

TENDER SPECIFICATIONS

Contract on subsidy for carbon capture,
transport and storage

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Invitation to tender for Contract on subsidy for carbon capture, transport and storage

1. INTRODUCTION

Economic operators interested in participating in the tender procedure must request for participation by submission of the ESPD.

Information regarding the prequalification, including e.g., requirements and criteria and the deadline for submitting requests to participate, are stipulated in the Contract Notice. As stated in the Contract Notice, section VI.3), the candidate is requested with its application for prequalification to submit a letter of commitment if the candidate relies on the technical and/or financial capacity of other entities, see Appendix E, Template for letter of commitment. Reference is also made to Guide to the ESPD.

These Tender specifications are only relevant to candidates who have been prequalified to submit first Indicative Offer and to participate in the negotiation phase. The Tender specifications provides guidelines for submission of Offers, communication between the tenderer and the DEA, information about the negotiations and the tender procedure in general.

2. OVERALL DESCRIPTION OF THE PROCUREMENT

2.1 The Contract

With the Danish Climate Agreement for Energy and Industry of 22 June 2020, a majority of the Danish Parliament decided that carbon capture and storage is to be an important element in achieving Denmark's climate policy objectives. This prompted the setting up of technologically neutral and market-based funds (CCUS funds) of DKK 16 billion scheduled for deployment between 2024-2048. The funds are deployed in two phases. This tender concerns the first phase.

The DEA wishes to enter into one Contract pursuant to which the recipient of the subsidies ("the Operator") shall ensure and be responsible for capture, transportation and permanent storage of CO₂ ("the Contract").

The Contract has been put out to tender by a previous tender procedure, cf. Contract Notice no. 2022/S 087-236640. The previous procedure was cancelled by the DEA according to contract award notice dispatched on 3 June 2022. See further below.

The funds are intended to provide subsidy for carbon capture and storage on flue gasses emitted by incineration. The funds are not intended to provide subsidy for carbon capture and storage on biogenic sources emitted without incineration. See https://kefm.dk/Media/637750803075155837/Faktaark_Tilskudspuljer%20til%20fangst%20og%20lagring%20af%20CO%E2%82%82_V02.pdf. The funds are not intended to provide subsidy for carbon emissions that originate from flaring related to oil and gas production in the Danish North Sea.

As described in the tender documents the Operator shall ensure that the CO₂ reductions equate to a minimum quantity of 0.4 MT captured and permanently stored CO₂ per year starting with year 2026. The Operator may also capture and permanently store CO₂ from start of operation until 31 December 2025, and/or capture and permanently store additional quantities of CO₂ from 1 January 2026. The Operator may deliver the reductions with one point source, a combination of point sources or a portfolio of several point sources.

The subsidy will be paid per ton CO₂ captured and permanently stored.

If the Operator achieves a larger quantity of reductions than the guaranteed quantity in any given year, the Operator may receive subsidy for such larger quantity if and to the extent that there are available funds within the limit of the yearly maximum allocated subsidy.

In addition to the CO₂ reductions, it is expected that the Operator shall deliver various documentation and reporting and make available various information/knowledge, data, etc. to the DEA and to third parties.

The Contract is expected to have a duration of approx. 20-21 years of operation (in addition to the prior pre-construction and construction phases), unless terminated earlier in accordance with the terms set out in the Contract.

The DEA will notify the funds to the European Commission as an aid scheme in accordance with the procedure prescribed by Article 108 of the Treaty on the Functioning of the European Union and the deployment of the funds is dependent on the European Commission's prior approval. The tender procedure, including the award of the Contract, is conducted subject to the necessary legislative changes. See further below paragraph 3.

The Contract is not divided into lots as the DEA considers award of one contract to be most efficient due to the nature of the Contract, including that the Contract entails a significant investment for the Operator and that the annual subsidy amount is subject to an annual subsidy cap, thereby limiting the maximum available amount of subsidy per year.

This tender procedure is conducted as an independent procedure and separately from the previous procedure. The candidates should therefore only refer to this Contract Notice and the tender documents published in connection with this Contract Notice, see the address to the electronic tendering system in section I.3) of the Contract Notice. The tender documents are based on the tender documents of the previous procedure but have been subject to various adjustments.

The DEA has made the brief minutes from the information meeting held on 20 May 2022, answered questions etc. from the previous procedure available in the electronic tendering system.

2.2 The tender procedure

The DEA considers the deployment of funds for the first phase and conclusion of the contract to be a subsidy scheme encompassed by the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022. The designation of the contract as a services contract in the Contract Notice, section II.1.3), etc. does not change this.

