

# Tender conditions for the establishment of Thor Offshore Wind Farm

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*The English version is a translation of the original in Danish for information purposes only. In case of a discrepancy, the Danish original will prevail.*

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## 1. The contracting authority

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## 2. About the tendering procedure and the contract notice in general

This tendering procedure concerns a concession agreement for the construction and connection to the grid of the Thor Offshore Wind Farm with associated internal collection grid up to the connection point onshore, with associated licences and authorisation.

For a more detailed description of the main content of the concession agreement, and for other relevant information on implementation of the project, see the Thor Offshore Wind Farm project description in annex 2. A draft concession agreement and associated model licences and a model authorisation are enclosed with the tendering materials as annexes 3, 3.1, 3.2, 3.3 and 3.4.

This tendering procedure is conducted as a negotiated procedure pursuant to the provisions in sections 61-66 of the Danish Public Procurement Act, Act no. 1564 of 15 December 2016 with later amendments. Only applicants that have been prequalified and invited to submit tenders can participate in the tendering procedure.

The contract notice is published at EU Tenders Electronic Daily, see contract notice no. 2020/S 187-448425, and the entire tendering material is available in the electronic tendering system at: <https://www.ethics.dk/ethics/eo#/bfb4d610-bfa1-4bfe-8808-6deb212e27cb/homepage>.

The tendering procedure is conducted as a negotiated procedure. Based on the negotiations undertaken, cf. section 66(5) of the Danish Public Procurement Act, as well as ~~any~~ questions from the tenderers, adjustments can be made to the tendering material. [This updated version of the tender tender material is made available to pre-qualified tenderers on June 24, 2021.](#) Furthermore, the Danish Energy Agency will provide a number of background information on e.g. environmental conditions, wind conditions, etc. available. [This information is made available to the pre-qualified tenderers as specified in Annex 10.](#) In addition, a strategic environmental assessment (SEA) of the plan for Thor Offshore Wind Farm ~~has will be been~~ published ~~once it has been prepared~~, and the results of a number of supplementary investigations ~~will be~~ **have been** made available for the tenderers ~~as they become available~~. ~~To the extent that any background information requires amendments to the tendering material, this will be done as supplementary information or documents in accordance with the section 134 of the Danish Public Procurement Act and the rules concerning such amendments for a tendering procedure conducted as a negotiated procedure.~~ Reference is made to section 4 of annex 2 (Project description for Thor Offshore Wind Farm) and annex 10 (existing data and results from preliminary investigations). Finally, notification to the European Commission according to the guidelines on State Aid has been done on 30 June 2020, ~~which may lead to adjustments in the tender material if the European Commission requires such adjustments regarding the design of the support model and the tender specifications.~~

Subsidies for The Offshore Wind Farm represents state aid in line with article 107, no. 1, of the Treaty on the Functioning of the European Union. The state aid has been notified in line with to the European Commission's guidelines on state aid for environmental protection and energy (Communication from the Commission, C 200, 28.6.2014, p. 1) and ~~was is excepted to be~~ approved by the European Commission ~~no later than on 1 March~~ July 2021. Granting and payment of subsidies in accordance with the conditions in the guidelines on state aid approval is required in order to ensure that subsidies to the concession winner are legal and compatible with the Single market rules.

See section 16 on prerequisites and conditions associated with the tendering procedure and the concession agreement.

All changes and additions ~~is have been~~ will be incorporated into the tendering materials with tracked changes, ~~will be highlighted in the text, and will be made available to tenderers well in advance of the deadline for submission of final tenders. The same applies to all supplementary investigations and other background information made available to tenderers. The Danish Energy Agency has designated some of the terms and conditions in the tendering materials as minimum requirements that cannot be negotiated, and these will not be changed during the tendering procedure. Nor will fundamental elements be subject to change during the tendering procedure, see more about this in section 8 on requirements methodology and changes to the tendering materials.~~

The Danish Energy Agency will notify all tenderers about any subsequent additional information or changes of the tendering materials through the electronic tendering system Ethics, when such versions are published.

If the Danish Energy Agency assesses that changes or supplementary information and documents constitute material changes to the tendering materials and that ~~applicants and~~ tenderers should therefore be given additional time to assess the tendering materials and prepare and submit ~~their application or a~~ tender, then the Agency will consider prolonging the deadlines in the tendering procedure.

All changes and supplementary information and documents make up part of the total tendering materials upon which final tenders are to be based.

