

Conditions for the competitive bidding process for the production of Power-to-X

[Month] 202[X]

DRAFT

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Appendix 1:	Template for bid including a declaration on the obligation to construct full capacity and start the production of green hydrogen in accordance with the bid
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Appendix 6:	Draft of contract

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
<https://ens.dk/>

All enquiries, including questions etc., must be submitted electronically during the competitive bidding process via the following link on the portal for the competitive bidding process:

[Insert link]

2. Regulation of the competitive bidding process for Power-to-X

The Danish Energy Agency's competitive bidding process for Power-to-X is not covered by the Danish Public Procurement Act¹, the EU Concession Contracts Directive² or the EU Utilities Directive.³

The Danish Energy Agency has decided to expose the contract(s) on aid for the production of green hydrogen to competition. Therefore, the competitive bidding process is subject to the general principles of EU law in the Treaty of the Functioning of the European Union (hereinafter "TFEU"), e.g. concerning equal treatment, transparency, proportionality and non-discrimination on the grounds of nationality. Aid for the production of green hydrogen granted pursuant to the competitive bidding process for Power-to-X constitutes State aid under TEUF Article 107 (1). [The competitive bidding process is approved by the European Commission in [SA.XXXXXX] the [DATE] in accordance with the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022⁴.]

The rights and obligations of the Danish Energy Agency and of the winning bidder(s) under this competitive bidding process are described in the contract, see appendix 6.

3. Climate Agreement on Energy and Industry from 2022 and Agreement on the development and promotion of hydrogen and green fuels (Power-to-X strategy) from 2022

The government (the Social Democratic Party), the Liberal Party of Denmark, the Danish People's Party, the Danish Social Liberal Party, the Socialist People's Party, the Red-Green Alliance, the Conservative People's Party, Liberal Alliance and the Alternative entered into Climate Agreement

¹ 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.

² 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.

³ 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.

⁴ Guidelines on State aid for climate, environmental protection and energy 2022 (2022/C 80/01)

on Energy and Industry on the 22 of June 2020. Subsequently, the same parties entered into an Agreement on the development and promotion of hydrogen and green fuels (Power-to-X strategy) on the 15 of March 2022. According to these two agreements, there should be established a state aid scheme for Power-to-X based on a competitive bidding process with a total budget of DKK 1.25 billion. The aid must be granted as operating aid and paid for produced green hydrogen over a 10-year period. The aim of the competitive bidding process is to achieve the lowest price for the largest production of green hydrogen within the budget.

The Climate Agreement on Energy and Industry and the Agreement on the development and promotion of hydrogen and green fuels (Power-to-X strategy) is available in Danish⁵ via the following links:

<https://fm.dk/media/18085/klimaaf tale-for-energi-og-industri-mv-2020.pdf>

<https://www.regeringen.dk/media/11146/aftale-om-udvikling-og-fremme-af-brint-og-groenne-braendstoffer.pdf>

4. The documents of the competitive bidding process for Power-to-X

The documents of the competitive bidding process consist of:

- 1) These conditions of the competitive bidding process, which primarily contain guidelines for preparing bids and requirements for bidders etc.
- 2) Template for bid, including declarations on obligation to construct full capacity and start the production of green hydrogen in accordance with the bid (appendix 1) (to be completed by the bidders in connection with the bid submission)
- 3) Template for description of installation(s) covered by the bid (appendix 2) (to be completed by the bidders in connection with bid submission)
- 4) Template for a demand guarantee (DK/UK) (appendix 3) (to be completed by the bidder's guarantor before signing of the contract)
- 5) Template for declaration of intent to provide a demand guarantee (appendix 4) (to be filled out by the bidder's guarantor in connection with bid submission)
- 6) Template for conditional award decision to the marginal bid (appendix 5.a) (to be filled out by the Danish Energy Agency, if relevant)
- 7) Template for reduced bid from the marginal bidder (appendix 5.b) (to be completed by the Danish Energy Agency and the marginal bidder, if relevant)
- 8) Template for description of installation(s) covered by the reduced bid (appendix 5.c) (to be filled out by the marginal bidder, if relevant)