The competitive bidding process for the first phase will be conducted as a negotiated procedure in accordance with the rules and principles of section II of the Danish Public Procurement Act, see also the Contract Notice, sections II.1.4) and IV.1.1)).

The basis for the choice of procedure is that the DEA considers that the needs of the DEA cannot be met without adaptation of solutions already available, that the contract includes design or innovative solutions, that the contract cannot be awarded without prior negotiation due to the special circumstances related to its nature and complexity, its legal and financial aspects and the associated risks, and that the DEA cannot define the technical specifications with sufficient precision by reference to a standard etc., cf. section 61(1), para a-d, of the Danish Public Procurement Act.

In essence, the tender procedure encompasses a very significant and complex subsidy scheme that has never been subject to a competitive procure before and that, in general, is completely novel. At the same time, the tender is expected to attract attention from both private and public economic operators, and there are simultaneous and ongoing legislative processes regarding CCS (see paragraph 3 below). This necessitates that the DEA is able to negotiate various aspects of both the tender documents and the offers received and to make potentially significant changes to the tender documents.

As stated in the Contract Notice, section II.2.4), all requirements that are not Minimum Requirements may therefore be subject to negotiation and may be changed or withdrawn during the tender procedure according to the DEA's decision. Thus, the DEA encourages all economic operators who can comply with the Minimum Requirements (and fulfil the minimum requirements for participation, see Contract Notice sections III.1.2) and

III.1.3)) to apply for prequalification, even if the economic operator cannot comply with all General Requirements.

Reference is also made to paragraph [13.3](#)~~13.2~~ below and Appendix B, Negotiation plan, of the Tender specifications regarding the expected topics for negotiation.

3. PREQUISITES AND CONDITIONS ASSOCIATED WITH THE TENDER PROCEDURE AND CONTRACT

As stated in the Contract Notice, section II.2.4), the DEA will notify the funds to the European Commission as an aid scheme in accordance with the procedure prescribed by Article 108 of the Treaty on the Functioning of the European Union and the deployment of the funds is dependent on the European Commission's prior approval.

The DEA reserves the right to cancel the tender procedure if the approval from the European Commission is not obtained, or if the European Commission stipulates conditions for the approval which necessitate changes to fundamental elements of the tender documents.

Further, as stated in the Contract Notice, section II.2.4), the tender procedure, including the award of the Contract, is conducted subject to the necessary legislative changes. The DEA reserves the right to cancel the tender procedure if the necessary legislative changes are not adopted prior to conclusion of the Contract.

Necessary legislative changes include, i.a., an amendment to the Danish Heating Supply Act (in Danish: "*varmeforsyningsloven*") to the effect that the value of excess EU emission allowances, where the excess is a result of state subsidised CCUS, shall be transferred to the entity capturing the CO₂ which must include the value in the calculation of the subsidies.

It is also noted that the tender procedure is prepared in order to take into account the ongoing process of providing a legal basis for municipally owned entities (whether owned directly or indirectly) to enter into the Contract. Reference is also made to paragraph 11.

The legal basis is expected to cover municipalities and municipally owned entities subject to the approval criteria in the Danish Heating Supply Act (in Danish: "*varmeforsyningsloven*") or the Danish Electricity Supply Act (in Danish: "*elforsyningsloven*"). The legislative changes are planned to be adopted in Autumn or Winter 2022 and to enter into force on 1 January 2023.

It is emphasised that in general the DEA is not obliged to award the contract and that the DEA reserves the right to cancel the tender procedure for other reasons than those mentioned in this paragraph, see also paragraph 17.

4. EXPECTED TIME SCHEDULE FOR THE TENDER PROCEDURE

The expected time schedule for the tender procedure is stipulated below:

Timing	Activity
7 June 2022	Date of the electronic transmission of the Contract Notice to Tenders Electronic Daily
18 July 2022	Deadline for questions regarding requests for participation Questions asked after this date will be answered if they are received in time for the DEA to communicate the answers within six days before expiry of the deadline for prequalification submission, cf. Contract Notice, sections IV.2.2) and VI.3).
1 August 2022, 23:59 CET	Deadline for requests for participation
12 August 2022	Decision regarding selection of economic operators
24 August 2022	Information meeting
16 September 2022	Deadline for comments to the tender documents
23 September 2022	Deadline for questions regarding submission of first Indicative Offer ("INDO"). Questions asked after this date will be answered if they are received in time for the DEA to communicate the answers within six days before expiry of the deadline for submission of first Indicative Offer (INDO), cf. paragraph 9.
7 October 2022, 13:00 CET	Deadline for INDO submission
7-31 November October – 18-28 November 2022	Negotiations and release of final <u>revised</u> tender documents
<u>7 December 2022</u>	<u>Deadline for questions regarding submission of second Indicative Offer ("INDO2").</u> <u>Questions asked after this date will be answered if they are received in time for the DEA to communicate the answers within six days before expiry of the deadline for submission of second Indicative Offer (INDO2), cf. paragraph 9.</u>
<u>21 December 2022, 13:00 CET</u>	<u>Deadline for INDO2 submission</u>
<u>23 January – 27 January 2023</u>	<u>Negotiations and release of final tender documents</u>
<u>TBD</u>	<u>Deadline for questions regarding submission of Best and Final Offer ("BAFO"), see paragraph 9.</u>

16-10 December February 2023 2 , 13:00 CET	Deadline for Best and Final Offer ("BAFO") submission
Middle-End of January February 2023	Decision regarding award of the Contract

The actual time schedule may end up varying from the expected time schedule stipulated above.

The DEA will communicate any deviations to the time schedule to all tenderers participating in the tender procedure.

5. THE TENDER DOCUMENTS

The tender documents form the basis of tenderer's submission of both the first Indicative Offer (INDO), any subsequent Indicative Offers (e.g. INDO2, INDO3 etc.) and Best and Final Offer (BAFO) and for conducting negotiations. The tender documents are available via the electronic tendering system.

The tender documents consist of the following documents:

- Contract Notice
- Guide to the ESPD
- These Tender specifications
- Appendices to the **Tender specifications**:
 - Appendix A: Offer evaluation (award criteria and evaluation method)
 - Appendix B: Negotiation plan
 - Appendix C: Template for the tenderer's comments to the tender documents
 - Appendix D: Template for offer submission letter
 - Appendix E: ~~Template for letter of commitment~~ [\[Not relevant after prequalification\]](#)
 - [Appendix F: Calculation of penalty](#)
- Draft of **Contract**
- Draft of Appendices 1-12 of the **Contract** which will become part of the contract when the tender procedure is concluded:
 - Appendix 1: European Commission's Decision SA [no] State aid to [the Operator]
 - Appendix 2: Definitions
 - Appendix 3: Requirements specification

- Appendix 4: Solution description
- Appendix 5: Time schedules
- Appendix 6: Subsidy and economy scheme
- Appendix 7: Subsidy and costs
- Appendix 8: Governance
- Appendix 9: Code of Conduct
- Appendix 10: Change management
- Appendix 11: Model performance and warranty guarantee
- [Appendix 12: Model parent company guarantee](#)
- [Appendix 13: Information about Sub-Suppliers](#)

As stated in the Contract Notice, section VI.3), the candidate is requested with its application for prequalification to submit a letter of commitment if the candidate relies on the technical and/or financial capacity of other entities, see Appendix E, Template for letter of commitment. The letter of commitment is to be filled in and signed by the operator(s) who make/makes the technical and/or financial capacity available to the candidate.

If the tenderers should identify aspects of the tender documents that appear inappropriate, including matters that are assessed to constitute substantial risk or cost factors or are commercially inappropriate, the tenderers are requested to use the table in Appendix C, Template for the tenderer's comments to the tender documents, see paragraph 10 below.

Changes to the tender documents will be communicated to all tenderers participating in the tender through the electronic tendering system.

6. REQUIREMENTS METHODOLOGY

6.1 Introduction

The DEA has divided the requirements in the tender documents into Minimum Requirements, see paragraph 6.2, and General Requirements, see paragraph 6.3.

Reference is made to paragraph 12.2 regarding the tenderer's right to make reservations to requirements in the negotiation phase; to paragraph ~~13.3~~13.2 regarding the DEA's right to change requirements during the negotiation phase; and to paragraph 14.3 regarding the tenderer's right to make reservations to requirements in the Best and Final Offer (BAFO).

6.2 Minimum Requirements

Minimum Requirements (MR) (*in Danish: "mindstekrav"*) refers to the DEA's fundamental needs. Minimum Requirements (MR) are mandatory requirements which cannot be changed during the tender procedure, but

see paragraph ~~13.3~~13.2, 2nd section, and which must be fulfilled by the tenderers in their Best and Final Offer. Minimum Requirements (MR) are therefore not included in the tender evaluation. It is stated in the tender documents which requirements are Minimum Requirements.

