entities in order to meet the minimum requirements for eligibility.

In this case, the conditions below apply regardless of the legal nature of the relationship between the entities.

The Tenderer should declare in its ESPD, cf. section 7, if the Tenderer relies on the capacity of other entities for the fulfilment of the minimum requirements for eligibility, cf. section 6.2. This must be stated in part II, section C of the ESPD.

If the Tenderer relies on the capacity of other entities for the fulfilment of the minimum requirements for eligibility, cf. section 6.2, a separate signed ESPD for each of the entities on which the Tenderer relies must also be submitted as preliminary documentation that such supporting entities are not subject to any of the grounds for exclusion, cf. section 6.1. Such supporting entities should each provide the information required under sections A and B of part II and part III of the ESPD. Insofar as it is relevant for the specific capacity or capacities on which the economic operator relies, the information under parts IV and V of the ESPD should also be provided in the ESPD for each supporting entity.

The DEA will conduct an overall assessment of the information submitted by the Tenderer and the supporting entities in the ESPD so as to assess whether the Tenderer fulfils the requirements regarding exclusion grounds, cf. section 6.1 and the minimum requirements for eligibility, cf. section 6.2.

After submission of tender and in connection with submission of documentation regarding the information stated in the ESPD, cf. section 12, the Tenderer must document that the Tenderer is in full disposal of the required resources necessary for the fulfilment of the Concession Agreement, cf. section 6.2 and the concession notice, section "Selection criteria". Hence, a Tenderer, which relies upon the support of other entities regarding economic and financial and/or technical and professional capacity, must document that the supporting entities are legally obligated towards the Tenderer and the SPV (by declaration of support). For this purpose, the Tenderer may use Annex B, (Letter of Commitment), cf. section 12.1.3.



After submission of tender, each of the entities on which the Tenderer relies upon must furthermore upon request from the DEA submit documentation regarding the exclusion grounds, cf. section 6.1 and the minimum requirements for eligibility, cf. section 6.2, in accordance with section 12.

Please see section 12 for further information about requirements and time for documentation.

In connection with the performance of the Concession Agreement, if the Tenderer relies on the economic and financial capacity of other entities (Supporting Economic Operator(s)), the DEA requires that the Tenderer and the Supporting Economic Operator(s) in question undertake joint and several liability, cf. section 15 of Annex F, (Concession Agreement). Where a Tenderer relies upon the economic and financial capacity of other entities, the Concession Agreement shall hence be co-signed in accordance with section 29.4 of Annex F, (Concession Agreement).

In connection with the performance of the Concession Agreement, if a Tenderer relies on the technical and professional capacity of other entities (Supporting Technical Operator(s)), to fulfil the minimum requirements for technical and professional capacity, the DEA requires that such Supporting Technical Operator carry out the relevant tasks regarding the technical and professional capacity, cf. section 20.5.1 of Annex F, (Concession Agreement).

Replacement of the supporting entities during the course of the Concession Agreement is subject to the conditions set out in section 20 of Annex F, (Concession Agreement) as well as the regulation of the directive 2014/23/EU.

Reference is made to Annex F, (Concession Agreement), for further information.

5.2. Groups of entities (Consortiums or other associations of undertakings)

Where a Tenderer consists of a group of entities (consortiums or other association of undertakings), a separate ESPD must be submitted for each participating economic operator, cf. section 7, as preliminary documentation that such participating economic operator is not subject to any of the grounds for exclusion, cf. section 6.1. This information should be provided in part III of the ESPD. Each participating economic operator must also fill out the relevant parts of the ESPD in respect of part II: Information concerning the economic operator and part IV and V concerning compliance with the minimum requirements for eligibility.



Where a tender is submitted by a group of entities including multiple responsible economic operators, each participating legal entity must be specified individually in a clear and unambiguous way, and the group of entities must also specify a joint authorized representative, who can submit a tender on behalf of the group. Specifications should be stated in the ESPD, part II, section A.

The DEA will conduct an overall assessment of the information submitted in the ESPD from each participant of the group of entities so as to assess whether the Tenderer fulfils the requirements regarding exclusion grounds, cf. section 6.1, and the minimum requirements for eligibility, cf. section 6.2.

After submission of tender and before the award of the Concession Agreement, the Tenderer to whom the DEA intends to award the Concession Agreement must, upon request, submit documentation regarding the information stated in the ESPD, cf. section 12. Where the Successful Tenderer is a group of entities, each participating entity must submit documentation regarding the exclusion grounds, cf. section 6.1 and the minimum requirements for eligibility, cf. section 6.2, in accordance with section 12.

Furthermore, the group of entities should also as part of its tender submit a signed consortium declaration, specifying the identity of the participating entities and the authorized representative in accordance with the information provided in the ESPD. The template in Annex C, (Consortia Declaration), may be used for this purpose.

Please see section 12 for further information about requirements and time for documentation.

It should be noted that the competition law rules must be followed if participants in a group of entities (e.g. consortium) are competitors on the same market.

It will be the authorized representative, who has the authority to make binding decisions on behalf of the group under the Concession Agreement, cf. section 15.1.2 of Annex F, (Concession Agreement). The Concession Agreement shall be signed by the group of entities in accordance with section 29.3.2 of Annex F, (Concession Agreement).

The participants in a group of entities or another association of undertakings are jointly and severally liable for the performance of the Concession Agreement, cf. section 15.1.2 of Annex F, (Concession Agreement).

Reference is made to Annex F, (Concession Agreement), for further information regarding group of economic operators.



