

**Conditions for the technology neutral  
tender of hybrid CfD for electricity  
generated by onshore wind turbines, open  
door offshore wind turbines, wave power  
plants, hydroelectric power plants and  
solar PV installations**

July 2020

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## 1. The contracting authority

Danish Energy Agency (Energistyrelsen)  
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1577 København V, Denmark  
Tel.: + 45 33 92 67 00  
CVR no. (company reg. no.): 59 77 87 14  
[www.ens.dk](http://www.ens.dk)

All enquiries, including questions etc., must be submitted electronically during the tendering procedure via the following link on the tendering portal:

[\*]

## 2. Regulation of the technology-neutral tender

The Danish Energy Agency's technology-neutral tender for entering into contract(s) on aid for electricity generated in Denmark by onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and/or solar PV installations are not covered by the Danish Public Procurement Act<sup>1</sup>, the EU Concession Contracts Directive<sup>2</sup> or the EU Utilities Directive.<sup>3</sup>

The Danish Energy Agency has decided to expose the contract(s) on price premiums to competition. This tendering procedure is therefore subject to the general principles of EU law in the TFEU<sup>4</sup>, e.g. concerning equal treatment, transparency, proportionality and non-discrimination on the grounds of nationality. Aid for electricity granted pursuant to the technology-neutral tender constitutes State aid under TEUF Article 107 (1). The tender procedure is approved by the European Commission in [SA.XXXXX] the [date] in accordance with the European Commission's Guidelines on State aid for environmental protection and energy 2014-2020.<sup>5</sup>

The rights and obligations of the Danish Energy Agency and of the winning tenderer(s) under this tendering procedure are described in the hybrid CfD contract, see Appendix 7.

## 3. Energy Agreement

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<sup>1</sup> Act no. 1564 of 15 December 2015, which implements Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

<sup>2</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, cf. Executive Order no. 1625 of 15 December 2015.

<sup>3</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, cf. Executive Order no 1624 of 15 December 2015.

<sup>4</sup> The Treaty of the Functioning of the European Union.

<sup>5</sup> OJ C 200, 28.6.2014, p. 1.

With the Energy Agreement of 29 June 2018 between the former government (the Liberal Party of Denmark, Liberal Alliance and the Conservative People's Party), Social Democracy, the Danish People's Party, the Red-Green Alliance, the Alternative, the Social Liberal Party and the Socialist People's Party, the political parties agreed to continue the expansion of renewable energy via technology-neutral tenders of solar PV, onshore wind, open door offshore wind turbines, wave power, and hydroelectric power in the period 2020-2024.

With the Climate Agreement of 22 June 2020 between the government (Social Democracy), the Liberal Party of Denmark, the Danish People's Party, the Red-Green Alliance, the Socialist People's Party, the Social Liberal Party, the Conservative People's Party, Liberal Alliance and the Alternative, the political parties agreed to continue technology-neutral tenders in 2020 and 2021. The parties agreed to change the tender conditions to aid in the form of a hybrid contract for difference (hybrid CfD), with a bid cap of 25.00 øre per kWh and a cap of DKK 600 million (2020-prices) on aid payments from the state to the winning tenderer(s) and to reserve funds for technology-neutral tenders in 2022-2024 with similar amounts.

The Energy Agreement and the Climate Agreement are available in Danish<sup>6</sup> via the links below:

<https://efkm.dk/media/12222/energiaftale2018.pdf>

<https://kefm.dk/media/13163/aftaletekst-klimaaftale-energi-og-industri.pdf>

#### **4. The tender documents**

The tender documents consist of:

- These tender conditions which primarily contain guidelines for preparing bids and requirements for tenderers etc.
- Template for tender letter including declarations on obligation to construct and connect to the grid etc. (Appendix 1)
- Template for description of installation(s) covered by the tender letter (Appendix 2) (to be completed by the tenderer in connection with bid submission)
- Template for a demand guarantee (DK/UK) (Appendix 3) (to be completed by the tenderers guarantor before signing of the hybrid CfD contract)
- Template for declaration from the municipality and template for declaration from the tenderer about solar PV installations (see tender letter) not subject to requirements for planning documentation (Appendix 4) (only one of the two templates are to be filled out by the municipality or the tenderer in connection with bid submission, if relevant) // template for declaration of support from the municipality council regarding open door offshore wind turbines (to be filled out by the municipal board in connection with bid submission, if relevant) (Appendix 4)

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<sup>6</sup> An English translation of the Energy Agreement can be found here:  
<https://en.efkm.dk/media/12307/energy-agreement-2018.pdf>.

- Template for declaration of intent to provide a demand guarantee (Appendix 5) (to be filled out by the tenderer's guarantor in connection with bid submission)
- Template for conditional award decision to the marginal bid (Appendix 6.a) (to be filled out by the Danish Energy Agency, if relevant)
- Template for reduced bid from the marginal tenderer (Appendix 6.b) (to be completed by the Danish Energy Agency and the marginal tenderer, if relevant)
- Template for description of installation(s) covered by the reduced bid (Appendix 6.c) (to be filled out by the marginal tenderer, if relevant)
- Draft of hybrid contract for difference (in the following referred to as the hybrid CfD contract) (Appendix 7) (Appendix 1-3 of the tender conditions will be included as Appendix 1-3 to the hybrid CfD contract)

All the tender documents are available on the tender portal via the following links:

[\*]

In the event of discrepancies between these tender conditions and the hybrid CfD contract, including appendices, the hybrid CfD contract, including appendices, prevails.

## **5. Content of the technology-neutral invitation to tender**

### *5.1 General*

These tender conditions apply to the technology-neutral tender in 2020 of aid for electricity generated by onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and/or solar PV installations (in the following referred to as "the 2020 technology-neutral tendering round") pursuant to section 50 d<sup>7</sup> of the Danish Promotion of Renewable Energy Act<sup>8</sup>. The 2020 technology-neutral tendering round covers new installations where work on the project has not been started and does not cover installations connected to the grid in a consumer installation.