6.3 General Requirements

General Requirements (R) means all other requirements set out in the tender documents by the DEA that are not Minimum Requirements, see the description in paragraph 6.2 regarding "Minimum Requirements".

All requirements that are not Minimum Requirements, such as the project description in Appendix 3, Requirements specification, and the provisions of the Contract, may be subject to negotiation and may be changed or withdrawn according to the DEA's decision. General Requirements (R) must be complied with in the Best and Final Offer (BAFO), but see paragraph 14.3, 3rd and 4th section.

7. COMMUNICATION

All communication between the tenderer and the DEA in connection with the tender procedure must be in English and must be submitted via Digital Tendering System ("Digitale Udbud") (the electronic tendering system).

The electronic tendering system is accessed via the link <https://eu.eu-supply.com/login.asp?B=KA>.

The tenderer logs on with the same user profile as that used for the prequalification application.

The tender procedure is accessed under the tab "Ongoing procedures". If not already registered as a user, the tenderer may do so under "Online registration". When the tenderer is logged on to the electronic tendering system, this procedure is accessed via "Public RFTs" (requests for tenders). The tenderer may sign up for alerts to receive e-mail notices when new information regarding the procedure is available, e.g. questions. However, the tenderer is advised to stay updated by regularly accessing the electronic tendering system.

If the tenderer should encounter problems with the electronic tendering system, the tenderer may contact technical support, either by e-mail dksupport@eu-supply.com or telephone (+45) 70 20 80 14.

8. INFORMATION MEETING

In the previous tender procedure, the DEA held an information meeting on 20 May 2022. The material from the information meeting, including brief minutes, has been made available in the electronic tendering system.

The DEA expects that an information meeting will be held prior to the deadline of the first Indicative Offer (INDO). See paragraph 4 above.

The information meeting will be held at Energistyrelsen (Danish Energy Agency), Carsten Niebuhrs Gade 43, 1577 København V.

Tenderers interested in participating in the meeting are asked to sign up via the electronic tendering system not later than 3 days before the meeting with indication of name of business and number of participants. The DEA reserves the right to reduce the number of representatives per tenderer participating in the information meeting. The DEA will draw up brief minutes of the information meeting which will be published via the electronic tendering system.

At the meeting, the DEA will explain the background of the procedure and the purpose of the Contract. The DEA will also provide more general information about the structure of the tender documents and the expected proceedings of the negotiations.

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, paragraph 9.

The DEA may conduct further information meetings than indicated above, which will be communicated to the tenderer via the electronic tendering system.

9. QUESTIONS

Questions regarding submission of first Indicative Offer (INDO) must be ~~asked~~submitted not later than 23 September 2022. Questions regarding second Indicative Offer (INDO2) must be asked~~submitted~~ no later than 7 December 2022.

Questions ~~asked~~submitted after this date will be answered if they are received in time for the DEA to communicate the answers within six days before expiry of the deadline for submission of INDO respectively deadline for submission of INDO2.

Questions received later than six days before expiry of the deadline for submission of INDO respectively the deadline for submission of INDO2 cannot be expected to be answered, unless the deadline for submission of INDO respectively the deadline for submission of INDO2 is also postponed, see section 93(4) of the Danish Public Procurement Act.

In the DEA's invitation to the tenderers to submit Best and Final Offer (BAFO), the DEA will set a deadline for questions regarding submission of BAFO.

Written questions of the tenderers, and the DEA's answers, will be regularly communicated in anonymised form via the electronic tendering system to all tenderers participating in the procedure.

10. COMMENTS TO THE TENDER DOCUMENTS

If the tenderers should identify aspects of the tender documents that appear inappropriate, including matters that are assessed to constitute substantial risk or cost factors or are commercially inappropriate, the tenderers are requested to use the table in Appendix C, Template for the tenderer's comments to the tender documents.

In the table, the tenderers should state the reasons why the matter(s) concerned is/are identified as substantial risk or cost factors or is/are commercially inappropriate. The tenderers are also requested to suggest alternatives.

The tenderers are requested to submit the completed Appendix C, Template for the tenderer's comments to the tender documents, no later than 16 September 2022 via the tab "Message" in the electronic tendering system.

The DEA will use the tenderer's comments to the tender documents as input for the negotiations. The DEA will not answer the tenderers' initial comments to the tender documents in Appendix C, Template for the tenderer's comments to the tender documents, as part of the process for questions and answers, see paragraph 9.

The tenderers may also enclose Appendix C, Template for the tenderer's comments to the tender documents, (e.g. a revised or supplemental version) together with the INDO, see also paragraph 12.

