

California Offshore Wind Auction

Article By:

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On October 18, 2022, the Department of the Interior announced that the Bureau of Ocean Energy Management (“BOEM”) will hold an auction to sell five offshore wind energy leases in federal waters off the California coast, with two off the coast of Humboldt and three off the coast of Morro Bay. PACW-1 is the first sale of offshore wind leases on the west coast of the United States, and the first to support the development of floating offshore wind projects anywhere in the US. The auction follows the record-breaking New York Bight auction and the Carolina Long Bay auction, both held earlier this year.

Here are six things to be aware of regarding the sale of offshore wind leases in the Humboldt and Morro Bay Wind Energy Areas.

- 1. Leasing Areas:** On December 6, 2022, BOEM will auction off five leases: Lease OCS-P 561 and Lease OCS-P 562 in the Humboldt Wind Energy Area, and Lease OCS-P 563, Lease OCS-P 564, and Lease OCS-P 565 in the Morro Bay Wind Energy Area (collectively, the “Lease Areas”). Combined, the five Lease Areas comprise over 373,000 acres and up to 4.5 gigawatts (GW) of capacity. The sizes and locations of the Lease Areas remain unchanged from BOEM’s Proposed Sale Notice (the “PSN”), published on May 31, 2022.
- 2. Qualified Bidders and Pre-Auction Requirements:** BOEM has determined that there are forty-three entities that are qualified to bid. This represents a significant increase both from the twenty-three qualified entities that were listed in the PSN and from the total number of bidders in previous auctions (New York Bight, 25; Carolina Long Bay, 16). To participate in the auction, each qualified entity must submit a Bidder’s Financial Form (“BFF”) by November 4, 2022, describing its strategies to qualify for the non-monetary bidding credits discussed below and identifying any affiliations with other qualified entities. Each potential bidder must also submit a \$5 million deposit by November 21, 2022, certify its compliance with the federal government’s equal opportunity and affirmative action requirements for government contractors, and participate in a mock auction on December 5, 2022.
- 3. Auction Process:** The auction will be conducted according to a round-by-round system. BOEM will begin each round by naming an “asking price.” Bidders, who can only bid on one Lease Area per round, will have thirty minutes to place bids, and any bid that meets the asking price (through cash value or cash value plus non-monetary bidding credits, as

discussed further below) is considered a “live bid.” If at least two live bids are received for a Lease Area, the auction moves to the next round, which BOEM begins by naming a new asking price which bidders must again decide whether to meet. At any point after the first round, bidders can make an “exit bid” in an amount greater than the previous round’s asking price but less than the subsequent round’s asking price; however, a bidder cannot further bid on any Lease Area after making an exit bid. The auction for a Lease Area is over when a round ends with one or zero live bids, with the lone bidder prevailing in the case of a single live bid and, in the case of zero live bids, the highest exit bid (or the exit bid chosen by BOEM in the event of exit bids of equal amounts) prevailing. All winners are provisional until they sign the lease, provide a financial assurance instrument or surety bond in the amount of \$100,000 to BOEM, and pay the balance of their bid. A single bidder cannot purchase more than one lease at the auction. BOEM has set minimum bids for the areas from approximately \$6.33M (OCS-P 0561; 63,338 acres) to \$8.04M (OCS-P 0565; 80,418 acres).

4. **Bidding Credits:** BOEM has designed a multiple-factor bidding auction consisting of (a) a monetary bid, and (b) a non-monetary factor, whereby BOEM will grant bidding credits to potential bidders of up to 30% of the cash bid amount. BOEM will appoint a panel to review the non-monetary component after the BFFs and bid deposits have been received but before the auction, and will notify bidders if they qualify for the bidding credits prior to the mock auction on December 5th. Bidding credits will be granted as follows:
- **Workforce Training and Supply Chain Credit:** A bidder can receive a bidding credit of up to 20% of the amount of its cash bid in exchange for committing to make a qualifying monetary contribution (“Contribution”) to either (x) workforce training programs that support the floating offshore wind industry, or (y) the development of a U.S. domestic supply chain for the floating offshore wind energy industry, or a combination of the two.
 - **Lease Area Use Community Benefit Agreement (“CBA”) Credit:** A bidder can receive a bidding credit of up to 5% of their cash bid amount in exchange for establishing a CBA with one or more communities, stakeholder groups (e.g., fisheries industry groups), or tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the project.
 - **General CBA Credit:** A bidder can receive a bidding credit of up to 5% of their cash bid amount in exchange for establishing a CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from the project.

5. **Financial Terms and Conditions.**

- **Rent:** Each Lessee will be required to pay rent to BOEM in an amount equal to \$3 per acre per year until commercial operations under the lease begin. Thereafter, BOEM will charge rent only for the portions of the Lease Area remaining undeveloped (i.e., non-generating acreage). The Lessee must also pay rent for any project easement associated with the lease in an amount equal to \$5 per acre per year, subject to a minimum of \$450 per year.

- Operating Fee: Once commercial operations have commenced, Lessee will be required to pay an operating fee to BOEM. For purposes of calculating the initial annual operating fee payment BOEM will apply an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations, prorated.

6. Notable Lease Stipulations.

- In addition to the multiple-factor approach and based on feedback received from stakeholders BOEM included a number of novel stipulations for this sale. Notably, lessees will be required to make “every reasonable effort” to enter into a Project Labor Agreement (“PLA”). The PLA provisions for the construction of an offshore wind project would apply to all contractors. Additionally, lessees will be required to work with the California Native American Heritage Commission to identify Tribes that have cultural and or historical ties to the Lease Areas, to coordinate a tribal pre-survey meeting with such Tribes, and to submit a Native American Tribes Communications Plan.

Joshua Sturtevant and Nathan Barbara also contributed to this article.

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