### 3. Timetable up to the award of the concession agreement

The tendering procedure is expected to follow the ~~tentative~~ timetable below:

Date	Year	Action
1 October - 16 November	2020	Questions and answers period (prequalification)
<b>1 December at 12 noon</b>	<b>2020</b>	<b>Deadline for applying for prequalification</b>
14 January	2021	Expected notification of prequalification result
Medio January – beginning March	2021	Questions and answers period (initial tender)
<b>15 March at 12 noon</b>	<b>2021</b>	<b>Deadline for initial tender</b>
Beginning April	2021	The Danish Energy Agency publishes a final memorandum with themes and questions for negotiation
7 - 28 April	2021	Negotiation phase
<del>24 June</del> <u>August</u>	2021	The Danish Energy Agency publishes final tendering materials
<del>9 Beginning</del> August - - end October	2021	Questions and answers period (final tender)
<b>8 November at 12 noon</b>	<b>2021</b>	<b>Deadline for final tender</b>

3 December	2021	Expected decision regarding the tendering procedure After a 10-day standstill period, the concession agreement is signed
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~~Note that the dates after the prequalification deadline are tentative dates subject to final approval in the process.~~

Regardless of any changes to the timetable, the time limit for final tenders will be at least 90 calendar days.

#### 4. The tendering materials

The tendering materials comprise the following:

- **The contract notice**
- These **tender conditions**
- **Annexes** to the tender conditions:
  - Annex 1: Prequalification document Thor ([Only relevant for the pre-qualification phase](#))
  - Annex 2: Project description for Thor Offshore Wind Farm
  - Annex 3: Draft concession agreement
    - Annex 3.1: Model licence for preliminary investigations
    - Annex 3.2: Model licence for construction
      - Annex 3.2.1.: Requirements for marking and buoying
    - Annex 3.3: Model licence for electricity production
    - Annex 3.4: Model authorisation to produce electricity
    - Annex 3.5: Model demand guarantee
    - Annex 3.6: Model parent company guarantee
    - Annex 3.7: Draft grid connection agreement, including annexes
    - Annex 3.8: Grid connection interfaces
    - Annex 3.9: Subsidy scheme, award criterion and costs to be included in the tender
  - Annex 4: List of important dates for the establishment of Thor Offshore Wind Farm
  - Annex 5: Template for declaration of support ([Only relevant for the pre-qualification phase](#))
  - Annex 6.1: Template for declaration of intent demand guarantee
  - Annex 6.2: Template for letter of intent parent company guarantee
  - Annex 7: Template for initial tender letter ([Only relevant for the pre-qualification phase](#))
  - Annex 8: Template for final tender letter
  - Annex 9: Environmental assessment and licence process for Thor Offshore Wind Farm
  - Annex 10: Existing data and results from preliminary investigations
  - Annex 11: Examples of calculating different bids

#### 5. The electronic tendering system

The tendering materials are available in the electronic tendering system Ethics under

<https://www.ethics.dk/ethics/eo#/bfb4d610-bfa1-4bfe-8808-6deb212e27cb/homepage>.

Access to the tendering materials and to taking part in the tendering procedure requires creating a user in the system and registering for the tendering procedure. See the instructions in the Ethics tendering system. Contact [support@ethics.dk](mailto:support@ethics.dk) or call + 45-7022-7007 if you have problems registering or have other questions about the tendering system.

Certain data, etc. constitutes background material for the tender, and is not directly available at the above address, but at [www.ens.dk/Thor](http://www.ens.dk/Thor), as well as at a FTP-server, which is run by Energinet, where the material can be accessed, cf. annex 2 (project description) section 4 and annex 10 (existing data and results from preliminary investigations). Parts of this background material, including MetOcean data, are confidential. This confidential data will only be available to prequalified applicants in the tender, upon submitting a declaration of confidentiality.

## 6. Prequalification

Applications for prequalification for the tendering procedure are made by filling in and submitting the ESPD document by **no later than 1 December 2020 at 12 noon** via the electronic tendering system. Applications for prequalification **cannot** be submitted via email.

More detailed information about the prequalification requirements and process, including grounds for exclusion, suitability requirements and selection criteria, as well as about requirements for the documentation to be submitted by relevant applicants before the Danish Energy Agency decides on prequalification, are to be found in the contract notice and in annex 1 (Prequalification document Thor). These two documents are only available in English.

Only applicants that have been prequalified and invited to submit tenders can participate in the tendering procedure.