6. CONDITIONS FOR AWARD

6.1. Exclusion grounds

If the Tenderer is covered by one of the mandatory exclusion grounds stated in section 134a, 135 and 136 of the Danish Public Procurement Act (in Danish: *Udbudsloven*), the statutory order no. 10 of 6 January 2023, cf. section 4 of the executive order no. 1080 on award of concession contracts, the Tenderer shall be excluded from participating in the procurement procedure.

It is accentuated, that the obligation to exclude a Tenderer also applies where a person convicted by final judgment, cf. section 135 (1) of the Danish Public Procurement Act, is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein, cf. section 135 (2) of the Danish Public Procurement Act, cf. section 4 of the executive order no. 1080 on award of concession contracts.

The DEA will furthermore exclude a Tenderer covered by one or several of the situations, which are listed as voluntary exclusion grounds in section 137 (1), no. 2 of the Danish Public Procurement Act, cf. section 4 of the executive order no. 1080 on award of concession contracts.

The Tenderer must use the ESPD as preliminary documentation confirming that the Tenderer is not covered by any of the mandatory exclusion grounds or the applicable voluntary exclusion grounds, cf. section 7.

Where a Tenderer is covered by one of the abovementioned exclusion grounds, the DEA will allow the Tenderer to demonstrate its reliability in accordance with section 138 of the Danish Public Procurement Act, cf. section 4 of the executive order no. 1080 on award of concession contracts.

The voluntary grounds for exclusion are applied while complying with the principle of proportionality. Hence, trivial matters cannot result in the exclusion of a Tenderer. Several matters which, individually, are less serious in nature may, however, give rise to exclusion of a Tenderer.

6.2. Minimum requirements for eligibility

6.2.1. *Regarding economic and financial capacity*

The Tenderer must fulfil the following minimum requirements in order to demonstrate the ability to perform the Concession Agreement:



1. The Tenderer must demonstrate an annual overall turnover (in IFRS: “revenue”) of minimum DKK 32 billion, calculated as an average, of the latest three (3) financial years available on the deadline for submitting tenders; **and**
2. The Tenderer must have an equity ratio (total equity/total assets x 100) of 20 per cent or above in the most recent financial year available on the deadline for submitting tenders OR a current long-term debt rating of BBB- or above (Standard & Poors and Fitch) and/or Baa3 or above (Moody’s) or an equivalent current rating from another reputable international credit rating agency at the time of submission of tender.

Re (1)

If the Tenderer relies on the economic and financial capacity of other entities, cf. section 5.1, the average overall annual turnover will be calculated based on the total combined turnover of the Tenderer and such other entities in each of the three (3) latest financial years available on the deadline for submitting tenders. For groups of entities, cf. section 5.2, the average overall annual turnover will be calculated based on the total combined turnover of the economic operators in each of the three (3) latest financial years available on the deadline for submitting tenders.

Examples

Example 1)

Tenderer “A” has stated the following in the ESPD:

<u>Annual turnover</u>	<u>Currency</u>	<u>Accounting year start date</u>	<u>Accounting year end date</u>
32,000,000,000	DKK	01-01-2023	31-12-2023
30,000,000,000	DKK	01-01-2022	31-12-2022
28,000,000,000	DKK	01-01-2021	31-12-2021

Calculation of the average revenue:

$(32,000,000,000 + 30,000,000,000 + 28,000,000,000) = 91,000,000,000 / 3 = \mathbf{30,333,333,333.33}$

Tenderer “A” does not fulfil minimum requirement regarding average revenue.

**Example 2)**

Tenderer "B" consist of a group of entities (X and Y). They have stated the following in the ESPD:

X has stated:

Annual turnover	Currency	Accounting year start date	Accounting year end date
25,000,000,000	DKK	01-01-2023	31-12-2023
19,000,000,000	DKK	01-01-2022	31-12-2022
18,000,000,000	DKK	01-01-2021	31-12-2021

Y has stated:

Annual turnover	Currency	Accounting year start date	Accounting year end date
15,000,000,000	DKK	01-07-2023	31-06-2024
12,000,000,000	DKK	01-07-2022	31-06-2023
10,000,000,000	DKK	01-07-2021	31-06-2022

Calculation of the average revenue from both X and Y:

The revenue figures are added up for the three available financial years available for both X and Y (regardless of that X and Y have different accounting years).

$$25,000,000,000 + 15,000,000,000 + 19,000,000,000 + 12,000,000,000 + 18,000,000,000 + 10,000,000,000 = 99,000,000,000 / 3 = 33,000,000,000$$

Tenderer "B" fulfils minimum requirement regarding average revenue.

Information about the minimum requirement must be specified in section IV, subsection B of the ESPD, cf. section 7.



Re (2)

Please note that in terms of meeting the abovementioned minimum requirements, the requirement regarding equity ratio and the requirement regarding long-term debt rating are equal alternatives to each other, i.e. one is not preferred to the other. If the Tenderer relies on the economic and financial capacity of other entities or is a group of entities, the Tenderer can choose to fulfil the minimum requirement (2) by either equity ratio or debt rating or by a combination of equity ratio and long-term debt rating.

If the Tenderer relies on the economic and financial capacity of other entities, cf. section 5.1, the equity ratio will be calculated as the Tenderer's and such other entities' total equity divided by their total assets, calculated as a percentage. For groups of entities, cf. section 5.2, the equity ratio will be calculated as the total equity of the entities divided by their total assets, calculated as a percentage.

If the Tenderer relies on the economic and financial capacity of other entities, cf. section 5.1, or is a group of entities, cf. section 5.2, and chooses to use the long-term debt rating to meet the financial minimum requirement (2), then each economic operator must meet the requirement for long-term debt rating individually or meet the minimum requirement regarding equity for those entities that may not meet the long-term debt rating.