⁵ An English summary of the Climate Agreement is available via the link: [https://kefm.dk/Media/C/B/fak-taark-klimaaf tale%20\(English%20august%2014\).pdf](https://kefm.dk/Media/C/B/fak-taark-klimaaf tale%20(English%20august%2014).pdf)

- 9) Draft of contract (hereinafter “**the contract**”) (appendix 1-3 of the conditions of the competitive bidding process will be included as appendix 1-3 to the contracts) (appendix 6)

All the documents of the competitive bidding process are available on the portal of the competitive bidding process via the following links:

[Insert link]

In the event of discrepancies between these conditions of the competitive bidding process and the contracts, including appendixes, the contracts, including appendixes, prevails.

5. Content of the competitive bidding process for Power-to-X

5.1 General

These conditions for the competitive bidding process apply to the competitive bidding process for Power-to-X in 202[X] pursuant to § 43 k of the Danish Act no. 923⁶. The competitive bidding process for Power-to-X covers new installations where work on the project has not yet been started, cf. clause 5.4.

In the bid, cf. clause 7.1, the bidder must state a bid price, the total water electrolysis capacity that they will establish and the total quantity of green hydrogen that they will produce during the 10-year aid period.

5.2 Aid for the production of green hydrogen

The competitive bidding process awards aid for the production of green hydrogen using water electrolysis, cf. the definition of green hydrogen in clause 5.5.

The winning bidder will have access to aid for the actual quantity of green hydrogen produced using water electrolysis on installation(s) covered by the contract during the entire support period, cf. clause 5.3.

The contract has no option to opt out on the part of the winning bidder.

A single, collected bid may be submitted, covering several water electrolysis plants at different planned locations or multiple bids may be submitted, i.e. one bid for each plant. Each bidder may submit several bids. A bid must at least include one water electrolysis plant.

5.3 Premium, aid period and budget

With the competitive bidding process the Danish Energy Agency awards aid as a fixed premium in DKK per GJ produced green hydrogen in accordance with the offered bid price stated in the winning bid. The aid will not be indexed. The winning bidder will have access to the premium for a 10-year period from the start of production as defined in clause 5.8.1.

There is a cap of DKK 1.25 billion on the total aid paid out by the Danish Energy Agency to all the winning bidders over the entire 10-year aid period from start of production as defined in clause 5.8.1.

⁶ Act no. 923 of 18 of May 2021

If the total budget of DKK 1.25 billion can be awarded to bids under 70 DKK/GJ, there will only be held one competitive bidding round containing the total budget. However, if this is not possible, the total budget will be divided into two competitive bidding rounds with a budget of maximum DKK 750 million for the first competitive bidding round and minimum DKK 500 million for the second round.

Receiving aid under the contract is subject to the condition that relevant Permits etc. are submitted to the Danish Energy Agency, cf. clause 5.6, and that the produced hydrogen is green in accordance with the definition described in clause 5.5.

Furthermore, it is a condition for receiving aid under the contract that the winning bidder complies with regulation regarding production, documentation and measurement etc. of green hydrogen in force at all time.⁷

The contract applies to the actual quantity of green hydrogen produced by installation(s) covered by the contract, cf. clause 5.2 above. It will not be possible to receive a premium for the production of green hydrogen that exceeds the quantity of green hydrogen that is stated in the contract concluded between the Danish Energy Agency and the winning bidder in question. Thus, if the green hydrogen produced by installations covered by the contract, exceeds the quantity of green hydrogen covered by the contract, the premium will only apply for the quantity of green hydrogen that is covered by the contract. The maximum quantity of green hydrogen that the winning bidder can receive aid for will appear from the contract and will remain constant for the entire 10-year aid period.

5.4 Requirement regarding new installations

The competitive bidding process applies to new water electrolysis plants where work on the project has not yet been started.

An installation will be considered a new installation when the water electrolysis plant is new. This means, that an expansion of an existing plant is only eligible under the competitive bidding process when new additional water electrolysis capacity is added to the plant.