### *5.2 Repowering*

A wind turbine will be considered a new installation when the entire wind turbine including tower, nacelle and rotor consists of parts straight from the factory. Foundations and grid connections from a previous project can be reused to establish a new installation.

A solar PV installation will be considered a new installation when the PV panels and inverters consist of parts straight from the factory. Mounting structures and grid connections from a previous project can be reused to establish a new installation.

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<sup>8</sup> Act no. 125 of 7 February 2020 on promotion of renewable energy as changed pursuant to Act no. 738 of 30 May 2020.

A hydroelectric power station will be considered a new installation when the entire installation consists of parts straight from the factory. Grid connections from a previous project can be reused to establish a new installation.

A wave power plant will be considered a new installation when the entire installation consists of parts straight from the factory. Grid connections from a previous project can be reused to establish a new installation.

### *5.3 Definition of open door offshore wind turbines*

"Open door offshore wind turbines" covers offshore wind turbines that have obtained a construction licence on the basis of an application under the open door procedure and provided the construction licence has not been put up for tender pursuant to the current regulations in the Danish Promotion of Renewable Energy Act.

### *5.4 Declaration from the municipal board about open door offshore wind turbines*

Open door offshore wind turbines that are planned to be located within 8 km of the coastline of one or more municipalities, which participate in the 2020 technology-neutral tendering round, and which are not subject to, or exempt from, the current rules on the municipality's right to object pursuant to the Danish Promotion of Renewable Energy Act,<sup>9</sup> in relation to this tendering round are subject to the municipality's right to object, see clause 7.3 below. The objective of the requirement in clause 7.3 is to ensure equal treatment of all the open door offshore wind turbines projects which are planned located within 8 km from one or more municipalities' coast line. The requirement does not apply to 1) open door offshore wind turbines subject to the rules on the municipality's right to object pursuant to the Danish Promotion of Renewable Energy Act<sup>10</sup>, and 2) open door offshore wind turbines that are planned to be located beyond 8 km from the coastline of one or more municipalities and that participate in the 2020 technology-neutral tendering round.

Open door offshore wind turbines that are planned to be located within 15 km of the coastline of one or more municipalities, and that participate in the 2020 technology-neutral tendering round, and that are not subject to, or exempt from, the current rules on the municipality's right to object pursuant to the Danish Promotion of Renewable Energy Act,<sup>11</sup> in relation to this tendering round are subject to the municipality's right to object, see clause 7.3 below. The objective of the requirement in clause 7.3 is to ensure equal treatment of all the open door offshore wind turbines projects which are planned located within 15 km of one or more municipalities' coast line. The requirement does not apply to 1) open door offshore wind turbines subject to the rules on the municipality's right to object pursuant to the Danish Promotion of Renewable Energy Act,<sup>12</sup> and 2) open door offshore wind turbines that are planned to be located beyond 15 km from the coastline of one or more municipalities and that participate in the 2020 technology-neutral tendering round.

### *5.5 Aid for electricity*

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<sup>9</sup> Act no. 125 of 7 February 2020.

<sup>10</sup> Act no. 125 of 7 February 2020.

<sup>11</sup> Act no. 125 of 7 February 2020 as changed pursuant to Act no. 499 of 1 May 2019.

<sup>12</sup> Act no. 125 of 7 February 2020 as changed pursuant to Act no. 499 of 1 May 2019.

A hybrid CfD contract provides access to production aid in the form of a price premium which is calculated as described in clause 5.8 below and is granted for the entire actual production of electricity generated at installations covered by the hybrid CfD contract and delivered to the Danish collective electricity supply grid, for 20 years from the date of grid connection with no option to opt out. An installation with one grid connection to the Danish collective electricity supply grid is considered to be one installation.

#### *5.6 Time of grid connection*

In accordance with section 5(4) of the Danish Promotion of Renewable Energy Act, the time of grid connection is defined as the date at which the installation supplies electricity to the Danish collective electricity supply grid for the first time, because this date will be noted in the register of master data (in Danish: stamdataregistret).<sup>13</sup>

#### *5.7 Total number of hybrid CfD contracts*

The total number of hybrid CfD contracts to be issued has not been determined. The intention is to conclude one or several hybrid CfD contracts on the basis of the award criterion lowest bid price (see clause 6.1 below) which can be kept within a threshold of 90% of the total expected production offered as described in clause 6.2 and 6.4 below.

#### *5.8 Price premium and aid period*

Aid will be paid as a price premium in øre per kWh. The price premium will be calculated using a hybrid contract for difference model (hybrid CfD). In the hybrid CfD, the price premium is calculated as the difference between the offered bid price and the annual reference price. In effect, the price premium will vary from year to year, but remain fixed within each year. The reference price is the average of the average spot electricity price of the bidding areas DK1 and DK2 in the preceding year weighted by volume.

The hybrid CfD uses a two-way payment structure. For each winning tenderer, the Danish Energy Agency pays the winning tenderer when the offered bid price exceeds the reference price, while the winning tenderer pays the Danish Energy Agency when the reference price exceeds the winning tenderer's offered bid price.

There is no cap on payments from the winning tenderer(s) to the Danish Energy Agency in the contract covering the whole period of 20 years from the date of grid connection of the installation.

There is a total cap of DKK 600 million (2020-prices) on the aid paid out by the Danish Energy Agency to the winning tenderer(s). The payout cap of DKK 600 million (2020-prices) is net of any payments from the winning tenderer(s) to the Danish Energy Agency. The net payout cap is allocated among the winning tenderer(s) based on a "first come, first served"-principle, where the winning tenderer(s) receive aid in every payment period where the payout cap does not bind. If the total awarded aid exceeds the net payout cap in a given payment period, then the residual sum (up to the payout cap) is paid to the winning tenderer(s) in proportion to the amount of aid that each winning tenderer would have received had the payout cap not been in effect. Any aid forewent due to a binding net payout cap, cannot later be claimed by winning tenderer(s).