Example

Example 1)

Tenderer "A" has stated the following in the ESPD for the most recent financial year available:

<u>Currency</u>	<u>Equity</u>	<u>Assets</u>	<u>Equity ratio</u>
DKK	55,000,000,000	200,000,000,000	$\frac{35,000,000,000}{200,000,000,000} \cdot 100 = 27.5 \%$

<u>Long-term debt rating</u>	<u>Standard & Poors and Fitch</u>
By the time of submission of tender	BB+

Assessment:



Tender A does not fulfil the requirement regarding long-term debt rating but fulfils the requirements of 20 % equity ratio. As the requirements regarding equity ratio and long-term debt ratio are equal alternatives to each other, the minimum requirement is fulfilled by the equity ratio of 27.5 %

Tenderer “A” fulfil minimum requirement regarding equity ratio/long-term debt rating.

Example 2)

Tenderer “B” consist of a group of entities (X, Y and Z). They have stated the following in the ESPD for the most recent financial year available:

X has stated:

<u>Currency</u>	<u>Equity</u>	<u>Assets</u>	<u>Equity ratio</u>
DKK	15,000,000,000	100,000,000,000	$\frac{15,000,000,000}{100,000,000,000} \cdot 100 = 15.0 \%$

Y has stated:

<u>Currency</u>	<u>Equity</u>	<u>Assets</u>	<u>Equity ratio</u>
DKK	60,000,000,000	300,000,000,000	$\frac{60,000,000,000}{300,000,000,000} \cdot 100 = 20.0 \%$

Z has stated:

<u>Long-term debt rating</u>	<u>Moody's</u>
By the time of submission of tender	Baa2

Assessment:

Tenderer B has chosen to fulfil the minimum requirement (2) by both equity ratio and the long-term debt rating.



The equity ratio for X and Y is added together as follows in DKK:

$$\frac{15,000 + 60,000}{300,000 + 100,000} \cdot 100 = 18.75 \%$$

Z has a long-term debt rating above the minimum requirement. X has an equity ratio that meets the minimum requirement, but when equity and total assets are added together with figures from Y, the minimum requirement of 20% equity ratio is not met.

Tenderer “B” does therefore not fulfil the minimum requirement regarding equity ratio/long-term debt rating.

Information regarding the minimum requirement must be specified in section IV, subsection B of the ESPD, cf. section 7.

6.2.2. Regarding technical and professional capacity

The Tenderer must fulfil the following minimum requirement in order to demonstrate the ability to perform the Concession Agreement:

1. At least one (1) reference covering a largescale offshore project in relation to energy production, completed within the last ten (10) years. A largescale offshore project in relation to energy production must, as a minimum, have the following characteristics in order to be considered:
 - a. Construction costs (CAPEX) of minimum DKK 500,000,000,
 - b. be fixed to the seabed, at least at 10 meters sea depth in average across the site, and
 - c. have a duration of contract, permit, licence, approval or the like of min. 25 years.

The reference must show experience with at least three (3) of the six (6) following key areas:

- 1) project management,
- 2) engineering,
- 3) procurement,
- 4) execution,
- 5) operation, or
- 6) quality control.

The Tenderer may document experience with the above three (3) key areas via one (1) or more references, provided that each reference covers a largescale offshore project in relation to energy production.



Only references completed within the latest ten (10) years before the expiry of the deadline for submission of tender will be accepted. As regard the assessment of whether a largescale offshore project is completed within the latest ten (10) years, the DEA will accept the following examples (which are not exhaustive):

- An offshore wind farm with an A/C substation where the last turbine has delivered the first kWh to the grid (fully commissioned offshore wind farm).
- An offshore oil- and gas development project including installation of fixed installations and commissioning and subsequent production/operation.

Information regarding the references should be specified in section IV, subsection C of the ESPD, cf. section 7. If the Tenderer prefers to submit the list of references as a separate document, this is accepted as well. However, illustrations, photographs etc. will not be taken into account.

Re (1)

For each project used as a reference (at least one (1), maximum five (5) references), the Tenderer must provide the following description:

- a. Name of largescale offshore project
- b. Description of main elements of the largescale offshore project including where relevant grid connection (AC-substation, etc.) from the offshore project to onshore/offshore point of connection;
- c. Contact person at the contracting entity and/or the authority who awards the permit/licence/approval or the like (preferably including phone number and email address);
- d. Contract signing date or the date of issuing the permit/licence/approval etc. (with the minimum duration of 25 years);
- e. Location of the largescale offshore project;
- f. The Tenderer's/the supporting entity's role (i.e. developer, owner, main consultant, sub-contractor, financial investor, or other);
- g. The Tenderer's/the supporting entity's contribution to the project within the following key areas: 1) project management, 2) engineering, 3) procurement, 4) execution, 5) operation and/or 6) quality control;
- h. Time of completion of the project (within the last 10 years).

If more than a total of five (5) references completed within the latest ten (10) years before the expiry of the deadline for submission of tender are submitted by a Tenderer, including where a Tenderer is a group of economic entities, e.g. a consortium or joint venture, only the five (5) newest references completed within the latest ten (10) years before the expiry of the deadline for submission of tender will be considered.



If it is not possible to identify the five (5) newest references, the five (5) newest references will be selected by drawing of lots of the references submitted by the remaining entities in the group of Tenderers or from the supporting entities which has been completed within the latest ten (10) years before the expiry of the deadline for submission of tender.

7. THE CONTENT OF THE TENDER

7.1. The content of the tender(s)

A tender consists of the following documents:

- (a) Tender Submission Letter (Annex A)
- (b) ESPD
- (c) Notification/declaration pursuant to Regulation (EU) 2022/2560 on foreign subsidies

The Tenderer is asked not to include the Annex F, (Concession Agreement), and the Appendices hereof that are not supposed to be completed/finalised by the Tenderer. The Concession Agreement and such Appendices are deemed to be accepted by the Tenderer upon submission of tender.