Start of works must be understood in accordance with point 19(82) of the European Commission's guidelines on State aid for climate, environmental protection and energy 2022. Start of works means the first firm commitment (for example, to order equipment or start construction) that makes an investment irreversible. The buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment.

5.5 Requirement regarding green hydrogen

Pursuant to this competitive bidding process, green hydrogen is defined as renewable hydrogen that can be considered a renewable liquid and gaseous transport fuels of non-biological origin in accordance with the Commission Delegated Regulation EU [XX/XX] of [XXX] supplementing

⁷ Among other things, this concerns regulations implementing Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources as well as regulations etc. issued pursuant to this Directive.

Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (hereinafter “**The Delegated Regulation**”). If The Delegated Regulation is changed or replaced by new rules, the new rules will apply.

If the hydrogen produced is not green in accordance with The Delegated Regulation as described above, the winning bidder is not entitled to the premium. For more details about the consequences of not complying with The Delegated Regulation see clause [XX] of the contract (appendix 6).

5.6. Requirement regarding environmental approval etc.

Receiving aid under the contract is conditioned upon the winning bidder submitting all relevant approvals, dispensations etc. to the Danish Energy Agency. The winning bidder must submit an adopted local development plan and/or a dispensation from an adopted local development plan, cf. the Danish Planning Act, an approved environmental impact assessment report or a decision on there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment, environmental permit, cf. the Danish Act on Environmental protection and a building permit, cf. the Danish Building Act and Executive order on building regulations 2018 (BR18) (hereinafter “**Permits etc.**”) The documents must be submitted in written to the Danish Energy Agency prior to the start of production as defined in clause 5.8.1.

The Permits etc. will be considered submitted, once the Danish Energy Agency has received the Permits etc. If the winning bidder fails to comply with this condition, aid will not be paid until the Permits etc. have been submitted. See also clause 5.8.2. below.

If an administrative authority, a complaints board or a court of law after the time allowed for submission of Permits etc. should make a decision that sets aside, in whole or in part, the above Permits etc., the Danish Energy Agency may on the basis of a specific assessment suspend the premium in the aid period or terminate the contract, cf. clause [X] and [X] of the contract.

[Possible section regarding the rules about investment screening]

5.7 The stage of the projects at the time of the bid

Before the bidders may participate in the competitive bidding process, they must have received a statement from the competent Danish environmental authority. The requirements to the statement depends on the specific project included in the bid.

If the project(s) are *comprised by annex 1* in Act no 1976 dated October 27 2021 (hereinafter “**Act no 1976**”), the project must have received a statement from the competent Danish environmental authority stating that the project is described in sufficient detail in order for the authority to start the first public hearing.

If the project(s) are *comprised by annex 2* in Act no 1976, the project must have received a statement from the competent Danish environmental authority stating that the project is described in sufficient detail in order for the authority to reach a screening decision assessing whether or not the project is comprised by the requirement to make an environmental assessment, cf. § 21 in Act no 1976.

Furthermore, if the project(s) has to be connected to the transmission grid for the supply of renewable electricity, the bidder must also, before participating in the competitive bidding process, have completed a screening at Energinet⁸ and as a result hereof have received a screening report⁹ from Energinet. The screening report from Energinet must document that connecting the project to the transmission grid is possible within the four-year time limit described in clause 5.8.2 below.

Bidders must submit the described documentation from the competent environmental authority and Energinet with the bid.

5.8 Obligation to construct full capacity and start the production and extension of the time limit

5.8.1 Definition of start of production and construction of full capacity

Each winning bidder is obligated to construct the full capacity and start the production, cf. clause 5.8.2 below.

Start of production is defined as the date at which the installation(s) covered by the contract produces green hydrogen in accordance with the contract for the first time. The condition is met when the first quantity of green hydrogen produced from these installations(s) is measured and documented to the Danish Energy Agency. The measuring and documentation of the produced green hydrogen must be done in accordance with the requirements in clause [X] of the contract (see appendix 6). The Danish Energy Agency reserves the right to monitor the measuring method in the aid period.