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<sup>13</sup> Cf. Executive Order no. 1601 of 17 December 2018 on control and inspection of payments of price premiums and other support to electric power generating plants etc.



The hybrid CfD contract applies to the entire amount of actual electricity production that is produced by the installations covered by the hybrid CfD contract and delivered to the Danish collective electricity grid, see clause 5.5 above.

Regardless of the above, for each winning tenderer and each year where the reference price exceeds the tenderer's offered bid price, the price premium will not have to be paid by the tenderer to the Danish Energy Agency in hours where the price premium (in absolute terms) is greater than the spot price for electricity in the bidding area that corresponds to the location of the winning tenderer's installation. The spot price for electricity is the hourly price per kWh on the spot market for the relevant bidding area (DK1 or DK2) stated by the Nordic Electricity Exchange, NordPool.

Regardless of the above, for each winning tenderer, the price premium will not be granted in hours where the spot price for electricity is not positive in the bidding area that corresponds to the location of the winning tenderer's installation.

The price premium is granted for electricity produced by installations covered by the hybrid CfD contract for 20 years from the time of grid connection. The time of grid connection is defined in accordance with clause 5.6 above.

#### *5.9 Projects at an advanced stage (late bidding)*

Tenderers are responsible – prior to submitting a bid – for finding a suitable geographical location for the installations covered by the bid and for obtaining the required planning documentation in pursuance of the Danish Planning Act, the Danish Act on Environmental Impact Assessment and/or any other relevant legislation, including all relevant decisions, permissions, approvals, possible dispensations and similar for the construction of installations covered by the bid.

Tenderers who wish to bid for a fixed price premium for electricity generated by onshore wind turbines, hydroelectric power plants and/or solar PV installations must submit an adopted local development plan with their bid, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist pursuant to the Danish Planning Act and Danish Act on Environmental Impact Assessment.

Tenderers who wish to bid for a price premium for electricity generated by solar PV installations that are not subject to requirements of an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist, must submit with their bid a declaration either from the municipality or from the tenderer itself (see Appendix 4) that there are no requirements for an adopted local development plan or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist, in accordance with the Danish Planning Act and Danish Act on Environmental Impact Assessment.

Tenderers who wish to bid for a price premium for electricity generated by open door offshore wind turbines and wave power plants must submit with their bid a construction licence, an adopted local development plan for the part of the project that is located onshore, as well as a completed template for a declaration of support from the municipal board (see Appendix 4) indicating that the municipal board is positive towards the construction of the open door offshore wind turbine project, see clauses 5.4 and 7.3. This declaration must be submitted with the bid, if the project will be located within respectively 8 or 15 km of the coastline, and if the project is not subject to the rules on the municipality's right to object pursuant to the Danish Promotion of Renewable Energy Act, see clause 5.4.

#### *5.10 Obligation to construct projects and connect them to the grid, and extension of the time limit for grid connection*

##### *5.10.1 Obligation to construct projects and connect them to the grid*

Each winning tenderer is obligated to construct the installation(s) covered by the hybrid CfD contract and to ensure the installation(s) are connected to the grid.

Within two years of the date of signing the hybrid CfD contract, a winning tenderer must have connected the onshore wind turbines, wave power plants, hydroelectric power plants and/or solar PV installations covered by the hybrid CfD contract to the grid, however see clause 5.10.2 below.

Within four years of the date of signing the hybrid CfD contract, a winning tenderer must have grid-connected the open door offshore wind turbines covered by the hybrid CfD contract, however see clause 5.10.2 below.

The obligation to connect to the grid will be considered met when 85% of the total installed capacity covered by the hybrid CfD contract, however see clause 5.11.2 below, has been connected to the grid within the time limit for grid connection of two years for onshore installations and four years for offshore installations, however see clause 5.10.2 below. The time of grid connection is defined in accordance with clause 5.6 above.

The right to aid pursuant to the hybrid CfD contract will lapse and a retention penalty must be paid corresponding to an amount calculated in accordance with the hybrid CfD contract (see clause 5.11.3), if an installation covered by the hybrid CfD contract is not connected to the grid or is connected to the grid later than two years for onshore installations and four years for offshore installations of concluding the hybrid CfD contract, however see clauses 5.10.2 and 5.11.2 below.

Installations covered by a hybrid CfD contract must be grid connected pursuant to the rules on grid connection set out in the Executive Order on grid connection of wind turbines, solar PV installations, wave power plants and hydroelectric power plants.

##### *5.10.2 Extension of the time limit for grid connection*

A winning tenderer is entitled to an extension of the time limit for grid connection of the installations covered by hybrid CfD contract, cf. clause 5.10.1 above, in the event of a delay caused by one or more of the following circumstances:

1. Circumstances relating to the Danish Energy Agency.

2. Circumstances arising for which the winning tenderer is without fault and over which the winning tenderer has no control, for example war, pandemic, extraordinary natural events, fire, strikes, lockout or malicious damage.
3. Precipitation, low temperatures, strong winds or other weather conditions preventing or delaying work, where such weather conditions occur to a significantly greater extent than usual for the season and area in question.
4. Public orders or bans, which are not caused by circumstances attributable to the winning tenderer.
5. A requirement for a stay of execution following directly from legislation or from a decision on a stay of execution by an appeals board or a court of law.
6. If the winning tenderer does not obtain required permits, dispensations and approvals etc. besides the ones required at the time of submitting the bid in accordance with the requirement concerning late bidding (see clause 5.9 above) from the authorities, although the winning tenderer has applied for this from the relevant authorities more than one year before expiry of the obligation to grid connect, see clause 5.10.1 above.
7. The grid company or the transmission company is not ready to connect the onshore wind turbines, solar PV installations wave power plants, hydroelectric power plants and/or open door offshore wind turbines to the Danish collective electricity grid with a minimum of 85 % of their installed capacity covered by the hybrid CfD contract before the time limit for grid connection (see clause 5.10.1 above) because the winning tenderer has not been able to obtain the required permits, dispensations and approvals etc. besides the ones required at the time of submitting the bid in accordance with the requirement concerning late bidding (see. clause 5.9 above) from the authorities although the winning tenderer has applied for the required permits, dispensations and approvals etc. from the relevant authorities more than one year before the obligation to construct the project and connect it to the grid takes effect, see clause 5.10.1 above.
8. The grid company or the transmission company is not ready to connect installations to the Danish collective electricity grid with a minimum of 85 % of their installed capacity covered by the hybrid CfD contract before the time limit for grid connection (see clause 5.10.1 above) and the winning tenderer has concluded an agreement about grid connection of the installations covered by the hybrid CfD contract no later than one year before expiry of the time limit for grid connection, see clause 5.10.1 above
9. If more than two UXOs are to be removed in connection with the establishment of open door offshore wind turbines.
10. If the construction of the installations covered by the hybrid CfD contract cannot be started due to a major preliminary survey, see section 26(3) of the Danish Museum Act pursuant to Consolidating Act no. 358 of 8 April 2014, or if the project has to be discontinued due to archaeological surveys, see section 27 of the Danish Museum Act pursuant to

11. Case processing of an expropriation case by the Danish Safety Technology Authority pursuant to section 27 of the Danish Electricity Safety Act.

The extension of the time limit will correspond to the actual delay caused by the circumstances in nos. 1-11 claimed by the tenderer. Winning tenderers entitled to an extension of the time limit must immediately submit a written request to the Danish Energy Agency for the Danish Energy Agency's consent to the extension. In connection with such a request, the winning tenderers must be able to substantiate that the delay in question was caused by the circumstances claimed by the tenderer, and that the delay could not reasonably have been avoided or limited.

Price premiums will not be disbursed after 23 years from signing a hybrid CfD contract concerning onshore wind turbines, wave power plants, hydroelectric power plants and/or solar PV installations. If an installation covered by a hybrid CfD contract is connected to the grid later than three years after establishment of the hybrid CfD contract, irrespective of the reason, the period with price premiums will be reduced proportionately with the delay exceeding the three years.

Price premiums will not be disbursed after 25 years from signing a hybrid CfD contract concerning open door offshore wind turbines. If an installation covered by a hybrid CfD contract is connected to the grid later than five years after establishment of the hybrid CfD contract, irrespective of the reason, the period with price premiums will be reduced proportionately with the delay exceeding the five years.

#### *5.11 Retention penalty and guarantees*

##### *5.11.1 Retention penalty*

The right to price premium will lapse and a retention penalty (a contractual penalty) will be immediately payable upon demand:

- if, after signing of a hybrid CfD contract for electricity generated by installations covered by the hybrid CfD contract, a winning tenderer notifies the Danish Energy Agency in writing that, irrespective of the reason, it will not or cannot construct and/or connect to the grid installations covered by the hybrid CfD contract;
- if the circumstances show that the winning tenderer will not or cannot construct and/or connect to the grid installations covered by the hybrid CfD contract, however see clause 5.10.2 above;
- if onshore installations and wave power plants covered by the hybrid CfD contract have not been connected to the grid by no later than two years after signing of a hybrid CfD contract, see however clauses 5.10.2 and 5.11.2; and
- if open door offshore wind turbine installations covered by the hybrid CfD contract have not been connected to the grid four years after signing the hybrid CfD contract, however see clauses 5.10.2 and 5.11.2 above.

If one or more of the above circumstances exclusively relates to part of the installed capacity covered by the hybrid CfD contract, the retention penalty will be calculated proportionally on the basis of the installed capacity which is not connected to the grid within the time limit for grid connection. Accordingly, the price premium will only be granted for that part of the capacity covered by the hybrid CfD contract which is grid connected within the time limit for grid connection, see clause 5.10 above.

#### *5.11.2 Grid connection of a capacity smaller or larger than 85 %*

If the capacity connected to the grid is smaller than 85 % of the capacity indicated in the hybrid CfD contract, a retention penalty will be payable for that part of the 85 % which is not connected to the grid within the time limit (see clause 5.10) and price premiums will only be granted for electricity supplied to the Danish collective electricity supply grid for the part of the 85 % which is connected to the grid before the time limit for grid connection, see clause 5.10.1 above.

If the capacity connected to the grid within the time limit for grid connection (see clause 5.10) is larger than the capacity indicated in the hybrid CfD contract there will only be granted price premiums for a proportional share of the electricity supplied to the Danish collective electricity supply grid. The share of the electricity production to which there will be granted a price premium will be calculated as the ratio between the capacity which is connected to the grid within the time limit (see clause 5.10) and the capacity which is indicated in the hybrid CfD contract. The share is constant for the entire aid period and is calculated separately for onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and solar PV installations at the time of grid connection.

#### *5.11.3 Calculation of retention penalty*

The retention penalty depends on the capacity of the individual winning project and will be calculated as DKK 170 per MWh on the basis of the stated capacity in the bid and an estimated of full-load hours per year for each technology.

The amount of the retention penalty for each winning project will thus be calculated using the following formula:

$$\text{Retention penalty} = \text{capacity} * \text{full load hours per year} * 170 \text{ DKK per MWh}$$

Tenderers are to indicate MW installed capacity in their bid for wind turbines, wave power plants and hydroelectric power plants.

Tenderers are to indicate MWp for solar PV installations, which is the DC effect of the photovoltaic solar panels used.