## 7. The award criterion

The award criterion is "Price".

Reference is made to Annex 3.9 (Support scheme, award criterion and costs to be included in the bid) and to Annex 11 (Examples of calculating different bids), which describes the support model and how the Danish Energy Agency will evaluate the bids and award the concession. Reference is also made to section 9 of Annex 3 (Draft concession agreement).

## 8. Requirements methodology and changes to the tendering materials

The minimum requirements in the tendering materials are the requirements defined in more detail in point 10.1. The minimum requirements cannot be changed during the tendering procedure and are not subject to negotiation. The final tender must not contain any reservations about the tendering material, including the minimum requirements. However, tenderers submitting an initial tender with reservations, including reservations about the minimum requirements will *not* be considered non-compliant.

The tendering materials may also include other fundamental aspects, which cannot be changed during the tendering procedure. Changes to fundamental aspects in the tendering materials are defined as changes that, according to a specific assessment, could have influenced the participation of potential applicants or tenderers in the tendering procedure, or that could have skewed the

competition among applicants or tenderers, had the change appeared in the original tendering materials, see section 24, no. 37, of the Danish Public Procurement Act.

The entire tendering procedure will take place with due consideration for the principles of equal treatment and transparency. This entails that the Danish Energy Agency must not subjectively favour the wishes of a single tenderer at the expense of opportunities for other tenderers to submit tenders. However, the individual change or the sum of changes do not have to be neutral towards all tenderers; what is crucial is that adjustments are only made to the tendering materials on the grounds of objective considerations such as the possibility to achieve a lower bid-price or the need to ensure that the project meets current relevant rules and requirements, including considerations for the environment, for security of supply and similar.

## 9. Tenders, formal requirements and reservations

### 9.1. Initial tender

Prequalified applicants (tenderers) are to submit an initial tender on the basis of the terms and conditions given in these tender conditions and associated annexes, including the project description in annex 2, the draft concession agreement in annex 3, as well as the model licences and model authorisation in annexes 3.1-3.4.

The initial tender must contain only a single bid-price, and the tenderer may not submit alternative tenders. The bid-price must be stated in “øre” in DKK with maximum two (2) decimals. The bid-price shall be above 0,00 øre/kWh.

The initial tender shall moreover state the installed capacity of Thor Offshore Wind Farm (wind farm size). The installed capacity shall be between 800 MW and 1,000 MW and must be stated in MW without decimals.

The bid-price in the initial tender is not binding, and will be treated with confidentiality.

The initial tender include the following:

- Initial tender letter (see annex 7) stating the bid-price and farm size. The initial tender must be signed by the tenderer.
- Input for the negotiations as described in section 10.1 and any reservations the tenderer may have about the tendering material.

A template for the initial tender letter has been enclosed as annex 7. The tenderer may use this template when submitting the initial tender.

The initial tenders and the indicated documentation etc. are to be submitted to the Danish Energy Agency via the electronic tendering system by **no later than on 15 March 2021 at 12 noon**. The material **cannot** be submitted via email or delivered physically. The final deadline will be announced at the same time as the notice of prequalification decision.

Initial tenders received after this date and time will not be considered, even though this does not exclude tenderers from further participation in the tendering procedure.

## 9.2. Final tender

At the end of the negotiation phase, tenderers will be invited to submit their final tender.

The final tender must contain only one single bid-price, which will be binding for the tenderer. The bid-price must be stated in “øre” in DKK with maximum two (2) decimals. The bid-price shall be above 0,00 øre/kWh.

The final tender shall moreover state the installed capacity of Thor Offshore Wind Farm being offered (farm size). The installed capacity shall be between 800 MW and 1,000 MW and must be stated in MW without decimals.

The tenderer must not submit alternative tenders.

If the tenderer’s final tender contain one or more reservations about the tendering material, the Danish Energy Agency will reject the tender. The tenderer will not have the opportunity to submit a new tender.

The final tender include the following:

- A final tender letter (cf. annex 8) indicating a bid-price and the farm size. The tender must be signed by the tenderer.
- Documentation that the signatory is authorised to sign for the company.
- A declaration of intent from a financial institution for the provision of a demand guarantee (annex 6.1) and a declaration of intent by the parent company to provide the parent company guarantee (annex 6.2) if the guarantee must be partly provided as the parent company guarantee.