Re (a) Tender submission letter

The Tenderer should fill out and enclose in its tender Annex A, (Tender Submission Letter), which shall include the information described in the Annex A, (Tender Submission Letter), hereunder the bid price, cf. section 11.1. The Tenderer shall fill in the relevant information in accordance with the guidance text in the annex.

The Tenderer is only allowed to submit one tender, cf. section 1.

The evaluation of the tenders is described in section 11 below.

Re (b) ESPD - completion and signature

The Tenderer must enclose in its tender an ESPD as preliminary documentation regarding the following:

1. That the Tenderer is not covered by any of the grounds for exclusion, see section "Exclusion grounds" of the concession notice and section 6.1 above, and



2. That the Tenderer fulfils the minimum requirements in terms of economic and financial capacity, see section “Economic and financial standing”, sub-section “Selection criterion 1” of the concession notice and section 6.2 above, and, in terms of technical and professional capacity, see section “Technical and professional ability”, sub-section “Selection criterion 1” of the concession notice and section 6.2 above.

For groups of entities, a separate signed ESPD must be submitted for each participating economic operator and the ESPD shall each contain the relevant information, cf. section 5.2.

If the Tenderer relies on the capacities of other entities, cf. section 5.1 above, a completed and signed ESPD must be submitted for each of the entities on which the Tenderer relies and the ESPD shall each contain the relevant information, cf. section 5.1.

The required ESPD(S) must be completed electronically via the electronic procurement system. However, it is required that **supporting entities** (Supporting Economic Operator(s) and/or Supporting Technical Operator(s)) sign their individual ESPD and upload a signed version hereof in the electronic procurement system. It is also required that members of a **group of entities** (e.g. a consortium) sign their individual ESPD and upload a signed version hereof in the electronic procurement system. Signature on the ESPD is not required for the member of the group that submits the tender in the electronic procurement system.

The Tenderer to whom the DEA intends to award the Concession Agreement, must subsequently submit documentation regarding the information specified in the ESPD, cf. section 12.

Re (c) notification/declaration pursuant to Regulation (EU) 2022/2560 on foreign subsidies

The Tenderer shall, as part of its tender, submit a notification or a declaration concerning any financial contributions received from third countries, see Article 29 of Regulation (EU) 2022/2560 on foreign subsidies.

Whether a notification or a declaration must be included in the tender depends on whether the Tenderer has received financial contributions from third countries exceeding the threshold in art. 28, para. 1, point (b), of Regulation (EU) 2022/2560 on foreign subsidies. The obligation is further elaborated in the Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023, particularly in art. 5.

To submit the notification/declaration concerning any financial contributions received from third countries the Tenderer may use the [online FS-PP form](#) (this requires EU-Login, see [EU-Login tutorial](#)) provided by the European Commission, to create the submission taking the form of a FS-PP pdf file. The pdf file should be uploaded to the electronic procurement system together with the tender.



Where the Tenderer is a group of economic entities the notification or declaration must be submitted by the appointed joint authorized representative, cf. section 5.2.

The Tenderer is encouraged to engage in pre-notification discussions with the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs in due time prior to the deadline for submission of tender, see for more information Implementing Regulation (EU) 2023/1441, Annex II, the Introduction, part 6, on 'Pre-notification contacts and waiver requests'.

7.2. The tender must be final and complete

The tender should be drafted so that the Concession Agreement may be entered into without prior negotiations between the Tenderer and the DEA.

It is the responsibility of the Tenderer to ensure that the tender is complete and drawn up in accordance with the guidelines set out in the procurement documents.

7.3. Reservations to the procurement material

The tender must not contain reservations to fundamental elements in the tender documents. Fundamental elements means matters that cause competition to be distorted to a significant degree if reservations are made. Reservations to fundamental elements in the procurement documents will cause the tender to be rejected.

Several reservations to non-fundamental elements of the procurement documents may cause the reservations, overall, to constitute a reservation to fundamental elements.

The DEA may choose – but is not obligated to – to capitalise reservations to non-fundamental elements if such capitalisation can be done with a high degree of certainty in accordance with the procurement rules. If the DEA chooses to capitalise the reservation, this will take place in the form of a price reduction to the bid price. Alternatively, the DEA reserves the right to exclude a Tenderer presenting non-fundamental reservations, unless such issues are deemed to be of a trivial nature.

If the DEA chooses to make use of its prerogative to enter into negotiations, cf. section 2 and 10, submitted tenders containing reservations, regardless of whether such reservations concern fundamental or non-fundamental elements, will be included in the negotiations.

However, as the DEA expects to award the Concession Agreement based on the initial tenders and as initiating negotiations is only an option for the DEA and not an obligation, cf. section 2, the Tenderer is advised not to make any reservations in the tender.



It is the responsibility of the Tenderer to ensure that the tender is clear and unambiguous so as to leave no doubt whether reservations are made to the procurement documents. Tenderers are therefore advised to seek clarification of any ambiguities and uncertainties in the final procurement documents by submitting questions, see section 4 above.

8. SUBMISSION OF TENDER

The tender must be submitted within the deadline for submission of tender, cf. section 3. Tenders received after this deadline will be rejected.

Provided that the DEA will make use of its prerogative to call for negotiations, the deadline for submission of new or revised tender and/or final tender will be stated in the DEA's invitation to submit new or revised tender and/or final tender. New or revised tenders and/or final tenders received after the deadline will be rejected. Reference is further made to section 10 regarding the negotiation phase, hereunder section 10.4 regarding new or revised tender and section 10.5 regarding final tender.