The calculation of the retention penalty will include the same number of full-load hours per year as the calculation of the budgetary allocation, see clause 6.4 below:

Onshore wind turbines: 3,40015 full-load hours per year.

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<sup>15</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

Wave power plants: 2,50016 full-load hours per year.  
Hydroelectric power plants: 2,50017 full-load hours per year.  
Solar PV: 1,07518 full-load hours per year.  
Offshore wind turbines: 4,50019 full-load hours per year.

Examples: For a hybrid CfD contract for onshore wind turbines with a capacity of 50 MW, the retention penalty will amount to DKK 28.90 million.

For a hybrid CfD contract for wave power plants and hydroelectric power plants with a capacity of 50 MW, respectively, the retention penalty will amount to DKK 21.25 million.

For a hybrid CfD contract for solar PV installations with a capacity of 50 MWp, the retention penalty will amount to DKK 9.14 million.

For a hybrid CfD contract for open door offshore wind turbines with a capacity of 50 MW, the retention penalty will amount to DKK 38.25 million.

#### *5.11.4 Guarantees*

##### *5.11.4.1 Declaration of intent to provide a demand guarantee*

With the bid, the tenderer must submit a declaration of intent (see Appendix 5) in Danish or English from a financial institution stating that said institution will provide a demand guarantee issued to the Danish Energy Agency corresponding to the amount of the retention penalty, see clause 5.11.3 above. The tenderer must use the Danish or English template enclosed as Appendix 5. The Danish version and English version of Appendix 5 have equal status and have the same validity.

##### *5.11.4.2 Demand guarantee*

Prior to signing of the hybrid CfD contract, the winning tenderer must provide a demand guarantee in Danish or English from a financial institution for an amount corresponding to the amount of the retention penalty, see clause 5.11.3 above. The tenderer must use the Danish or English template enclosed with the hybrid CfD contract as Appendix 3. The Danish version and English version of Appendix 3 have equal status and have the same validity. It is a prerequisite that the Danish Energy Agency has received the original demand guarantee from the winning tenderer before the Danish Energy Agency's signing of the hybrid CfD contract.

##### *5.11.4.3 Lapse of the demand guarantee*

The obligation to provide a guarantee will lapse when 85% of the installed capacity covered by the hybrid CfD contract has been connected to the grid, however see clause 5.11.2 above regarding construction of a smaller capacity than 85 %. In situations covered by clause 5.11.2 above, the obligation to provide a guarantee will lapse when payment of penalty has occurred regarding the share of the 85 % of the capacity indicated in the price premium

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<sup>16</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>17</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>18</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>19</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

contract which has not been connected to the grid before the time limit of grid connection (see clause 5.10 above). The time of grid connection is defined in accordance with clause 5.6 above.

#### *5.12 Joint and several liability*

If the Danish Energy Agency establishes a hybrid CfD contract with a consortium, all members of the consortium will be jointly and severally liable for all obligations covered by the hybrid CfD contract.

If the tenderer is an undertaking in the process of being established, the founders of the undertaking will have to assume joint and several liability with the tenderer on the date of signing of the hybrid CfD contract and until the undertaking has been registered, see section 41(3) of the Danish Companies Act.

If the tenderer is an undertaking in the process of being established, the founders of the undertaking will have to assume joint and several liability with the tenderer on the date of signing of the hybrid CfD contract and until the undertaking has been registered, see section 41(3) of the Danish Companies Act.

Any claim arising pursuant to the hybrid CfD contract may therefore be directed towards 1) any of the participants in the consortium, and 2) any founders in situations in which the tenderer is an undertaking in the process of being established.

Joint and several liability will only be enforced to the extent that the winning tenderer is in breach of the hybrid CfD contract and if such a breach is not remediated by the winning tenderer on demand from the Danish Energy Agency. Joint and several liability only covers claims by the Danish Energy Agency.

#### *5.13 The loss-of-value scheme, the option to sell scheme, the RE bonus scheme, payment to green fund and the guarantee fund*

The winning tenderer is subject to the loss-of-value scheme, the option to sell scheme, the renewable energy bonus scheme and payment to green fund pursuant to the rules and regulations of the Danish Promotion of Renewable Energy Act no 738 dated 30 may 2020, including issued executive orders concerning the schemes . It is a prerequisite for granting of price premium pursuant to a hybrid CfD contract that obligations in relation to the four schemes are met pursuant to the Danish Promotion of Renewable Energy Act.

Tenderers can participate in the technology-neutral tendering procedure regardless of whether they have applied for the provision of a guarantee under the current rules applying to the guarantee fund set up to support financing of preliminary surveys etc. by wind turbine cooperatives, wave power plant cooperatives, hydroelectric power plant cooperatives and solar PV cooperatives in the Danish Promotion of Renewable Energy Act.

## **6. Award criterion, ranking, flexibility mechanism and threshold of 90%**

### *6.1 Award criterion*

The Danish Energy Agency will conclude contract(s) on hybrid CfD for electricity generated by installations covered by the winning bid on the basis of the award criterion **lowest offered bid price**, which will be assessed as follows:

- **The amount of the offered bid price in øre per kWh for electricity production for 20 years from grid connection**

The price premium in the hybrid CfD for the winning tenderer(s) will be determined according to the principle of "pay-as-bid". Each hybrid CfD contract will therefore contain the bid price (expressed in øre per kWh) that the winning tenderer has submitted in its bid.

The offered bid price is to be a fixed øre amount (constant in current prices) and will not be indexed. The offered bid price is to be stated as an amount in øre per kWh with maximum 2 decimal places.

Bids above 25.00 øre per kWh will not be accepted.

### *6.2 Ranking*

A hybrid CfD contract will be awarded to the tenderer(s) that submit compliant bids with the lowest bid price, see clause 6.1 above, and that can be kept within 90 % of the total expected production offered, see clause 6.4 below.