Construction of full capacity is defined as constructing the full water electrolysis capacity as stated in the bid, cf. clause 7.1 below, and as covered by the contract. This means, that it must be possible for the winning bidder to produce the total quantity of green hydrogen covered by the contract (see appendix 6). The condition is met when [...]

5.8.2 Time limit for the obligation to construct full capacity and start the production

Within four years from the date of signing the contract with the Danish Energy Agency, the winning bidder must have constructed the full capacity and started the production as defined in clause 5.8.1.

The obligation to construct full capacity will be considered met when the winning bidder has constructed the full capacity as defined in clause 5.8.1 within the four year time limit.

The obligation to start the production will be considered met when the installation(s) covered by the contract starts the production as defined in section 5.8.1 within the four year time limit.

It is a requirement that the winning bidder have sent the required Permits etc. to the Danish Energy Agency, cf. clause 5.6, in order for the obligation to construct full capacity and start the production is considered met. Furthermore, it is a requirement that the produced hydrogen is green, cf. clause 5.5, in order for the obligation to start production is considered met.

If the winning bidder does not construct the full capacity within four years as described above, the winning bidder is obligated to pay liquidated damages in accordance with clause 5.10 below and clause [XX] of the contract. However, a number of exceptions applies to this rule, cf. clause 5.8.3

⁸ Energinet owns and runs the electricity transmission grid in Denmark.

⁹ A screening report is the final result of a screening agreement with Energinet.

below. If the winning bidder does not start the production of green hydrogen within four years as described above, the 10-year aid period that runs from the start of production, cf. clause 5.3, will be reduced in proportion with delay. However, a number of exceptions also applies here, cf. clause 5.8.3.

5.8.3 Extension of the time limit

A winning bidder is entitled to an extension of the time limit for the obligation to construct full capacity and start the production, cf. clause 5.8.2 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 bidder is without fault and over which the winning bidder has no control, for example war, pandemic, extraordinary natural events, fire, strikes, lockout or malicious damage.
- 3) Public orders or bans, which are not caused by circumstances attributable to the winning bidder.
- 4) 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.
- 5) If the winning bidder does not obtain the required Permits etc. from the authorities, although the winning bidder has applied for these no later than three years before expiry of the time limit for construction full capacity and start of production, cf. clause 5.8.2. This does not affect the requirements set out in clause 5.7.
- 6) The distribution company or the transmission company¹⁰ is not ready to connect the installation(s) covered by the contract, because the winning bidder has not been able to obtain the required Permits etc. from the authorities, although the winning bidder has applied for the required Permits etc. from the relevant authorities no later than three years before expiry of the time limit for constructing full capacity and start of production. This does not affect the requirements set out in clause 5.7.
- 7) The transmission company is not ready to connect the installation(s) covered by the contract within the time limit for establishing full capacity and start of production, as stated in the screening report, cf. clause 5.7. This does not affect the requirements set out in clause 5.7.
- 8) The distribution company is not ready to connect the installation(s) covered by the contract within the time limit for establishing full capacity and start of production, cf. clause 5.8.2 above, and the winning bidder has entered into an agreement on connecting the installations covered by the contract to the grid no later than 2 years before the expiry of the limit for construction full capacity and start of production, cf. 5.8.2.

¹⁰ Energinet owns and runs the electricity transmission grid in Denmark

- 9) If the construction of the installation(s) covered by the 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 Consolidating Act no. 358 of 8 April 2014.
- 10) If any Permits etc. that are required in order to receive aid, are declared void, and this is not caused by circumstances attributable to the winning bidder.

The extension of the time limit will correspond to the actual delay caused by the circumstances in number 1-10 claimed by the bidder. Winning bidders who are entitled to an extension of the time limit must immediately, and before the time limit, 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 bidder must be able to substantiate that the delay in question was caused by the circumstances claimed by the bidder, and that the delay could not reasonably have been avoided or limited.