Matters listed in the tenderer's comments to the tender documents (Appendix C, Template for the tenderer's comments to the tender documents) submitted no later than 16 September 2022 or enclosed together with the INDO and any subsequent Indicative Offers are not considered to be part of the ~~INDO-Offer~~ (but a proposal for negotiations) and the list is therefore not considered a reservation either.

The tenderer's BAFO is not to include or the tenderer's possible comments to the tender documents (Appendix C, Template for the tenderer's comments to the tender documents).

11. SUBMISSION OF OFFERS

The tenderer's first Indicative Offer (INDO) must be submitted not later than 7 October 2022, 13:00 CET. INDOs received after this time will be rejected.

The deadline for submission of Best and Final Offer (BAFO) will be stated in the DEA's invitation to submit BAFO. BAFOs received after the deadline specified will be rejected. The deadline for submission of BAFO is expected to be ~~16-10 December~~ February 2022/2023, but at this stage this is only an estimated date.

The tenderer is only permitted to submit one INDO and one INDO2, and the tenderer is not permitted to submit variant INDOs and INDO2s. In the negotiation phase, however, the DEA may ask the tenderers to submit subsequent (new or revised) Indicative Offers (e.g. INDO2, INDO3 etc.) on the basis of the negotiations, see paragraph 13.1 and Appendix B, Negotiation plan. The DEA has decided to ask the tenderers to submit a second Indicative Offer (INDO2), see paragraph 13.2. The tenderer is only permitted to submit one BAFO, and the tenderer is not permitted to submit variant BAFOs.

All Offers must be in English. However, documents from and composed by public authorities included in the Offers, such as CO₂ emission reports and verification reports, may be in Danish.

The tenderer must keep open its BAFO for acceptance for 6 months from the expiry of the relevant deadline for submission of BAFO.

Offers submitted by municipally owned entities (whether owned directly or indirectly) are conditional on the adoption and entry into force of a legal basis for such entities to enter into the Contract prior to the signing of the Contract. This entails that Offers of municipally owned entities are considered non-binding if the necessary legal basis is not provided.

Offers must be submitted via Digital Tendering System ("Digitale Udbud") (the electronic tendering system). Offers may not be submitted in any other way, including by e-mail. The electronic tendering system is accessed via the link <https://eu.eu-supply.com/login.asp?B=KA>, cf. further information in paragraph 7.

Offers are submitted by uploading the Offer to the electronic tendering system. When the ~~tender Offer~~ is uploaded and submitted, the tenderer may until the expiry of the Offer deadline change the content of the Offer or withdraw the Offer.

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

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

12. FIRST INDICATIVE OFFERS (INDO)

12.1 Submission of INDO

A first Indicative Offer (INDO) consists of the following documents:

- (a) Offer submission letter (Appendix D)
- (b) Completed or finalised Appendices

The tenderer does not have to include the Contract and the Appendices of the Contract that are not supposed to be completed/finalised by the tenderer. The Contract and such Appendices are deemed accepted by the tenderer.

Re (a) Offer submission letter

The tenderer should enclose in its INDO, an offer submission letter (Appendix D) which should include the following information:

- Name of the operator or group of operators submitting the Offer.
- Contact details (e-mail address and telephone number) for the DEA's use in connection with the procedure.

The legal entity/group of legal entities submitting the Offer must be the same legal entity/same group of legal entities prequalified by the DEA.

Re (b) Appendices

The tenderer is requested to complete or finalise the following Appendices:

- Solution description [including sub-appendices](#) (Appendix 4)
- Time schedules (Appendix 5)
- Subsidy and costs (Appendix 7)
- Governance (Appendix 8)

Each Appendix provides instructions explaining how to complete or finalise the Appendix.

The tenderer is also requested to enclose the following Appendices together with the INDO with an indication of the name, business registration number, address, postal code and city and country of the guarantor for the Performance and Warranty Guarantee and of the parent company for the Parent Company Guarantee by submitting the following documents with such information, see also the instructions in the Appendices:

- Model performance and warranty guarantee (Appendix 11)
- Model parent company guarantee (Appendix 12)

The following documents may be enclosed with the INDO and are not considered to be part of the INDO (but a proposal for negotiations):

- Document with the tenderer's comments to the tender documents (Appendix C), see paragraph 10.

The DEA will not award the contract on the basis of the INDO and, hence, the tenderers can expect negotiation meetings to be conducted, see paragraph 13.