By parent company is meant a company, which controls the tenderer/concessionaire, as defined in International Accounting Standard (IAS 27) of The International Accounting Standards Board (IASB). If the tenderer is a consortium or any other form of constellation, the tenderer is to be understood as any member of the consortium or constellation, which means that in this situation, only one parent company guarantee must be put in place regardless of the fact that several parent companies may be part of the consortium/constellation.

Reference is made to section 4 on guarantees in annex 3 (draft concession agreement).

In submitting the final tender, the tenderer makes a commitment to construct the electricity production plant and connect it to the grid, provided the terms and conditions under section 7 in annex 3 (Draft concession agreement) are met.

Furthermore, the tenderer must submit the following declarations with the final tender:

- 1) A solemn declaration that the tenderer has complied with any and each requirement to repay aid which, in a previous decision, the European Commission has found to be illegal and incompatible with the internal market
- 2) A solemn declaration stating that the tenderer is not an undertaking in difficulty as defined in point 20 in the Commission Communication on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Official Journal of the European Union, C 249, 31.7.2014, p. 1.)
- 3) A declaration that the tenderer's tender does not contain reservations and
- 4) A declaration that the tenderer understands that the Danish Energy Agency is entitled to publish information about the successful tender, including information about price premium capacity and the name of the successful tenderer.

It follows from EC regulations for subsidy for Thor Offshore Wind Farm, that the subsidy cannot be granted to a company, which has not complied with a demand for making return payments of subsidy, which the European Commission by an earlier decision has deemed illegal or non-compliant with the internal market. In relation to the submission of the final tender (offer), the tenderer must therefore provide a declaration concerning this, cf. declaration no. 1).

In accordance with the EC regulations for subsidy for Thor Offshore Wind Farm, the subsidy cannot be provided for a company, which is in financial difficulty. A company is in financial difficulty when it fulfills at least one of the circumstances, which are listed in point 20 of the European Commission's framework conditions on state aid for the rescuing and restructuring non-financial undertakings in difficulty (Official Journal of the European Union, C 249, 31 July 2014, p. 1). In relation to the submission of the final tender (offer), the tenderer must therefore provide a declaration concerning this, cf. the above declaration no. 2).

A template tender letter has been enclosed as annex 8. The tenderer may use this template to submit its final tender, to provide its declaration regarding its commitment to construct the electric power generating plant and connect it to the grid, as well as to provide the other declarations listed above. In the case that the tenderer chooses not to use the template in annex 8, the tenderer is encouraged to secure carefully, that the tender letter includes all required information.

If the tenderer is a company that has not yet been established, the founding companies and/or individuals must independently co-sign the final tender, see annex 8. If a company, that has not yet been established, is awarded the concession, then said company will have to be established before conclusion of the concession agreement.

The tenderer will bear the full commercial risk for the kWh price offered.

The ~~expected~~ deadline for submission of the final tender to the Danish Energy Agency is **no later than 8 November 2021 at 12 noon**.

~~The date will be finally determined after completion of negotiations and any resulting subsequent final adjustments to the tendering materials. The revised tendering materials will be submitted to the prequalified tenderers at the time of a confirmation of, or eventual new final deadline for submitting~~

~~final tenders. As mentioned under section 3, the deadline for submitting final tenders will be at least 90 calendar days from the date of publication of the revised final tendering materials.~~

Final tenders must be submitted to the Danish Energy Agency via the electronic tendering system. Tenders cannot be submitted via email. The final tender cannot be sent by email or be delivered physically. If the tender in the electronic tendering system contains multiple versions of the same document, the most recently uploaded version will be considered the valid one.

Tenders received after the deadline for submission of tenders will not be considered.

## 10. The negotiation phase

The following describes the terms and conditions and the process for the negotiations.

### 10.1. Themes for negotiation and minimum requirements

Below is a non-exhaustive list of topics, which the contracting authority considers most relevant as the basis for negotiations with tenderers:

- Topic 1: Size of the penalty for defective performance, the incentive for completion, the guarantees and the timing and phase-in of these (annex 3, draft concession agreement, section 3 and 4)
- Topic 2: Compensation for any delay in Energinet's grid connection (annex 3, draft concession agreement, section 10)
- Topic 3: Possible reasons for extending deadlines in the construction phase (annex 3, draft concession agreement, section 5)
- Topic 4: Dates for payment of costs of preliminary investigations and Energinet's onshore installations (annex 3, draft concession agreement, section 8)

The contracting authority may, during the negotiation phase, add new topics or change the topics to be discussed with the tenderers. For example, the initial tenders may make it relevant to add topics to the list above, cf. below.