The tender must be submitted via the electronic procurement system, cf. section 4. Tenders may not be submitted in any other way.

The electronic procurement system is accessed via the link stated in section 4.

The tender is submitted by uploading the tender to the electronic procurement system. When the tender is uploaded and submitted, the Tenderer may, until the expiry of the tender submission deadline, change the content of the tender or withdraw the tender.

The DEA does not have access to the content of the tender until the expiry of the deadline.

Tenders must be in English.

If the tender contains several versions of the same document, the latest uploaded version will apply. The time indicated in the electronic procurement system will determine which version is the latest.

The Tenderer must keep its tender open for acceptance for eight (8) months from expiry of the tender submission deadline.



By submitting a tender on the basis of these procurement specifications, the Tenderer accepts the above stated tender validity period.

If the DEA considers it appropriate due to delays resulting from the procedures pursuant to Regulation (EU) 2022/2560 on foreign subsidies or the Danish Investment Screening Act, the DEA may invite all Tenderers to accept an extension of the period in which they must keep their tenders open for acceptance. All Tenderers will in this situation be free to decide whether to accept the extension of the tender validity period as proposed by the DEA. Where a Tenderer does not accept an extension of the tender validity period, the tender of such Tenderer will expire at the end of the initial tender validity period of eight (8) month from the tender submission deadline and such Tenderer will no longer be considered for the award of the Concession Agreement.

If Regulation (EU) 2022/2560 on foreign subsidies does not prevent the award of the Concession Agreement at such time, the DEA may at any time choose to award the Concession Agreement to the Tenderer who has submitted the tender with the highest bid price, subject to this Tenderer obtaining the necessary authorisation pursuant to the Danish Investment Screening Act if relevant, cf. section 3.1 and section 12.2. In this case the Tenderer, to whom the DEA awards the Concession Agreement, must keep its tender open for acceptance until conclusion of the Concession Agreement.

The Tenderer is not permitted to submit variant tenders to the submitted tender(s).

9. OPENING OF TENDERS

The DEA will open the tenders after the deadline for submission of tender has expired, cf. section 3.

The Tenderers are not permitted to attend the opening of the tenders.

After opening the tenders, the DEA will initially check whether the tenders comply with the formal requirements of the procurement documents, including the information stated in the ESPD.

Thereafter, the DEA will check whether the tenders contain reservations, which may cause the tenders to be rejected, cf. section 7.3.

The DEA reserves the right to clarify any ambiguities in the tenders by having the Tenderer submit, supplement, clarify or complete the tender in compliance with the general principles of equal treatment, transparency, proportionality and the prohibition against discrimination based on nationality, cf. art. 3 (1) of the directive 2014/23/EU.



Regardless of the use of the words "must" or "shall" in the procurement documents, the DEA reserves the right to obtain further information from the Tenderers within the scope of the above-mentioned provisions. However, the DEA is not obliged to obtain further information or documentation from the Tenderers.

Tenders, which are considered compliant will then be evaluated as described in section 11.

After evaluation of the tenders, cf. section 11, and after verification of the submitted documentation regarding information stated in the ESPD, cf. section 12, the DEA will simultaneously notify all Tenderers of the award decision via the electronic procurement system.

10. NEGOTIATIONS

The DEA expects to award the Concession Agreement based on the initial tenders.

However, the DEA reserves the right to enter into negotiations with the Tenderers based on the submitted initial tenders, cf. art. 37 (6) of the directive 2014/23/EU, if this is considered relevant to ensure effective competition. This could, as an example, be the case where the DEA finds that negotiations might ensure more competitive prices, or, as other examples, where changes in the SEA are made after submission of tenders or where other changes in risk factors in the project occurs and, hence, make it relevant to call for negotiations and revised tenders.

Reference is also made to the possibility for the DEA to enter into negotiations if more than one tender contains an equal highest bid price, cf. section 11.2 below.

After opening of tenders, cf. section 9, if the DEA chooses to make use of its prerogative to initiate negotiations based on the submitted tenders, the DEA will inform all the Tenderers hereof simultaneously, through the electronic procurement system, cf. section 4, by way of an invitation to enter into negotiations.

If relevant, the negotiation phase will start from receipt by the Tenderers of the DEA's invitation to enter into negotiations and will continue until receipt by the Tenderers of the invitation to submit final tender(s), pursuant to section 10.5.

The negotiations will be conducted individually and in accordance with section 10.1-10.2-10.3.

The negotiations will be conducted in English or in Danish as preferred by the Tenderer.



10.1. Negotiation phase

The negotiation phase can be completed in writing by the DEA submitting an invitation to enter into negotiation where the DEA will describe the framework for the negotiation. Based on this written framework the Tenderers submit new or revised tenders.

The DEA may also choose to invite the Tenderers to negotiation meetings (physical and/or virtual).

The DEA may convene more negotiation rounds (both in writing and/or by negotiation meetings) if it should be deemed necessary by the DEA.

The DEA will at all times notify the Tenderers regarding the negotiation phase through the electronic procurement system.

10.1.1. Topics for the negotiation meetings

The topics subject to negotiations, if relevant, will be published to the Tenderers, in the invitation to enter into negotiations. It should be noted that the list of topics published in advance is not exhaustive, as other topics may also be discussed on the individual negotiation meetings if deemed necessary. Furthermore, a specific agenda for the negotiation meetings will be submitted to the Tenderers well in advance of the negotiation meetings.

10.1.2. Location and participants

If the negotiation is conducted as physical meetings, the negotiation meetings are expected to be held at the following address:

Carsten Niebuhrs Gade 43, 1577 Copenhagen V

The Tenderers are advised to participate in the negotiations with experts and key persons with the required expertise.