Regardless of the above, the extension of time may never exceed a total of one year, and the Danish Energy Agency will not be able to pay the premium later than 15 years after the conclusion of the contract. If a winning bidder, who is covered by one or more of the exceptions above, does not start the production of green hydrogen, cf. clause 5.8.1 and clause 5.8.2, within 5 years after signing the contract, the 10-year aid period, that runs from the start of production, cf. clause 5.3, will be reduced in proportion with the delay beyond the 5 years. If a winning bidder, that is covered by one or more of the exceptions above, does not construct full capacity, cf. clauses 5.8.1 and 5.8.2, within 5 years from signing the contract, the winning bidder must, regardless of the reason for this, pay retention penalty, cf. point 5.10.

5.9 Total number of winning contracts

The total number of contracts to be concluded based on the competitive bidding process has not yet been determined. The intention is to enter into one or several contracts based on the award criterion lowest bid price (see clause 6.1 below), which can be kept within the available funds, cf. clause 5.3 above.

5.10 Liquidated damages and guarantees

5.10.1 Liquidated damages

Liquidated damages will be immediately payable upon demand if one of the following situations apply:

- If after signing the contract, a winning bidder notifies the Danish Energy Agency in writing that it will not or cannot construct the full capacity within four years in accordance with the obligations described in clause 5.8.2. However see clause 5.8.3.
- If the circumstances show that the winning bidder will not or cannot construct the full capacity within four years in accordance with the obligations described in clause 5.8.2. However see clause 5.8.3.
- If full capacity has not been constructed within four years in accordance with the obligations described in clause 5.8.2. However see clause 5.8.3.

If one or more of the circumstances above exclusively relate to a part of the capacity covered by the contract, the liquidated damages is calculated proportionately, cf. clause 5.10.2 and 5.10.3 below.

5.10.2. Constructing less capacity than covered by the contract

If the capacity established within the time limit, cf. clause 5.8.2, is less than the capacity covered by the contract, the winning bidder must pay a liquidated damage for the remaining capacity that has not been established within the time limit, cf. the formula below in clause 5.10.3.

5.10.3 Calculation of liquidated damages

The liquidated damages will be calculated based on the total amount of green hydrogen stated in the contract, a penalty rate and the missing capacity not constructed in percentage according to the contract.

The amount of the liquidated damages for each winning project will be calculated using the following formula:

$$\text{Liquidated damage} = \text{Penalty rate} * \frac{\text{Total amount of green hydrogen}}{10} * \text{xx\% missing capacity}$$

Where:

- the penalty rate is 40 DKK/GJ,
- the total amount of green hydrogen is the total production over a 10-year aid period in GJ stated in the contract and
- the missing capacity is the remaining capacity not constructed in percentage out of the full capacity according to the contract

5.10.4. Guarantees

5.10.4.1 Declaration of intent to provide a demand guarantee

With the bid, the bidder must submit a declaration of intent, cf. appendix 4, 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 liquidated damages, cf. clause 5.10.3 above. The bidder must use the Danish or English template enclosed as appendix 4. The Danish version and English version of appendix 4 have equal status and have the same validity.

5.10.4.2 Demand guarantee

Prior to signing of the contract, the winning bidder must provide a demand guarantee, cf. appendix 3, in Danish or English from a financial institution for an amount corresponding to the amount of the liquidated damages, cf. clause 5.10.3 above. The bidder must use the Danish or English template enclosed with the 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 bidder before the Danish Energy Agency signs the contract.

5.10.4.3 Lapse of the demand guarantee

The demand guarantee will lapse when the full capacity is constructed in accordance with clause 5.8.1 and 5.8.2. However see clause 5.8.3. In cases covered by clause 5.8.3, the demand guarantee will lapse when the full capacity is constructed within the extended time limit.

5.11 Joint and several liability

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

If the bidder is an undertaking in the process of being established, the founders of the undertaking will have to assume joint and several liability with the bidder on the date of signing of the contract and until the undertaking has been registered, cf. section 41(3) of the Danish Companies Act¹¹.