For use in the negotiations, the tenderer is asked to enclose with its initial tender a document of no more than five pages with up to seven proposals for adjustments to the tendering materials which could reduce the costs of construction and operation of the offshore wind farm and thus provide for a lower final bid-price. These proposals can be based on, but are not limited to, the topics listed above and should be described in prioritised order with justifications. As far as possible, there should be a description of the importance of each proposal for the bid-price, preferably in DKK øre/kWh.

The following terms and conditions are minimum requirements and are not subject to negotiation:

- *The original pre-investigation area, which is made available for the establishment of the wind farm, but where the final gross area within the pre-investigation area is determined as described in annex 2 (project description) as well as in annex 3.1 (model licence for pre-investigation) and 3.2 (model licence for construction).*

- *The permitted size of the effect of the offshore wind farm in Point of Connection (PoC) (minimum 800 MW and maximum 1,000MW).*
- *The subsidy scheme in form of a 2-way Contract-for-Difference (CfD)*
- *The Concessionaire's obligation to establish the grid connection forward to the POC*
- *Energinet's establishment, operation and ownership of the onshore grid connection and the Concessionaire's obligation to pay the cost of this*
- *The date of completion (first kWh from the last turbine).*
- *The Concessionaire's obligation to re-establish the site*

See section 8 on requirements methodology and changes to the tendering material.

## **10.2. The negotiation process**

After receipt of the initial tenders and before the negotiation meetings, the Danish Energy Agency will issue a memorandum with the final topics and questions subject to negotiations. This will ensure everyone equal opportunity to review the topics prior to the negotiations. The memorandum will build on the items for negotiation mentioned above, as well as on the preliminary tender submitted by tenderers, which the Danish Energy Agency considers appropriate to include in the negotiations, see section 9.1. and 10.1.

At least one separate negotiation meeting will be held with each tenderer. The Danish Energy Agency reserves the right to hold several rounds of negotiation meetings if necessary, and/or to divide the negotiation meetings into meetings on different topics such as technical, legal and financial topics.

All tenderers will be invited to the same number of meetings about the same themes and the same amount of time will be provided for each meeting.

The Danish Energy Agency also reserves the right to ask supplementary, written questions to tenderers during the process.

The tenderers may be requested to submit additional tenders (second initial tender, third initial tender, etc.) if the Danish Energy Agency considers this necessary.

In the event of several negotiation rounds/additional tenders, the Danish Energy Agency will ensure that the tenderers are given sufficient time to prepare.

The Danish Energy Agency will not draw any conclusions about the changes to be made to the tendering materials at the meetings, but will decide this after completion of the final meeting, see section 11

The meetings will not be public. The Danish Energy Agency will take minutes at each meeting to record what was discussed at the meeting. The tenderer's material and minutes from the meeting will be treated with confidentiality. Tenderers will receive minutes only from the meetings they have participated in and not from meetings with other tenderers.

Negotiations themselves will not lead the Danish Energy Agency to restrict the number of final tenders. Thus, all tenderers will be able to submit a final tender.

As a public authority, the Danish Energy Agency is subject to the provisions of the Danish Access to Public Administration Files Act (LBK nr. 145 af 24. februar 2020 med senere ændringer), the Danish Public Administration Act (LBK nr. 433 af 22. april 2014 med senere ændringer) and the

Danish Environmental Information Act (LBK nr. 980 af 16. august 2017 med senere ændringer). Therefore, the Danish the Agency cannot rule out that access to all or parts of the tenderer's materials, or possibly to minutes of meetings, may be granted at a later stage. In this event, the tenderer will be consulted before hand.

Participants from the tenderer at negotiation meetings should be relevant key employees in the project with the required expertise. It is the intention that the negotiation meetings take place at the Danish Energy Agency's address in Copenhagen. However, the Danish Energy Agency reserves the right to conduct the meetings digitally, if the situation regarding Covid-19, including travel restrictions in Denmark or other countries, so prescribes. In this case, tenderers will be notified well in advance.

For practical reasons, the tenderer will be asked to notify how many representatives will be taking part in the negotiations on behalf of the tenderer. This notification is to be submitted via the electronic tendering system by no later than seven days before the meeting.