If several bids contain the same bid price, the bids in question will be ranked according to the size of the expected production (the capacity offered\*the pre-defined number of full-load hours), from the largest to the smallest.

If several bids, each of which can be accommodated within 90 % of the expected production (the capacity offered\*the pre-defined number of full-load hours, see clause 6.4 below), contain the same price premium and the same expected production, the bids in question will be ranked through drawing lots to the extent that it is not possible to award all of the bids a hybrid CfD contract within the 90 % of the total expected production offered, see clause 6.4 below.

### *6.3 Flexibility mechanism*

If the Danish Energy Agency decides that there is a marginal bid the Danish Energy Agency will offer the tenderer the opportunity to downscale the project to a size that can be contained within the remaining 90 % threshold described in clause 6.2 above, but at the bid price originally offered in accordance with Appendices 6.a-6.c. The "marginal bid" means a compliant bid which – assessed on the basis of the price in the bid – can be awarded a hybrid CfD contract but which will entail that the Danish Energy Agency's threshold of 90 % described in clause 6.2 above will be exceeded.

The Danish Energy Agency will send a conditional award letter to the marginal tenderer via the tender portal with information about the size of the remaining threshold of 90% as described in clause 6.2 above see Appendix 6.a. The conditional award letter will state that in order for the Danish Energy Agency to be able to accept the bid, the tenderer will have to downscale its project so that it may be retained within the remaining threshold, see Appendices 6.a-6.c.



If the Danish Energy Agency does not receive an accept from the marginal tenderer in accordance with Appendices 6.a-6.c no later than two days after the Danish Energy Agency has send the conditional award letter the Danish Energy Agency will consider this a rejection of the offer to downscale and the conditional offer of hybrid CfD contract will lapse without further notice. The marginal tenderer will hereafter receive a refusal of offering a hybrid CfD contract see clause 10 below.

If the Danish Energy Agency does not receive an accept from the marginal tenderer to deliver the project in question in accordance with the remaining budget (see Appendices 6.a-6.c) and there are no other bids with the same price premium as the marginal bid, the remaining threshold of 90% described in clause 6.2 above will not be utilised.

If the Danish Energy Agency does not receive an accept from the marginal tenderer to deliver the project in question in accordance with the remaining budget (see Appendices 6.a-6.c) and there are other bids with the same price premium as the marginal bid, these will be considered in the order from largest to smallest expected production. Projects that exceed the threshold of 90% described in clause 6.2 above will be offered to downscale the project, while projects that do not exceed the threshold of 90% described in clause 6.2 above will be awarded a hybrid CfD contract. This procedure will be applied until the total threshold of 90% described in clause 6.2 above has been reached. This rule will only be applied in situations where several projects have been submitted with the same price premium as the marginal bid.

#### *6.4 Threshold of 90%*

Tenderers are to submit a bid price premium per kWh and the capacity of the project (MW). For solar PV installations, the project's capacity is to be stated in MW<sub>p</sub>, which is the DC effect of the photovoltaic solar panels used.

Expected annual production will be calculated on the basis of the assumed number of full-load hours per year for each technology, see below.

Hybrid CfD contracts will be awarded to tenderers with the lowest offered bid price per kWh until the threshold of 90% has been reached, see however clause 6.3 above.

The offered bid price and the project's capacity must appear from the individual bid, see Appendix 1, while the assumption concerning full-load hours depends on the technology used. In connection with the evaluation, cf. clause 6.2-6.3, the calculation will be based on the following production assumptions for each technology:

Onshore wind turbines: 3,40020 full-load hours per year.

Wave power plants: 2,50021 full-load hours per year.

Hydroelectric power plants: 2,50022 full-load hours per year.

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<sup>20</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>21</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>22</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

Solar PV: 1,07523 full-load hours per year.  
Offshore wind turbines: 4,50024 full-load hours per year.

The threshold of 90% described in clause 6.2 above is calculated separately for each technology in case of installations with a combination of solar PV and wind turbines.

The calculation of the threshold of 90% described in clause 6.2 above is solely of an evaluation-technical nature and the assumptions used in the calculations will therefore not affect the actual aid payment, the date of grid connection or similar.

## **7. Bid, declarations and documentation**

### *7.1 The bid*

A bid must contain one bid price (the bid price offered), which is binding for the tenderer.

The bid must contain a description of the tenderer. The description must contain the following elements:

The name and address of the tenderer:

- The name of a contact person, if the tenderer is a company
- The registration number of the company, if the tenderer is a company (e.g. CVR no. (Danish company reg. no.))
- The national identification number of the person, if the tenderer is a natural person (e.g. CPR no.)
- Telephone number of the tenderer or of a contact person
- Email address of the tenderer or of a contact person.

The tender letter template see Appendix 1, which the tenderer must complete when submitting the bid, is available at the tender portal:

[\*]

The bid (see Appendix 1) must furthermore include a description of the installations (see Appendix 2). If a bid (see Appendix 1) covers several installations Appendix 2 is to be completed for each installation covered by the bid. Appendix 2 must among other things include the following elements:

- The installed capacity of installations covered by the bid. The installed capacity is to be stated in whole kW and is the largest active capacity the installations covered by the bid have been constructed to supply continually. If an installation is made up of different technologies the installed capacity per technology is to be stated.

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<sup>23</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

<sup>24</sup> Corresponding to full-load hours in the Danish Energy Agency's most recent technology catalogue.

- For solar PV installations, the DC effect of the photovoltaic solar panels used in installations covered by the bid should also be stated. The DC effect should be stated in whole kWp.

In addition a declaration of intent to provide a demand guarantee (see Appendix 5) must be enclosed with the bid.

A single, collected bid may be submitted, covering several installations at different planned locations, or bids may be submitted individually for each installation. Tenderers may submit several bids.

Installations covered by a bid must be located in Denmark, including on the Danish continental shelf, except for the Faroe Islands and Greenland.