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

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

6. Award criterion, ranking, flexibility mechanism

6.1 Award criterion

The Danish Energy Agency will conclude contract(s) for the production of green hydrogen generated by installation(s) covered by the winning bid based on the award criterion **lowest offered bid price**, which will be assessed as follows:

- **The offered bid price in DKK per GJ covering green hydrogen production for 10 years from start of production as defined in clause 5.8.1.**

The premium will for each winning bidder be determined in accordance with the principle of "pay-as-bid". Each contract will therefore contain the bid price (expressed in DKK per GJ) that the winning bidder has submitted in its bid. Furthermore, each contract will contain the total quantity of green hydrogen and the full capacity that the winning bidder has submitted in its bid, cf. clause 6.3.

The offered bid price is to be a fixed DKK amount and will not be indexed.

The offered bid price is to be stated as an amount in DKK per GJ with four decimal places.

Bids with an offered bid price above 120 DKK/GJ will not be accepted.

Bidders are to submit a bid price (DKK per GJ), the quantity of green hydrogen (GJ) that they will produce over the 10 year aid period and the total water electrolysis capacity (MW) that they will

¹¹ Act no 1952 of 11 October 2021

construct. The offered bid price, the quantity and the capacity must appear from the individual bid (see appendix 1).

Contract(s) will be awarded to bidders with the lowest offered bid price per GJ until the available funds, cf. clause 5.3, have been depleted.

6.2 Ranking

A contract will be awarded to the bidder(s) that submit a bid, which is compliant with the requirement set out in these conditions, and with the lowest bid price, cf. clause 6.1, and that can be kept within the available funds.

If several bids contain the same offered bid price, the bids in question will be ranked according to the quantity of green hydrogen according to the bid, from the largest to the smallest.

If several bids contain the same offered bid price and the same quantity of green hydrogen, 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 contract within the available funds.

6.3 Flexibility mechanism

If the Danish Energy Agency decides that there is a marginal bid, the Danish Energy Agency will offer the bidder with the marginal bid the opportunity to downscale its quantity of green hydrogen such that it can be contained within available funds, but at the bid price originally offered in accordance with appendixes 5.a-5.c. The "marginal bid" means a bid that complies with the requirements set out in these conditions, which – assessed on the basis of the price in the bid – can be awarded a contract, but which would entail that the available funds would be exceeded.

The Danish Energy Agency will send a conditional award letter to the marginal bidder via the portal for the competitive bidding process with information about the downscaled quantity of green hydrogen that can be contained within the available funds, see appendix 5.a. The conditional award letter will state that in order for the Danish Energy Agency to be able to accept the bid, the bidder will have to downscale the quantity of green hydrogen such that it can be contained within the available funds, see appendixes 5.a-5.c.

If the Danish Energy Agency does not receive an acceptance of the conditional award letter from the marginal bidder in accordance with appendixes 5.a-5.c no later than 10 working days after the Danish Energy Agency has sent the conditional award letter, the Danish Energy Agency will consider this a rejection of the offer to downscale, and the conditional offer of contract will lapse without further notice. The marginal bidder will hereafter receive a refusal of offering a contract, cf. clause 10 below.

If the Danish Energy Agency does not receive an acceptance of the conditional award letter from the marginal bidder and there are no other bids with the same offered bid price as the marginal bid, the remaining funds will not be utilised.

If the Danish Energy Agency does not receive an acceptance of the conditional award letter from the marginal bidder and there are other bids with the same offered bid price as the marginal bid, these will be considered in the order from largest to smallest quantity of green hydrogen. For such bids, a bid that would entail that the available funds would be exceeded, will be offered to

downscale the project. This procedure will be applied repeatedly until the available funds are depleted. This procedure will only be applied in situations where several bids have been submitted with the same offered bid price as the marginal bid.

7. Bid, declarations and documentation

7.1 The bid

A bid must contain the offered bid price (DKK per GJ), the quantity of green hydrogen to be produced during the 10 year aid period and the total water electrolysis capacity to be constructed (see appendix 1). The offered bid price, the capacity and the quantity is binding for the bidder. However see clause 6.3.