#### **11. Revised tendering material and submission of final tender**

After the negotiations, the Danish Energy Agency will decide whether the tendering materials need adjustment based on information and experience from the negotiation phase. The Danish Energy Agency will attempt to design the revised tender material in order to meet the Danish Energy Agency's wish for the lowest bid price and certainty for establishing the offshore wind farm with associated internal grid up to the Point of Connection, while at the same time ensuring that as many tenderers as possible can submit a competitive tender. The Danish Energy Agency cannot change the minimum requirements as defined in point 10.1. or fundamental elements in the initially published tendering material, cf. section 8.

The tenderers must submit their final tender on the basis of the revised tendering material published by the Danish Energy Agency. The revised tendering material will be submitted to the prequalified tenderers at the time of confirming or fixing a new final deadline for submitting final tenders. The final tender must be submitted in accordance with section 9.2.

#### **12. Costs of participation and period of validity of tenders**

All tenderer are bound by their final tender until the Concession Agreement is signed, though not longer than four months from the expiry of the deadline for submission of the final tender.

Regardless of the concession being granted to another tenderer, the tenderer is bound by his offer until the Danish Energy Agency has signed the concession agreement, but not for longer than the mentioned four months.

Tenderers' costs in connection with the tender are of no concern to the Danish Energy Agency. In this connection, note that the Danish Energy Agency assumes no liability if the tendering procedure is cancelled and no concession agreement is awarded, or if the necessary legislation is not adopted or if complaints or similar have the effect that the project cannot be implemented, etc. See also section 16 on prerequisites and conditions associated with the tendering procedure and the concession agreement.

### **13. Processing of tenders**

Opening of tenders will take place via the electronic tendering system at the Danish Energy Agency's address in Copenhagen under the presence of employees at the Danish Energy Agency directly involved in the tendering procedure, and optionally, the Danish Energy Agency's legal adviser as well as a consultant, who on behalf of the provider of the electronic tendering system, is entitled to be present.

The Danish Energy Agency will treat the tenders with confidentiality. Reference is made to paragraph 5 of the Danish Public Procurement Act and the practice of the Complaints Board for Public Procurement. However, the Danish Energy Agency is required to publish information about the content of the successful tender. The Danish Energy Agency is moreover required to provide access to documents pursuant to the rules on legal right of access in the Access to Public Administration Files Act, the Danish Public Administration Act and the Danish Environmental Information Act. In this event, the tenderer will be consulted before hand.

The tenderer must observe unconditional confidentiality towards third parties concerning matters, which might come to the tenderer's knowledge in connection with the tendering business.

### **14. Conclusion of the tendering procedure**

After receipt of the final tender, the Danish Energy Agency will decide on the award of the contract, and the agreement will be concluded. The process is described in more detail below.

#### **14.1. Confirmation of information submitted in the ESPD**

Further to its application for prequalification, the tenderer has submitted documentation for the information submitted in the ESPD document.

Before the award of the contract, the tenderer to which the Danish Energy Agency intends to award the contract must declare solemnly that the information submitted in the ESPD remains valid and that the previously submitted documentation is still correct. The Danish Energy Agency may, however, require the submission of new documentation if the Agency deems this to be necessary.

#### **14.2. Award decision and notification**

Once the Danish Energy Agency has assessed which tender has the lowest price relative to the award criterion, cf. section 7 and annex 3.9 (Subsidy scheme, award criteria and costs to be included in the tender), and has approved any eventual new documentation, cf. section 14.1, then the Danish Energy Agency will decide on the award of the concession agreement.

However, if the bid-price in the successful tender is above the budget evaluation threshold, the award of the concession agreement will require prior approval by the parties to the Energy Agreement of June 2018, cf. annex 3.9.

The Danish Energy Agency will subsequently notify all tenderers at the same time about the award decision. The notification provided to the tenderers that are not awarded the concession agreement will contain information about the successful bid-price and farm size, as well as when the standstill period is to expire.

The Danish Energy Agency reserves the right to cancel the tendering procedure, as long as this cancellation is not in conflict with the equal treatment principal or as long as this cannot in any other way be deemed non-factual. Reference is made to section 16 on prerequisites and conditions associated with the tendering procedure and the concession agreement.

### 14.3. Conclusion of the concession agreement

Notification of the award decision to the tenderers does not mean that the concession agreement has been concluded. The concession agreement will not be considered concluded (and the tendering procedure finally completed) until the concession agreement has been signed. The concession agreement cannot be signed until the expiry of the standstill period. This period must be at least 10 calendar days calculated from the day after the day when the Danish Energy Agency has submitted its notification about the award decision via the electronic tendering system to all tenderers.