The tenderers should ensure that the INDOs are complete and that costs / subsidy rate are set on the basis of the tender documents that form the basis of the Offer submission.

12.2 Reservations in the INDO

The tenderer is advised to submit the first Indicative Offer (INDO) on the basis of no reservations being made. However, reservations in the INDO will not cause the INDO to be considered non-compliant but will instead be included in the negotiations.

If the tenderer should identify aspects of the tender documents which the tenderer finds inappropriate, the tenderer is advised to use the template in Appendix C, Template for the tenderer's comments to the tender documents, and to submit the template together with the INDO and any subsequent INDOs.

13. NEGOTIATION PHASE

13.1 Introduction

The negotiation phase runs from receipt of the DEA's invitation to participate in the process until invitation to submit Best and Final Offer (BAFO) pursuant to paragraph 14.

The negotiations are conducted in accordance with the schedule in Appendix B, Negotiation plan.

The negotiations are conducted in English.

After receipt of first Indicative Offers (INDO), the DEA will conduct individual negotiation meetings with all tenderers who, within the deadline stated, have submitted a INDO. 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. If deemed necessary, the DEA may ask the tenderers to submit subsequent (new or revised) Indicative Offers (e.g. INDO2, INDO3 etc.) after the negotiation round based on the first Indicative Offer.

13.2 Submission of second Indicative Offer (INDO2)

After the negotiation round based on the first Indicative Offer (INDO), the DEA has decided to ask the tenderers to submit a second Indicative Offer (INDO2). The INDO2 must be submitted not later than 21 December 2022, 13:00 CET. INDOs received after this time will be rejected.

The tenderer's INDO2 must include the same documents as those to be included in the first Indicative Offer (INDO), see paragraph 12.1(a) and (b) above.

The tenderer is advised to ensure that INDO2 is complete, and that costs / subsidy rate are set based on the revised tender documents that form the basis of the submission of the INDO2. The tenderer is furthermore advised to submit the INDO2 without reservations, see paragraph 12.2.

After receipt of second Indicative Offers (INDO2), the DEA will conduct individual negotiation meetings with all tenderers who, within the deadline stated, have submitted an INDO2. The DEA expects that the negotiation meetings will be held on 23 – 24 January 2023, however, the DEA may change this. The DEA will provide further information to the tenderers about the time of the meetings etc. via the electronic tendering system.

13.2.13.3 Changes to the tender documents

On the basis of the negotiations or other circumstances, see also paragraph 2.2, the DEA may choose, with due compliance of the principles of equal treatment and transparency, to change the content of the General Requirements and/or waive one or more General Requirement(s). The DEA may also add new General Requirements during the negotiation stage.

The DEA will not change Minimum Requirements (MR) or fundamental elements in the originally issued tender 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 tender documents during the negotiation process will be marked with "track changes".

All tenderers participating in the procedure will via the electronic tendering system be given access, simultaneously, to the revised tender documents and will be given the same amount of time to prepare any revised negotiable Offers.

The revised tender documents will provide the basis for possible subsequent Indicative Offers and the Best and Final Offers (BAFO), see paragraph 13.1 and 14.

13.3/13.4 Completion of the negotiation phase

The DEA expects to submit the final tender documents in ~~November~~ January 2022-2023 provided that no more than ~~one~~ two negotiation rounds ~~is~~ are held.

After submission of the final tender documents, the negotiation phase is considered completed, and the DEA will ask tenderers to submit their Best and Final Offer (BAFO).

All tenderers participating in the tender procedure will via the electronic tendering system be given access to the revised tender documents at the same time, and the tenderers will be given the same amount of time to prepare their BAFO, see paragraph 14.

14. BEST AND FINAL OFFERS (BAFO)

14.1 Submission of BAFO

At the end of the negotiation phase, the tenderers are invited to submit their Best and Final Offers (BAFO).

The tenderer's BAFO must include the same documents as those to be included in the first Indicative Offer (INDO), see paragraph 12.1, item (a) and (b) above.

The tenderer must further submit the following declarations with the BAFO, see Appendix D, Template for offer submission letter:

- A solemn declaration stating that the tenderer has complied with any and each requirement to repay aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market; and
- 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.)

According to the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022 aid for environmental protection and energy must not be awarded to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. Further, according to the guidelines the Commission will when assessing aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market take account of the amount of aid still to be recovered. The tenderer must therefore submit declarations regarding this with the BAFO, cf. above.