The bid must also contain a description of the bidder (see appendix 1). The bid must contain the following information:

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

Template for the bid letter, cf. appendix 1, are available at the portal for the competitive bidding process via:

[[Insert link](#)]

The bid, cf. appendix 1, must include a description of the installation(s) the bid concerns, cf. appendix 2. If a bid covers several installations, appendix 2 must be completed for each installation covered by the bid.

The bid must also include a declaration of intent to provide a demand guarantee as described in clause 5.10.4.1, cf. appendix 4, and the documentation described in clause 5.7 regarding the state of the project at the time of the bid.

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

Installations covered by a bid must be located in Denmark.

The bidder bears the full commercial risk associated with the offered bid price.

7.2 Declarations

In the bid letter (see appendix 1) the bidder must give the following declarations:

- 1) Solemn declaration stating that the bidder has complied with any and each requirement for repayment of aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market
- 2) Solemn declaration stating that the bidder 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 (OJ C 249, 31.7.2014, p.1)
- 3) Solemn declaration on not to receive any other aid with the same purpose and/or for the same project than the premium pursuant to the contract for this competitive bidding process
- 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 bidder is established¹²
- 5) Declaration stating that work on the project to construct installations covered by the bid has not started¹³
- 6) Declaration stating that the bidder's bid letter does not include any reservations, including to all the documents for the competitive bidding process
- 7) Declaration stating that the bidder is informed that the Danish Energy Agency will process personal information given by the bidder in connection with submitting the bid
- 8) Declaration stating that the bidder is informed that the Danish Energy Agency is eligible to publish information regarding the winning bid, quantity of green hydrogen, capacity, location, technology and the name of the winning bidder

7.3 Documentation

The bidder must also submit the following documentation with the bid letter:

- A statement from the competent environmental authority as described in clause 5.7
- If the project has to be connected to the transmission grid for the supply of renewable electricity, a screening report from Energinet documenting that connecting the project to the transmission grid is possible within the four-year time limit as described in clause 5.7
- A declaration of intent from a financial institution (see appendix 4) as described in clause 5.10.4.1

7.4 Incomplete bids

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

¹² See the principles in section 135(3) of the Danish Public Procurement Act.

¹³ The definition of when work on a project has been started is given in point 19(82) of the European Commission's guidelines on State aid for climate, environmental protection and energy 2022 (2022/C 80/01)

8. Deadline for bids and formal requirements

The deadline for receipt of bids is:

[XX] 202[X], at 12:00 noon

Bids received after this deadline will not be considered.

A bid must contain:

- A completed and signed template for the bid letter and declarations (appendix 1) (see clauses 7.1 and 7.2 above)
- A completed template with a description of installation(s) covered by the bid (appendix 2) (see clause 7.1 above)
- A statement from the competent environmental authority (see clause 5.7)
- If the project has to be connected to the transmission grid for the supply of renewable electricity, a screening report from Energinet documenting that connecting the project to the transmission grid is possible within the four-year time limit (see clause 5.7)
- A completed template with a declaration of intent from a financial institution for the provision of a demand guarantee (see appendix 4) (see clause 5.10.4.1 above)

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

[Insert link]

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

If the portal for the competitive bidding process is down due to technical reasons within the last 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 bidder finds parts of the documents for the competitive bidding process to be unclear, the bidder is invited to submit substantiated questions concerning this, cf. clause 14 below.

9. Language

Bids, cf. appendix 1, and all other appendixes, must be in Danish. However, the required declaration of intent to provide a demand guarantee, cf. appendix 4, and the demand guarantee, cf. appendix 3, will be accepted both in Danish or English.

The Danish Energy Agency has prepared the documents for the competitive bidding process in Danish. The documents for the competitive bidding process will also be made available in an English translation.

In the event of any discrepancy between the Danish version of the conditions for the competitive bidding process, including appendixes, and the English translation of the conditions for the competitive bidding process, including appendixes, the Danish version of the conditions for the competitive bidding process, including appendixes, prevails, see however clauses 5.10.4.1 and 5.10.4.2.