The DEA will in the invitation to enter into negotiation state the deadline for announcing the Tenderer's number of representatives participating in the negotiation meeting. The DEA reserves the right to reduce the number of representatives per Tenderer participating in the negotiation meetings.



10.2. Minutes of meeting and feedback

In case meetings are held, the DEA will draw up minutes of meeting after each negotiation meeting. The minutes of meeting will not be made publicly available, and each minutes of meeting will therefore only be submitted to the Tenderer concerned, who will be given the opportunity of commenting on and confirming the information in the minutes of meeting. The minutes of meeting cannot be given any independent legal significance for the submission of tender, as the tender must be based solely on the procurement documents.

If questions of a general nature were to be discussed at a negotiation meeting, the reply to such questions will be submitted via the electronic procurement system, in anonymized form, to all Tenderers participating in the procurement procedure.

In order to avoid unnecessary use of the Tenderers' resources, the DEA will endeavour to notify the Tenderers through the negotiation meetings and in the minutes of meeting if there are aspects of the Tenderer's initial tender that do not fulfil the requirements of the procurement documents. However, absence of such notification cannot be construed to mean that there are no reservations of this nature. It is the sole responsibility of the Tenderer to ensure that the submitted tender comply with all requirements and fundamental elements in the procurement documents.

10.3. The negotiations

10.3.1. Execution of negotiations

The negotiations, if any, will be conducted in accordance with art. 37 (6) and the general principles of equal treatment, transparency, proportionality and the prohibition against discrimination based on nationality, cf. art. 3, (1) of the directive 2014/23/EU.

The DEA will conduct individual negotiation meetings with all Tenderers who, within the deadline stated, cf. section 3, have submitted a tender. The negotiations will be conducted in accordance with the principle of equal treatment, and all Tenderers will be given the same amount of time for negotiations with the DEA.

During the negotiation meetings, each the Tenderer will be given feedback to its tender. The feedback is given to ensure the optimization of the Tenderers' tender.



10.3.2. Changes to the procurement documents

On the basis of the negotiations, the DEA may, while respecting the principles of equal treatment and transparency, make changes to the procurement material.

The DEA is not allowed to change the subject-matter of the Concession Agreement, the award criteria and minimum requirements, cf. art. 37 (6) of the directive 2014/23/EU, in the originally issued procurement documents. However, linguistic clarifications, correction of obvious mistakes, inappropriateness, etc., may be made at all times, provided that this can be done without distortion of competition and discrimination of the Tenderers.

All corrections to the procurement documents during the negotiation process will be marked with "track changes".

All Tenderers participating in the procedure will via the electronic procurement system be given access, simultaneously, to the revised procurement documents and will be given the same amount of time to prepare any new or revised tender and/or a final tender.

10.4. New or revised tenders

The DEA may choose to hold additional negotiations based on new or revised tenders before requesting the Tenderers to submit a final tender.

After the negotiation based on the submitted initial tenders, if deemed necessary, the DEA may therefore through the electronic procurement system send the Tenderers an invitation to submit new or revised tenders.

The deadline for submission of new or revised tenders will be stated in the invitation to submit new or revised tenders. New or revised tenders received after the deadline will be rejected.

New or revised tenders must meet all the requirements stated in the procurement specifications, and thus the tenders must include all documents as stated in section 7, apart from the ESPD, as it has been submitted together with the initial tenders.

In connection with submission of new or revised tender(s), the DEA draws attention to section 7.3 regarding reservations. The DEA reserves the right to award the Concession Agreement based on any subsequent new or revised tenders.



10.5. Final tender and completion of negotiation phase

After submission of the DEA's invitation to submit final tender, the negotiation phase is considered completed. The DEA however reserves the right to reinstitute negotiations during the evaluation phase as further set out in section 11.2.

The deadline for submission of final tender will be stated in the invitation to submit the final tender. Final tenders received after the deadline will be rejected.

The final tender must meet all the requirements stated in the procurement specifications, and thus the tender must include all documents as stated in section 7, apart from the ESPD, as it will have been submitted together with the initial tender(s).

In connection with submission of final tender, the DEA draws attention to section 7.3 regarding reservations. Reference is furthermore made to section 7.1, litra c, regarding the requirement for an updated notification/declaration to be submitted with the final tender pursuant to Regulation (EU) 2022/2560 on foreign subsidies.

11. EVALUATION OF TENDERS

The submitted tenders shall be evaluated in accordance with the provisions stated in the following sections.

11.1. Award criterion and evaluation method

Award of the Concession Agreement to the most economically advantageous tender will take place on the basis of the award criterion, Price.

The award criterion, Price, will be assessed on the basis of the bid price submitted by the Tenderer in the Tender Submission Letter (Annex A), cf. section 7.

The bid price must constitute a concession payment in DKK for the right and obligation to exploit the concession area stated in Appendix 2, (Location of the Concession Area), in accordance with the Concession Agreement. The bid price shall be based on a **total concession payment that covers a period of 30 years**, cf. section 10 of the Concession Agreement, i.e., the offered concession payment shall cover the total 30-year period (not the yearly payment).

The concession payment is not subject to a VAT (Value Added Tax).



Hence, the Tenderer submitting the tender with the **highest bid price** will be awarded the Concession Agreement.

11.2. In the event of equal highest bid prices

In the event that multiple tenders contain equal highest bid price, the DEA will initiate a negotiation round with all Tenderers having submitted a tender in order to give the Tenderers the possibility to raise their price. If a Tenderer does not wish to raise its bid price, such Tenderer shall stand the bid price originally offered.

If one or several of the Tenderers raise their prices, the DEA will conduct a new evaluation of all the submitted tenders, including from the Tenderers who choose to stand by their former prices, with the scope of awarding the Concession Agreement to the most economically advantageous tenders in accordance with the principle stated in section 11.1.