~~The tenderer is also requested to enclose the following Appendices together with the BAFO with an indication of the name, business registration number, address, postal code and city and country of the guarantor for the Performance and Warranty Guarantee and of the parent company for the Parent Company Guarantee by submitting the following documents with such information, see also the instructions in the Appendices:~~

- ~~• Model performance and warranty guarantee (Appendix 11)~~
- ~~• Model parent company guarantee (Appendix 12)~~

The tenderer's BAFO is not to include the tenderer's possible comments to the tender documents (Appendix C, Template for the tenderer's comments to the tender documents).

During the negotiation proceedings, including in connection with the invitation to submit BAFO, the DEA may change or add to the information/documents that constitute(s) or is/are to be enclosed with the BAFOs. If so, this will be communicated via the electronic tendering system to all tenderers participating in the procedure.

14.2 Final and complete

The tenderer should note that the DEA is not permitted to negotiate the BAFO any further with the tenderer. The BAFO should therefore be drawn up so that the contract can be entered into without further discussions or negotiations between the tenderer and the DEA.

Therefore, when filling in/completing the appendices, the tenderer should to the extent possible use wording of legal obligations and not wording such as "*this might pertain to ...*", "*one might also consider to ...*" or "*usually is used ...*", "*we have often successfully ...*", "*one might also envisage ..*" or "*this might be solved by ...*". Wording not suitable for legal obligations may, in the given circumstances, be treated as reservations with the ensuing consequences, see paragraph 14.3 below.

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

14.3 Reservations in the Best and Final Offer

It is the responsibility of the tenderer to ensure that the ~~tender~~ Offer is clear and unambiguous so as to leave no doubt whether reservations are made to the tender documents. Tenderers are therefore advised to seek clarification of any ambiguities and uncertainties in the final tender documents by submitting questions, see paragraph 9.

In relation to the submission of BAFO, it should be noted that ~~tenders~~ Offers with reservations to Minimum Requirements (MR) will be rejected as non-compliant.

When submitting BAFO, the tenderers must also comply with all General Requirements. BAFOs containing reservations to General Requirements will be rejected as non-compliant if the reservation concerns fundamental elements of the procurement. "Fundamental elements" means matters that cause competition to be distorted to a significant degree if reservations are made. Several reservations to elements that are not fundamental may cause the reservations, overall, to constitute a reservation to fundamental elements.

If reservations to General Requirements do not concern fundamental elements, the DEA may choose - but is not obliged - to consider Offers with reservations to General Requirements to be compliant if the reservation can be quantified. If the DEA chooses to quantify the reservation, this will take place in the form of a supplement to the subsidy offered by the tenderer evaluated under the subsidy criterion. The supplement will correspond to the amount which, on the basis of a legitimate and objective assessment, with a high degree of certainty would be cover the DEA's additional payment that may be caused by the reservation.

15. CONFIDENTIAL INFORMATION IN THE ~~TENDERS~~ OFFERS AND DURING NEGOTIATIONS

The DEA will ensure that all tenderers are treated equally and that they have access to the same information.

The DEA will not, without specific consent, disclose to other tenderers any suggested solutions or other confidential information provided by a tenderer.

The DEA may include a tenderer's proposed changes to the tender documents in the negotiations with the other tenderers. In the negotiations with the other tenderers, the precise wording of the proposed change will not be disclosed, nor will it be disclosed which tenderer proposed the change.

The tenderer should note that documents or information in the tenderer's first Indicative Offer (INDO), any subsequent Indicative Offers and Best and Final Offers (BAFO) may be subject to the rules on access to documents. This means that competitors, etc., may request access to ~~tenders~~ Offers submitted. According to

the practice of the Danish Complaints Board for Public Procurement (*Klagenævnet for Udbud*), requests for access to documents from other operators also participating in the tender 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 Offer~~/~~tenders Offers~~ be treated confidentially and has indicated which information/elements of the ~~tenders Offers~~ must be kept confidential.

If there is information or elements in a tender, or information or elements emerge during the negotiations which for business reasons are desired to be exempted from access to documents, the tenderer is asked to state so in its ~~tender Offer~~ or draw the DEA's attention to the matter during the negotiations. 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.

16. OPENING AND EVALUATION OF ~~TENDERS~~OFFERS

The DEA will open the ~~tenders Offers~~ after the deadline for submission of Offer in question has expired.

The tenderers are not permitted to attend the opening of the ~~tenders~~Offers.

After opening the ~~tenders~~Offers, the DEA will initially check whether the ~~tenders Offers~~ comply with the formal requirements of the tender documents. The DEA may use the procedure of section 159(5) and (6) of the Danish Public Procurement Act, if the Offer does not comply with the requirements of the tender documents.