Furthermore, reference is made to section 16 on prerequisites and conditions associated with the tendering procedure and the concession agreement and point 7 in the draft concession agreement, cf. annex 3.

It is a condition for the Danish Energy Agency's signature to the concession agreement that the guarantee of DKK 1.12 bn. covering the penalty for defective performance has been provided pursuant to point 4.1 in the draft concession agreement, cf. annex 3.

If the winner of the tendering procedure has relied on the support of other economic operators to meet the technical minimum requirements in connection with the prequalification, it is moreover a condition for the Danish Energy Agency's signature to the concession agreement, that the winner before this happens, presents signed contracts concerning relevant parts of the construction and/or operation of Thor Offshore Wind Farm with the company(ies) on which the tenderer has based its application for prequalification in order to meet the technical minimum requirements.

If the winner of the tendering procedure has relied on other economic operators to meet the minimum economic and financial minimum requirements of the prequalification, these economic operators must also sign the concession agreement. Supporting economic operators are assumed jointly and several liable with the Concessionaire concerning fulfilling the concession agreement, cf. point 14 in annex 3.

As soon as possible after signing the concession agreement, and latest 1 April 2020~~2~~, the concessionaire must submit information about the planned project and the intended preliminary investigations for use in issuing a licence to carry out preliminary investigations, see annex 3.1 (model licence for preliminary investigations). Reference is made to point 2.1-2.3 in the draft concession agreement (annex 3) and annex 9 (environmental and permitting process).

## 15. Changes to the composition of the tenderer during the tendering procedure

As a general rule, there should be no changes to the composition of the tenderer during the tendering procedure.

Changes with regard to the entities on which the tenderer has relied financially or technically, or changes with regard to financial entities within a consortium etc., may only be made after approval

by the Danish Energy Agency, and in accordance with the current rules. Please refer to the detailed rules there.

## 16. Prerequisites and conditions associated with the tendering procedure and the concession agreement

~~From the originally published version of the tender material, it appeared that the~~ completion of the tendering procedure depends on a number of matters, just as the concession agreement after being awarded and signed will be conditional upon certain terms. ~~A number of these terms are currently clarified as, which are~~ described in the following.

The European Commission must approve that the terms and conditions of the tendering procedure for Thor Offshore Wind Farm are compatible with EU state aid regulations. The Danish Energy Agency therefore reserves the right to cancel the tendering procedure if the Agency ~~would~~ fails to obtain this approval from the European Commission, or if the European Commission ~~would happen to setpoint~~ out any conditions for the approval which pertain to the design of the support model and which necessitate changes to fundamental aspects of the tendering procedure, including the minimum requirements and award criteria, cf. section 7 and annex 3,9 (Subsidy scheme, award criteria and cost to be included in the tender) and point 9 on settlement terms in the draft concession agreement, cf. annex 3. The pre-notification to the European Commission for state-aid approval of the subsidy scheme for Thor Offshore Wind Farm was submitted on 30 June 2020 and ~~is expected to be was~~ approved ~~on by no later than~~ on 1 ~~March~~ July 2021, ~~and, thus, well in advance of the deadline for submission of tenders.~~

~~Furthermore, it is assumed that the Danish Parliament (Folketinget) will approve the changes to the Danish Renewable Energy Act required for the special model for CfD (Contract for Difference) and settlement for Thor Offshore Wind Farm. It is expected that the Parliament's approval will be available in autumn 2020, so that the change can be implemented immediately after the EU Commission's approval and no later than 1 July 2021. Moreover, the Danish Renewable Energy Act was approved by the Danish Parliament (Folketinget) on 21 December, 2020 ((Lov nr. 2065 af 21/12/2020) and enter into force on 1 July 2021.~~

Completion of the tendering procedure, and ultimately the award of the concession agreement, is moreover contingent on the Minister for Climate, Energy and Utilities making the necessary changes to the Wind Turbine Grid Connection Order (Executive Order no. 864 of 25 June 2018) by no later than 1 July 2021 pursuant to the political decisions that the tendering of Thor Offshore Wind Farm shall include the grid connection forward to POC. ~~The executive order has been in consultation in the spring of 2021 and will enter into force on 1 July 2021.~~

Finally, completion of the tendering procedure, and ultimately the award of the concession agreement, is contingent on the strategic environmental assessment (SEA) of the Thor Offshore Wind Farm plan and any complaints *not* giving rise to significant changes to the preconditions for carrying out the tendering procedure, including pursuant to annex 3.1 (model licence for preinvestigation) and annex 3.2 (model licence for construction), or to significant changes to the EIA approval for the onshore installation referred to in section 4 of annex 2 (project description for Thor Offshore Wind Farm).