The tenderer bears the full commercial risk for the kWh offered bid price.

### 7.2 *Declarations*

In the tender letter (see Appendix 1) the tenderer must give the following declarations:

- 1) solemn declaration stating that the tenderer is not subject to any outstanding recovery order to repay aid following a previous Commission decision declaring an aid illegal and incompatible with the internal market,
- 2) solemn declaration stating that the tenderer is not an undertaking in difficulty as defined in the Commission Communication on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1),
- 3) solemn declaration on not to receive any other aid than price premiums pursuant to the contract on price premium. A guarantee pursuant to the current rules on the guarantee fund in the Danish Promotion of Renewable Energy Act concern preliminary investigations and is not considered other aid in this context;<sup>25</sup>
- 4) solemn declaration on not to have unpaid due debt of DKK 100,000 or more to public authorities regarding taxes, duties or contributions to social security schemes pursuant to Danish legislation or legislation in the country in which the tenderer is established;<sup>26</sup> and
- 5) declaration stating that work on the project to construct installations covered by the tender has not started<sup>27</sup>
- 6) declaration stating that the tenderers tender letter does not include any reservations including to the tender documents

<sup>25</sup> See section 21 of the Danish Promotion of Renewable Energy Act, cf. Consolidating Act no. 125 of 7 February 2020.<sup>26</sup> See the principles in section 135(3) of the Danish Public Procurement Act.

<sup>26</sup> See the principles in section 135(3) of the Danish Public Procurement Act.

<sup>27</sup> The definition of when a project has been commenced is given in section 5(1), no. 6, of the Promotion of Renewable Energy Act, cf. Consolidating Act no. 1288 of 27 October 2016.

7) declaration stating that the tenderer is informed that the Danish Energy Agency will process personal information given by the tenderer in connection with submitting the bid and

8) declaration stating that the tenderer is informed that the Danish Energy Agency is eligible to publish information regarding the winning bid including price premium, capacity and the name of the winning tenderer.

### *7.3 Documentation*

The tenderer must also if relevant in relation to technology submit the following documentation with the tender letter:

For onshore wind turbines and hydroelectric power plants subject to requirements for planning documentation:

- an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment (see clause 5.9 above).

For solar PV installations not subject to requirements for planning documentation:

- a declaration from the municipality or from the tenderer itself that there is no requirement for an adopted local development plan including an EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment (see clause 5.9 above).

For open door offshore wind turbines and wave power plants:

- a construction license and an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist for the part of the project that is located onshore pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment (see clause 5.7 above).
- A completed template on declaration from the municipal board stating that the municipal board does not have any objections to construction and grid connection of the open door offshore wind turbine project covered by the bid (see clause 5.9 above). The tenderer must submit a declaration from all relevant municipalities.

### *7.4 Incomplete tenders*

The Danish Energy Agency will not consider bids in which the tender letter, declarations and documentation pursuant to clauses 7.1-7.3 above are missing.

## **8. Deadline for bids and formal requirements**

The deadline for receipt of bids is

**[\*] 2020, at 12:00 noon**

Bids received after this deadline will not be considered.

A bid must contain:

- a completed and signed template for the tender letter and declarations (Appendix 1) see clauses 7.1 and 7.2 above
- a completed template with a description of installations covered by tenders (Appendix 2) see clause 7.1 above
- for onshore installations: either an adopted local development plan, including an EIA approval or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a completed template with a dispensation from a rural zone permit if such a dispensation exist for installations subject to requirements of planning documentation pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment; or a completed template on planning documentation with a declaration from the municipality or the tenderer (Appendix 4) see clause 7.3 above for installations not subject to requirements of planning documentation
- for offshore installations: a construction license and an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist for the part of the project that is located onshore pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment
- for open door offshore wind turbines: a completed template on declaration of support from the municipality board concerning open door offshore wind turbines (Appendix 4) see clause 7.3 above and/or
- a completed template with a declaration of intent from a financial institution for the provision of a demand guarantee (Appendix 5) see clause 7.1 above.

All communication must take place electronically. Bids must be submitted via the tender portal, which can be accessed directly from the following link:

**[\*]**

Bids cannot be submitted in any other way, including by email.

If the tender portal is down due to technical reasons up to one week before the deadline for the receipt of bids, the Danish Energy Agency reserves the right to prolong the deadline for submitting bids.

If a tenderer finds parts of the tender documents to be unclear, the tenderer is invited to submit substantiated questions concerning this see clause 14 below.

## **9. Language**

Bids, including appendices, must be in Danish (see Appendix 1). However, the required declaration of intent to provide a demand guarantee (see Appendix 5) will be accepted in Danish or English.

The Danish Energy Agency has prepared the tender documents in Danish. The tender documents will also be made available in an English translation.

In the event of any discrepancy between the Danish version of the tender conditions, including appendices, and the English translation of the tender conditions, including appendices, the Danish version of the tender conditions, including appendices, prevails, see however clauses 5.11.4.1 and 5.11.4.2.

## **10. Award**

When the Danish Energy Agency has assessed whether the bids received are compliant, and which bids have the lowest offered price premiums within the threshold of 90% described in clause 6.2 above, the Danish Energy Agency will notify all tenderers of whether their bids have been accepted. Notification to any marginal tenderers will happen at the same time. With regard to tenderers that are not awarded a hybrid CfD contract and tenderers that have submitted incomplete bids and therefore will not be considered (see clause 7.4) the notification will also contain a brief account of the relevant grounds for the decision.

The Danish Energy Agency reserves the right to cancel the tender of price premiums for electricity generated at onshore wind turbines, solar PV installations and offshore wind turbines without awarding hybrid CfD contracts.

The Danish Energy Agency reserves the right to reject one or more offered bids, if the Danish Energy Agency assesses that the bid or bids have been submitted to manipulate with the threshold of 90% described in clause 6.2 above.