Should a renewed evaluation result in multiple tenders contain equal highest bid price, the DEA is entitled to repeat the abovementioned negotiation round until the evaluation results in only one (1) most economically advantageous tender.

The negotiation round shall be conducted as described in section 10.1-10.2-10.3 above.

12. FINALISATION OF THE PROCUREMENT PROCEDURE

After submission of tender and before the award of the Concession Agreement, the Tenderer, to whom the DEA intends to award the Concession Agreement, must upon request from the DEA submit documentation regarding the information stated in the ESPD, cf. section 151(1) of the Danish Public Procurement Act, cf. section 5 of the executive order no 1080 on award of concession contracts. See section 12.1 below.

The Tenderer must further submit a declaration that proves that the Tenderer or any subcontractor are not covered by the prohibition in Article 5k in Regulation (EU) No 833/2014 as later amended, cf. section 13.2. A form which may be used for this purpose is enclosed as Annex D, (Declaration regarding sanctions against Russia).

When the DEA has selected the tender with the highest bid price, see section 11, and has obtained the needed documentation, the DEA will decide on the award of the Concession Agreements.

The DEA is not obliged to award the Concession Agreement and reserves the right to annul the procurement procedure.



Even though the Concession Agreement has been awarded to another Tenderer, the Tenderer is bound by its tender until the DEA has signed the Concession Agreement, but no longer than the date specified for the Tenderer to keep open its tender, cf. section 8. The notification of the Tenderers of the award decision does not mean that the Concession Agreement have been concluded. The Concession Agreement is only considered to have been concluded when the Concession Agreement is signed.

The DEA does not consider the procurement procedure completed until the Concession Agreement has been signed.

12.1. Documentation regarding the information stated in the ESPD

Upon request, the Tenderer to whom the DEA intends to award the Concession Agreement must submit documentation regarding the information stated in the ESPD, cf. section 151(1) of the Danish Public Procurement Act, cf. section 5 of the executive order no 1080 on award of concession contracts. However, the DEA expects that the DEA will request all Tenderers to submit documentation for the information stated in the ESPD, cf. section 151(2), cf. section 5 of the executive order no 1080 on award of concession contracts.

12.1.1. Documentation regarding the exclusion grounds, cf. section 6.1.

The documentation regarding the exclusion grounds, cf. section 6.1, can consist of the following:

- An extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the Member State or country of origin or the country where the economic operator is established showing that the Tenderer is not covered by the exclusion grounds listed in section 135 (1) of the Danish Public Procurement Act, cf. section 4 of the of the executive order no 1080 on award of concession contracts, **and**
- A certificate issued by the competent authority in the Member State or country concerned, showing that the Tenderer is not covered by the exclusion grounds listed in section 135 (3) and section 137 (1), no. 2, cf. section 4 of the executive order no 1080 on award of concession contracts.

Where the Member State or country in question does not issue such documents or certificates, or where these do not cover all the cases specified in section 6.1 they may be replaced by a declaration on oath.

In Member States or countries where there is no provision for declarations on oath, a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established, may be used.



The DEA will generally accept the documentation, which is listed in e-Certis for the relevant country, cf. section 152 (3) of the Danish Public Procurement Act, cf. section 5 of the executive order no 1080 on award of concession contracts. See also section “Further information”, sub-section “Additional information” of the concession notice.

E-Certis can be accessed via the link: <https://ec.europa.eu/tools/ecertis/#/homePage>

It is accentuated that the documentation must also include documentation regarding the exclusion ground in section 135 (2) of the Danish Public Procurement Act, cf. section 4 of the executive order no 1080 on award of concession contracts. See section 6.1 above.

For groups of entities, cf. section 5.2, the documentation must be submitted for each participating entity in the group.

Where a Tenderer relies on the economic and financial capacity and/or technical and professional capacity of other entities, cf. section 5.1, documentation regarding such other entities must also be provided.

Where a Tenderer is covered by one of the abovementioned exclusion grounds, the DEA will allow the Tenderer to demonstrate its reliability in accordance with section 138 of the Danish Public Procurement Act, cf. section 4 of the executive order no. 1080 on award of concession contracts.

12.1.2. Documentation regarding the minimum requirements, cf. section 6.2.

The DEA will accept the following documentation regarding the minimum requirements on economic and financial capacity, cf. section 6.2:

- 1) Annual overall turnover calculated as an average, of the latest three (3) financial years available, cf. section 6.2
 - The Tenderer must submit annual reports or an extract thereof, or a statement of the Tenderer’s annual overall turnover for the latest three (3) financial years available, depending on when the Tenderer was established, if the key figures are available.
- 2) Equity ratio **OR** long-term debt rating, cf. section 6.2
 - Regarding the equity ratio, the Tenderer must submit a balance sheet or an extract thereof for the most recent financial year available, if publication of the balance sheet is required by law in the country where the Tenderer is established, or other documentation.

OR



- Regarding the long-term debt rating, the Tenderer must submit documentation from the relevant credit rating agency.

Regarding key figures etc. mentioned in section 6.2.1, which cannot be documented by annual reports or a balance sheet, a statement from the company's (state authorized) accountant must be submitted.

For group of entities, cf. section 5.2, the information must be submitted for each participating entity in the group.

Where a Tenderer relies on the economic and financial capacity of other entities, cf. section 5.1, documentation for such other entities must be provided as well.

The DEA will accept the following documentation regarding minimum requirements on the technical and professional capacity, cf. section 6.2:

- The list of references, cf. section 6.2.2, that the Tenderer specifies in the ESPD, cf. section 7, will constitute the final documentation for the Tenderer's information about the technical and professional capacity. No additional documentation will be requested. However, the DEA reserves the right to contact the Tenderer, or the customer/authority stated in the reference for confirmation of the information stated in the reference.