Regardless of the use of the words "must" or "shall" in the tender documents, the DEA reserves the right to obtain further information within the scope of the above-mentioned provisions. However, the DEA is not obliged to obtain further information or documentation from the tenderers. The DEA may furthermore clarify possible ambiguities in the Offers within the scope of the Danish Public Procurement Act.

As for the tenderers' Best and Final Offer (BAFO), the DEA will assess, after the initial examination of whether the ~~tender Offer~~ complies with the formal requirements of the tender documents, whether the Offer contains reservations that will cause the BAFO to be non-compliant, see paragraph 14.3.

The Offers will then be evaluated in accordance with the award criterion and sub-criteria as described in Appendix A, Offer evaluation.

If the DEA identifies reservations to Minimum Requirements (MR) or General Requirements in the BAFO, the contracting entity may either:

- 1) reject the Offer, or
- 2) quantify reservations to General Requirements if possible, see paragraph 14.3.

After deciding on the award of the contract, the DEA will notify all tenderers of the award decision. The notification of the tenderers who have submitted a compliant BAFO, but who are not awarded the contract, will include a brief explanation of the relevant grounds for the decision, including the characteristics and advantages of the successful Offer as compared to the unsuccessful Offer and the name of the successful tenderer, as well as information about the date of expiry of the standstill period. The notification will furthermore include an account of the course of the negotiations with the tenderers.

17. DOCUMENTATION AND FINALISATION OF THE TENDER PROCEDURE

Before the award of the contract, the tenderer to whom the DEA intends to award the Contract must submit documentation of the information stated in the ESPD, see section 159(2) of the Danish Public Procurement Act, and sections III.1) and VI.3) of the Contract Notice. If the DEA has received such documentation at an earlier stage of the tender procedure, the DEA may ask for updated documentation or confirmation that the submitted documentation is still valid.

The DEA may at any time during the tender procedure require that the candidate or tenderer presents documentation as stated in the Danish Public Procurement Act section 152, when that is necessary in order to ensure correct performance of the procedure, see section 151(2) of the Danish Public Procurement Act. Therefore, as stated in the Contract Notice, section VI.3), the candidate is requested with its application for prequalification to submit a letter of commitment if the candidate relies on the technical or financial capacity of other entities, see also paragraph 5.

Further, as stated in the Contract Notice, section III.1.3) the DEA intends to ask the candidates to provide documentation for their fulfillment of the minimum requirements concerning financial and economic standing after pre-qualification.

The DEA intends to ask the tenderers' to provide documentation that the tenderer and any entities on which the tenderer may rely are not subject to the exclusion grounds in section 135(1) or (3) of the Danish Public Procurement Act, or the exclusion grounds in section 137(1), para 2 or 7 together with the tenderers' INDOs, see paragraph 12.

When the DEA has selected the Offer with the best price-quality ratio, see Appendix A, Offer evaluation, and has obtained the above documentation, the DEA will decide on the award of the Contract.

The DEA is not obliged to award the contract and reserves the right to cancel the tender procedure.

Even though the Contract has been awarded to another tenderer, the tenderer is bound by its Offer until the DEA has signed the contract, but no longer than the date specified for the tenderer to keep open its Offer, see also paragraph 11.

The notification of the tenderers of the award decision does not mean that the Contract has been concluded. The Contract is only considered to have been concluded when the Contract is signed. The DEA does not consider the tender procedure completed until the Contract has been signed.

18. GUARANTEES

Prior to the signing of the Contract the tenderer who is awarded the Contract shall provide the DEA with an unconditional and irrevocable on-demand Performance and Warranty Guarantee issued by a Guarantor in favour of the DEA and an unconditional and irrevocable on-demand Parent Company Guarantee issued by the tenderer's Ultimate Parent Company, [if relevant](#).

The Performance and Warranty Guarantee shall be in the form of Appendix 11, Model performance and warranty guarantee, and otherwise in accordance with the provisions of the Contract, including clause 8.1.

The tenderer who is awarded the Contract may request the DEA's consent to amend the format of Appendix 11, Model performance and warranty guarantee, with non-substantial changes if such changes are (i) requested by the Guarantor and (ii) do not affect the terms specified in Appendix 11, Model performance and warranty guarantee, and (iii) and are not in any other way deemed to be detrimental by the DEA.

The Parent Company guarantee shall be in the form of Appendix 12, Model parent company guarantee, and otherwise in accordance with the provisions of the Contract, including clause 8.2.