

Legal Update

US BOEM Announces North Carolina Offshore Wind Auction

On March 25, 2022, the Bureau of Ocean Energy Management (BOEM) [announced](#) that it will hold a competitive auction for two lease areas (totaling roughly 110,091 acres) in the Carolina Long Bay area, which is off the coast of North Carolina. The auction will take place on May 11, 2022, and is estimated to last one to two business days. Based on comments received on the November 1, 2021, [Proposed Sale Notice](#), BOEM will be implementing a new auction format, it modified the area to be leased, and it added and modified the lease stipulations.

New Multi-Factor Auction Format

Instead of the purely ascending monetary auctions held in the past, BOEM will use a multi-factor auction format that has a combination of a monetary bid and a non-monetary factor. A bidder can receive a credit of 20 percent of its bid in exchange for committing to make qualified monetary contributions to workforce training and/or supply chain development programs or initiatives. Each bidder is required to identify whether it is making the commitment to earn the bidding credit in the Bidder Financial Form (BFF), which is due on April 11, 2022. Each bidder is also required to submit a conceptual strategy that describes objective, quantifiable and verifiable actions that will be taken to qualify for the credit, which is due with bid deposits on April 25, 2022. BOEM will appoint a panel to review the non-monetary component after the BFFs and bid deposits have been received.

The auction will proceed in rounds with incremental price increases until no more than one active bidder remains for each of the two lease areas. Unlike the New York Bight auction, which limited bidders to winning one lease area, bidders for the North Carolina auction can win both lease areas. The bid made by a bidder in each round will represent the sum of the monetary amount (cash) and the non-monetary factor (bidding credit). The first round will last 30 minutes, and subsequent rounds are expected to last approximately 10-20 minutes with a short 10-minute recess in between. BOEM has set a minimum bid of \$50 per acre for each lease area, which is lower than the minimum bid set for the New York Bight auction (i.e., \$100 per acre). At the end of the auction, BOEM will announce the provisional winners. BOEM is holding a mock auction on May 6, 2022, for qualified bidders.

Qualified Bidders

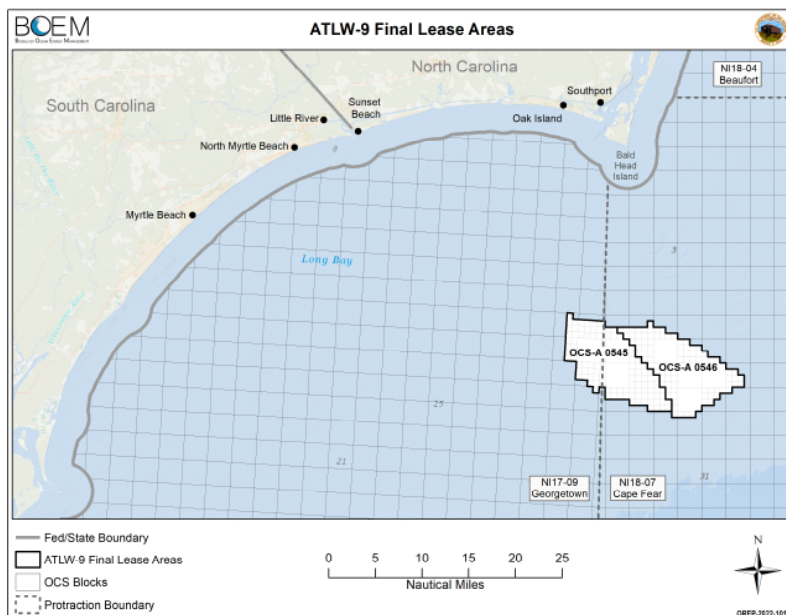
There are 16 entities qualified to bid in the auction. Prior to the auction, each entity is required to submit a BFF that, among other things, lists eligible bidders with whom they are affiliated. Affiliated entities cannot compete against each other in the auction. The qualified bidders are:

1. 547 Energy LLC
2. Arevia Power LLC
3. Avangrid Renewables, LLC
4. BP US Offshore Wind Energy LLC
5. Invenergy Long Bay Offshore LLC
6. Carolina Offshore Wind LLC
7. Duke Energy Renewables Wind, LLC
8. EDF Renewables Development, Inc.
9. JERA Renewables NA, LLC
10. Masdar Offshore Wind Americas LLC
11. MRP Offshore Wind Farm LLC
12. Orsted North America Inc.
13. OW North America Ventures LLC
14. RWE Offshore Wind Holdings, LLC
15. Shell New Energies US LLC
16. TotalEnergies Renewables USA, LLC

Each of these entities was required to submit its qualifications package by January 3, 2022, which was before the New York Bight auction was held. For the New York Bight auction, while 25 entities were qualified, only 14 ended up competing in the auction.

Modified Lease Area

In response to comments received, BOEM reduced the total lease area by 14 percent, resulting in 110,091 acres to be offered for sale instead of the previously proposed 127,865 acres. BOEM removed from the lease area all lease blocks within 20 statute miles from the shoreline (i.e., roughly 13,474 acres in the northern portion of the lease area) and lease blocks that overlapped with the navigational fairway proposed by the US Coast Guard (i.e., 4,300 acres in the southeast portion of the lease area). In addition, BOEM will be auctioning two separate leases. BOEM divided the lease areas to have similar acreage, distance to shore and wind resource potential. (OCS-A 0545 totals 54,937 acres, and OCS-A 0546 totals 55,154 acres).



New and Modified Lease Stipulations

BOEM's Final Sale Notice added and modified certain lease stipulations.

- First, building on an existing lease stipulation, BOEM is requiring semi-annual progress reports that, among other things, identify potentially affected tribes and people; consider a project's potential impacts on other identified parties; coordinate with other lessees on party engagement; develop communications plans for fisheries, tribes and agencies; and provide updates on activities executed under any survey plan.
- Second, BOEM is requiring lessees to seek input and discussion with tribes and parties surrounding transmission easements prior to proposing such easements. In addition, consistent with its ongoing transmission planning efforts, BOEM may condition approval of a lessee's Commercial and Operations Plan on the incorporation of certain transmission methods, including cable corridors, regional transmission systems and meshed systems.
- Third, as a result of consultation with the US Fish and Wildlife Service, BOEM will require the installation of automated tracking systems on meteorological buoys to monitor bird and bat movement.
- Fourth, to encourage union-built projects and the growth of the domestic supply chain, BOEM will require each lessee to establish a goal statement and provide progress updates regarding the lessee's contribution to the US-based offshore wind industry supply chain, as well as make every reasonable effort to enter a project labor agreement covering the construction stage, which is to apply to all contractors.
- Fifth, lessees with abutting leases must either collaborate on the layout of surface structures or incorporate a one-nautical-mile setback from the abutting boundary.
- Finally, BOEM will require lessees to implement Project Design Criteria and Best Management Practices that include mitigation, monitoring and reporting requirements for noise reduction, mooring design, and marine debris and vessels so as to avoid interaction with or entanglement with protected species under the Endangered Species Act.

Based on the recent New York Bight auction and the growing interest and entrances into the offshore market, the upcoming North Carolina auction will undoubtedly be competitive and exciting.

Simultaneously, BOEM released the final [Supplemental Environmental Assessment](#) for lease issuance and site assessment activities in the Wilmington East Wind Energy Area, which includes the two lease areas to be auctioned. BOEM concluded that the proposed actions would not cause any significant impacts and do not trigger the need for a full Environmental Impact Statement.

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[The Law off the Land: Why Offshore Wind Developers, Utilities, and Investors Should Give Early Consideration to Environmental Law Risks](#)

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