10. Award

When the Danish Energy Agency has assessed whether the bids received are compliant with the requirements, and which bids have the lowest offered bid prices within the available funds, the Danish Energy Agency will notify all bidders of whether their bids have been accepted. Notification to any marginal bidders will happen at the same time. With regard to bidders that are not awarded a contract and bidders that have submitted incomplete bids and therefore will not be considered, cf. 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 competitive bidding process without awarding contracts.

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

It is a prerequisite for the Danish Energy Agency's conclusion of the contract with the winning bidder that the guarantee for the liquidated damages, cf. appendix 3, has been provided and that the original guarantee for the liquidated damages is handed over to the Danish Energy Agency no later than the time of signing the contract, cf. clause 5.10.4.2 above.

11. Validity period and costs of participation

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

The bidder's costs in connection with the competitive bidding 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.

The Danish Energy Agency reserves the right to publish anonymized statistics about the competitive bidding process round.

The Danish Energy Agency is eligible to publish information about the winning bid(s), including bid price, quantity of green hydrogen, capacity, location, technology and the name of the winning bidder. Furthermore, the Danish Energy Agency may be obliged to grant access to documents pursuant to the rules on access to documents in the Danish Access to Public Administration Files Act, the Danish Public Administration Act and the Danish Act on Environmental Information.

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

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 competitive bidding process creates effective competition between the bidders and that all bidders are treated equally.

13. Checklist

Has the bidder enclosed with the bid:

- 1) A bid letter (appendix 1) containing:
 - a. a bid price in DKK per GJ, a total quantity of green hydrogen (GJ) and a total water electrolysis capacity (MW),
 - b. a solemn declaration on the obligation to construct full capacity and start the production of green hydrogen,
 - c. a solemn declaration stating that the bidder does not have unpaid, due debt to public authorities exceeding DKK 100,000,
 - d. a solemn declaration stating that the bidder has complied with any and each requirement for repayment of aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market,
 - e. a solemn declaration stating that the bidder 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 (OJ C 249, 31.7.2014, p.1),
 - f. a solemn declaration stating that the bidder will not receive other aid for the same purpose and/or for the same project than the premiums under the contract,
 - g. a declaration stating that the work on the project has not started,
 - h. a declaration stating that the bidder has not included any reservations to the documents for the competitive bidding process,

- i. a declaration stating that the bidder is informed that the Danish Energy Agency will process personal information given by the bidder in connection with submitting the bid and
 - j. a declaration stating that the bidder is informed that the Danish Energy Agency is eligible to publish information concerning the winning bid, including bid price, quantity of green hydrogen, location, technology and the name of the winning bidder.
- 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 4)
 - 4) A statement from the competent environmental authority as described in clause 5.7
 - 5) If the project must be connected to the transmission grid for the supply of renewable electricity, a screening report from Energinet documenting that connecting the project to the transmission grid is possible within the four-year time limit as described in clause 5.7

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

14. Questions concerning documents of the competitive bidding process

Bidders may submit written questions regarding the documents for the competitive bidding process. 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 bidders are able to submit relevant bids within the framework of the conditions for the competitive bidding process. All potential bidders are therefore encouraged to use the opportunity to submit written questions on the documents for the competitive bidding process, pointing out conditions, which the bidders find unclear or inappropriate. The Danish Energy Agency reserves the right to make amendments to the documents for the competitive bidding process during the competitive bidding 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 portal for the competitive bidding process via the following link:

[Insert link]

All written questions (anonymized) and answers to these will be published on the portal for the competitive bidding process.

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

Questions that are received within the last six days of the time limit for submitting bids cannot be expected to be answered.

It will be possible to submit technical questions regarding the portal for the competitive bidding process 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 competitive bidding process

All information about the competitive bidding process, including answers to questions and any changes to the documents for the competitive bidding process, will be published on the portal for the competitive bidding process:

[Insert link]

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