12.1.3. Documentation regarding support from other entities, cf. section 5.1

If the Tenderer relies on the economic and financial and/or the technical and professional capacity of other entities, cf. section 5.1, the Tenderer must submit a declaration of support from each supporting entity, where the supporting entities declare to be legal obligated towards the Tenderer and the SPV (as the case may be). Annex B, (Letter of Commitment), may be used.

The Annex B, (Letter of Commitment), is only to be completed and signed by the entities on which the Tenderer relies upon regarding economic and financial and/or technical and professional capacity.

12.2. Finalisation of investment screening, cf. section 3.1

If the Successful Tenderer is subject to investment screening pursuant to the Danish Investment Screening Act, the Successful Tenderer must fulfil the following conditions before the conclusion of the Concession Agreement will take place:

- I. Provide the DEA with an authorisation (cf. § 5 of the Investment Screening Act) from the Danish Business Authority for the Successful Tenderer to incorporate the SPV for the purpose of the SPV to enter into the Concession Agreement (if relevant), and



- II. Provide the DEA with an authorisation (cf. § 7 of the Investment Screening Act) from the Danish Business Authority for the SPV to enter into the Concession Agreement (if relevant), or
- III. Provide the DEA with a confirmation from the Danish Business Authority that an authorisation is not required, e.g. based on a pre-screening under section 6(1) of the Executive Order no. 1491 of 25 June 2021 on the delimitation of the scope of application of the Investment Screening Act (if relevant)

If authorisation is granted subject to terms, it is furthermore a condition that such terms are acceptable to the DEA.

If an authorisation is required and such authorisation is subject to terms that constitute reservations to fundamental or non-fundamental elements, cf. section 7.3, and/or changes to the Successful Tenderer's tender, the DEA's award decision will lapse if such changes and/or reservations would have had effect on the DEA's award decision.

If the award decision is revoked by the DEA, the DEA will resume the evaluation of tenders and make a new award decision.

12.3. Other conditions for finalisation of the procurement procedure

The DEA will only sign the Concession Agreement provided the Successful Tenderer has complied with the requirements set out in section 1.4 above, within a reasonable deadline set by the DEA and under the condition that the Successful Tenderer/the shareholders of 100 per cent of the share capital of the Concessionaire (SPV) (as the case may be) simultaneously enters into the Irrevocable Undertaking, cf. Annex G, (Irrevocable Undertaking) implying that State Holding by the end of the Investment Period will become the owner of 20 per cent of the share capital of the Concessionaire (SPV) as further set out in section 1.4 above.

The DEA's decision to award the Concession Agreement is furthermore subject to the Successful Tenderer obtaining any required merger clearance(s) or, if relevant, derogation(s) from any standstill obligation(s) within reasonable time if the establishment of the SPV is subject to merger control clearance, cf. section 1.4.1.1. The Concession Agreement will not be concluded until the Successful Tenderer has established the SPV (if relevant) and obtained any such required merger clearance(s) or, if relevant, derogation(s) from any applicable standstill obligation(s).

Finally, the DEA will only sign the Concession Agreement provided the SPV delivers the guarantees required pursuant to Annex F, (Concession Agreement), Sub-Sections 16.2 and 16.3 at latest on the signing date, in a duly executed, valid and binding form and in accordance with the templates set out in Appendix 4, (Performance Guarantee) and Appendix 5, (Parent Company Guarantee). If the SPV is not able to provide the required guarantees at latest on the signing date, the DEA reserves the right to withdraw the award decision.



The DEA furthermore reserves the right to raise a claim against the Successful Tenderer for any loss suffered by DEA as a consequence thereof.

12.4. Prerequisites and conditions associated with the procurement procedure

Completion of the procurement procedure and signature of the Concession Agreement will be dependent on the following terms.

- The completion of the procurement procedure is contingent on the SEA and potential complaints are *not* giving rise to fundamental changes to the preconditions for carrying out the procurement procedure, since the procurement procedure may otherwise be annulled in accordance with the applicable public procurement regulation.
- The completion of the procurement procedure is contingent upon completion of the above-mentioned conditions, cf. 12.2 and 12.3

13. OTHER INFORMATION

13.1. Confidential information in the tender

Documents or information in the Tenderer's tender may be subject to the rules on access to documents. This means that competitors, etc., may request access to a tender submitted. According to the practice of the Danish Complaints Board for Public Procurement (*Klagenævnet for Udbud*), requests for access to documents from other Tenderers also participating in the procurement procedure must be granted by the DEA. However, in the assessment of whether to grant access to documents, the DEA will include considerations as to whether the Tenderer has asked that part of the tender be treated confidentially and has indicated which information/elements of the tender must be kept confidential.

If there is information or elements in the tender, which for business reasons are desired to be exempted from access to documents, the Tenderer is asked to state so in its tender. However, irrespective of the Tenderer's requests for confidentiality, the DEA will be entitled and obliged to give access to documents to the extent required by law.

13.2. International sanctions

Attention is drawn to Article 5k in Regulation (EU) No 833/2014 as amended by Regulation (EU) 2022/576 which applies for the procurement procedure. The provision contains a prohibition against award of contracts



to Russian companies and Russian controlled companies etc. (reference is made to Article 5k, section 1, for the exact delimitation of the actors covered by the prohibition). The DEA may at any time during the procurement procedure require that the Tenderers prove that they are not covered by the prohibition, for example by requiring documentation regarding the Tenderers' and any subcontractors' place of establishment and ownership. Annex D, (Declaration regarding sanctions against Russia), may be used for this purpose.