Notification of the award decision to the winning tenderers does not mean that the hybrid CfD contract has been concluded. The hybrid CfD contract will not be considered concluded (and the tendering procedure finally completed) until the hybrid CfD contract has been signed. The hybrid CfD contract cannot be signed until after expiry of a period of ten calendar days calculated from the day after the day when the Danish Energy Agency submitted its notifications about the award of the hybrid CfD contract.

It is a condition for the Danish Energy Agency's conclusion of the hybrid CfD contract with the winning tenderer that the demand guarantee for the retention penalty (see Appendix 3) has been provided no later than at the time of the winning tenderer's signing of the hybrid CfD contract, see clause 5.11.4.2 above.

## **11. Tender validity period and costs of participation**

Tenderers are bound by their bids until signing of the contract(s) on hybrid CfD, however for no longer than three months from expiry of the deadline for submitting bids (tender validity period).

The tenderer's costs in connection with the tendering process, including any costs associated with obtaining the necessary decisions, approvals, licences/permits and dispensations etc., are of no concern to the Danish Energy Agency.

## **12. Processing of bids**

The Danish Energy Agency will treat all bids with confidentiality.

However, the Danish Energy Agency reserves the right to publish anonymised statistics about the tendering round.

The Danish Energy Agency is eligible to publish information about the winning price premium(s) including the name(s) of the winning tenderer(s). Furthermore, the Danish Energy Agency may be obliged to grant access to documents pursuant to the rules on access to documents in the Danish Public Information Act, the Danish Public Administration Act and the Act on Environmental Information.

The Danish Energy Agency is not obliged to return bids to the tenderers.

In the evaluation of bids and other submitted documentation, the Danish Energy Agency reserves the right to use external assistance if necessary.

The Danish Energy Agency considers it material that the tendering procedure creates effective competition between the tenderers and that all tenderers are treated equally.

## **13. Checklist**

Has the tenderer enclosed with the bid:

1. A tender letter (Appendix 1) containing:
  - a. a bid price per kWh and capacity
  - b. a solemn declaration on the obligation to construct and connect to the grid specified installations
  - c. a solemn declaration stating that the tenderer does not have unpaid, due debt to public authorities exceeding DKK 100,000
  - d. a solemn declaration stating that the tenderer has complied with any and each recovery order to repay aid following a previous decision from the European Commission declaring an aid illegal and incompatible with the internal market
  - e. a solemn declaration stating that the tenderer is not an undertaking in difficulty as defined in the Commission Communication on Guidelines on

State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1)

- f. a solemn declaration stating that the tenderer will not receive other aid than the price premiums under the hybrid CfD contract. A guarantee pursuant to the current rules on the guarantee fund in the Danish Promotion of Renewable Energy Act concern preliminary investigations and is not considered other aid in this context
  - g. a declaration stating that the work on the project has not started
  - h. a declaration stating that the tenderer has not included any reservations to the tender documents
  - i. a declaration stating that the tenderer is informed that the Danish Energy Agency will process personal information given by the tenderer in connection with submitting the bid and
  - j. a declaration stating that the tenderer is informed that the Danish Energy Agency is eligible to publish information concerning the winning bid including bid price, capacity and the name of the winning tenderer.
2. A completed template for the description of installation(s) covered by the bid (Appendix 2).
  3. A completed template for letter of intent to provide a demand guarantee (Appendix 5).
  4. For onshore wind turbines: adopted local development plan, including an approved EIA report.
  5. For onshore wind turbines: an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist, in accordance with the Danish Planning Act and the Danish Act on Environmental Impact Assessment, see clause 7.3 above.
  6. For solar PV installations: either an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist, in accordance with the Danish Planning Act and the Danish Act on Environmental Impact Assessment or a completed template for declaration regarding no requirement of planning documentation from the municipality or from the tenderer itself (Appendix 4), see clause 7.3 above.
  7. For open door offshore wind turbines: a construction license and an adopted local development plan, including an approved EIA report or an EIA decision that there is no obligation to prepare an EIA report; a rural zone permit; and/or a dispensation from an adopted local development plan and/or a dispensation from a rural zone permit if such a dispensation exist for the part of the project that is located onshore



pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment.

8. For open door offshore wind turbines: a completed template on declaration from the municipality board concerning open door offshore wind turbines (Appendix 4) see clauses 5.4, 5.9 and 7.3 above.

The tender letter must state which company or combination of companies is/are submitting the bid.

#### **14. Questions concerning tender documents**

Tenderers may submit written questions regarding the tender documents. Questions may be submitted in Danish or in English. Questions/answers in Danish will not be translated into English, and questions/answers in English will not be translated into Danish.

It is essential to the Danish Energy Agency that all tenderers are able to submit relevant bids within the framework of the tender conditions. All potential tenderers are therefore encouraged to use the opportunity to submit written questions on the tender documents, pointing out conditions which the tenderers find unclear or inappropriate. The Danish Energy Agency reserves the right to make amendments to the tender documents during the tender procedure if this is deemed appropriate in the light of questions received or if it turns out to be necessary due to other reasons. Such amendments will however not concern fundamental elements.

Questions must be submitted electronically via the tender portal at the following link:

[\*]

All written questions (anonymised) and answers to these will be published on the tender portal.

[\*]

Questions received by no later than [date] will be answered by no later than six days before the deadline for submitting bids. However, tenderers are encouraged to submit questions well before this date.

Questions that are received later than six days before expiry of the time limit for submitting bids cannot be expected to be answered.

It will be possible to submit technical questions regarding the tender portal up until the deadline for receipt of bids. These questions will be answered by the Danish Energy Agency as soon as possible before the deadline for receipt of bids.

#### **15. Information on the tendering procedure**

All information about the tendering procedure, including answers to questions and any changes to the tender documents, will be published on the tender portal:

[\*]

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