In the situations described above, the tendering procedure may be cancelled.

Furthermore, the concession agreement will be conditional upon those of the above conditions, which are not settled at the time of signing the contract. Reference is made to section 7 of annex 3 (draft concession agreement).

The Danish Energy Agency also reserves the ordinary right to cancel the tendering procedure, i.e. providing such cancellation is not made for reasons that conflict with the equal treatment principle or is otherwise deemed non-factual. For example, if all of the tenders submitted are above the budget evaluation threshold, and the parties to the Energy Agreement decide that the tender with the lowest expected total support costs over the 20-year period is too high, as described in annex 3.9 (Subsidy scheme, award criteria and cost to be included in the tender).

## **17. Communication and questions**

All communication regarding this tendering procedure will be through the electronic tendering system.

Applicants and tenderers can submit written questions about the tendering materials.

It is important to the Danish Energy Agency that all potential tenderers are given the opportunity to submit relevant tenders within the framework of the tender specifications, i.e. without reservations for elements in the revised tendering material. All potential tenderers are therefore encouraged to use the opportunity to submit written questions on the tendering materials, including pointing out conditions which they find less appropriate.

All questions must be in writing and in English, and they are to be submitted via the electronic tendering system.

Questions and answers will be published in anonymous format in the electronic tendering system.

### *Questions and answers - prequalification*

During the prequalification phase, questions can be submitted until and including 16 November 2020. The Danish Energy Agency will only answer questions submitted after this date if it is possible for the Agency to do so by no later than six days before the expiry of the deadline for applications for prequalification, see section 6.

### *Questions and answers - initial tenders*

From the publication of the prequalification and until 14 days before the deadline for submission of the initial tenders there will be opportunity to ask questions. In the period from this date and up to the conclusion of the negotiations, the Danish Energy Agency will only answer questions about topics that are not a part of the negotiations. Questions that are received later than the stated time, can only be expected to be answered to the extent that it is possible for the Danish Energy Agency to do this no later than 6 days before the expiry of the deadline for submitting preliminary tenders.

### *Questions and answers - final tenders*

After publication of the revised tendering material, expectedly by ~~24 June~~ August 2021, questions may be submitted from 9. August 2021 up to and including 14 days before the deadline for the submission of the final tender, see section 3. Tenderers are requested to submit questions well in

advance of ~~this time~~ the deadline for submission of the final bid. The Danish Energy Agency will only answer questions submitted after this date if it is possible for the Agency to do so by no later than six days before the expiry of the deadline for submission of final tenders.

*Eventual amendments to the tender material etc.*

If a question during one of the phases (deadlines for pre-qualification, initial tender and final tender) gives rise to clarifying, adjusting or adding to the tendering materials, information about this will be given along with the answer to the question. If the answer to a question so requires, corrections or supplementary information will be published in the electronic tendering system. If the Danish Energy Agency considers it necessary, the Danish Energy Agency will extend the deadline in the relevant phase.

There will be no publication of changes later than 6 days before expiry of the final deadline for submission in each phase.

## **18. Language**

The indicative as well as the final tender must be in Danish or English.

The Danish Energy Agency has as a point of departure prepared the tendering material in Danish. Most of the tendering material will also be made available in an English translation, except for annex 3.7 (Draft grid connection agreement) including underlying annexes, which is only available in Danish. However, where material is available in both a Danish and English version, the Danish version will prevail. Therefore, in the event of any discrepancy between the Danish version and the English translation, the Danish version prevails. One of the annexes to the tendering materials, annex 1 (the prequalification document), is only available in an English version and will not be published in a Danish version.

Documentation for information provided in the ESPD and other documentation, including extracts from relevant registers, accounts and declarations, etc., which are not written in Danish or English, are submitted in the original language with an English translation prepared by an authorized translator and signed with an apostille in accordance with the Hauge Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.

The Danish authorities may require that case processing of the project be in Danish.

## **19. Further information**

Note that all information about the tendering procedure, including replies to questions, information about preliminary investigation material, etc. and changes to the tendering material, will be published via the electronic tendering system.

Applicants and tenderers are therefore encouraged to keep informed and up-to-date via the electronic tendering system.