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**Denmark-Copenhagen: Wind farm
2015/S 039-065965**

Public works concession

Directive 2004/18/EC

Section I: Contracting authority

I.1) Name, addresses and contact point(s)

Energistyrelsen

Amaliegade 44

For the attention of: Mette Cramer Buch, Therese Kofoed Jensen, Charlotta Castenfors Laursen

1256 Copenhagen K

DENMARK

Telephone: +45 33926700

E-mail: nearshorewind@ens.dk

Fax: +45 33114743

Internet address(es):

General address of the contracting authority: <http://www.ens.dk>

Further information can be obtained from: The above mentioned contact point(s)

Specifications and additional documents (including documents for competitive dialogue and a dynamic purchasing system) can be obtained from: The above mentioned contact point(s)

Tenders or requests to participate must be sent to: The above mentioned contact point(s)

I.2) Type of the contracting authority

Ministry or any other national or federal authority, including their regional or local sub-divisions

1.3) Main activity

Other: The Danish Energy Agency engages nationally and internationally in production, supply and consumption of energy - as well as the efforts to reduce emissions of greenhouse gases.

1.4) Contract award on behalf of other contracting authorities

The contracting authority is purchasing on behalf of other contracting authorities: no

Section II: Object of the concession

II.1) Description of the concession

II.1.1) Title attributed to the contract by the contracting authority:

Tender for 350 MW Danish nearshore wind capacity

II.1.2) Type of contract and location of works

NUTS code DK041,DK050,DK022,DK014

II.1.3) Short description of the contract:

In March 2012, the Danish Government entered into an energy agreement with all but 1 of the political parties in the Danish Parliament. By the energy agreement a large majority of the Danish Parliament has decided to initiate a tendering process covering the installation of offshore wind turbines totalling 450 MW in nearshore sites. A prior information notice was published in the Official Journal of the European Union on 26.9.2013.

In July 2014 the Danish Government entered into a political growth agreement with a majority of the political parties in the Danish Parliament. As a consequence the nearshore wind farm tender was reduced from 450

MW to 350 MW. Furthermore, it was agreed that there will be a price cap for the nearshore wind turbines, so that only those tenders that have an average price of no more than 0.70 DKK per kWh will be accepted in connection with the tendering procedure. If there are not enough tenders for the establishment of 350 MW, tenders which entail an average price of more than 0.70 DKK per kWh may be accepted if all of the parties to the Energy Agreement so agree.

This tender for the construction and operation of a total capacity of up to 350 MW is a multisite tender. This means that 6 areas will be offered for tender at the same time and that projects within these sites will be competing against each other. The concession owner shall build and operate the wind farm and the export cable to the grid connection point on the shore. A tenderer is allowed to submit more than 1 tender. Furthermore, conditional tendering for 2 sites will be possible, i.e. a tenderer can submit offers for up to 350 MW conditional upon the tenderer being awarded concession for both sites.

The Danish Energy Agency (hereinafter the DEA) will award the concession(s) to the tenderer(s) who has submitted the offer(s) which make(s) it possible to obtain establishment of the highest total capacity within the maximum limit of 350 MW at the lowest total average price. This means that there may be more than 1 winner of this tender. It is therefore not known beforehand how many sites or in which of the 6 sites the nearshore wind farms will be constructed.

The nearshore wind farm sites are named: Vesterhav Nord, Vesterhav Syd, Sæby, Sejerø Bugt, Smålandsfarvandet, and Bornholm. Each area can hold up to 200 MW installed capacity, except Bornholm, which can hold up to 50 MW. The coordinates for the pre-investigation areas in each site are available on www.ens.dk/nearshorewind

The use of the seabed will be limited to a maximum use of 44 km² per 200 MW installed capacity. This is proportionally scaled down if fewer MWs are commissioned; e.g. 100 MW constructed capacity is allowed to use an area of up to 22 km², and for Bornholm the size of the wind farm is limited to a maximum installed capacity of 50 MW, in an area of up to 11 km². For all sites, the concessionaire(s) will be able to decide where to locate the wind farm within the limits of the designated area and within the limits set by the Environmental Impact Assessments (EIAs).

As a part of the tender preparation, the Danish Energy Agency has conducted technical dialogue meetings. Among other documents, the discussion paper for the technical dialogue and the summary of the outcome of the discussions are available at www.ens.dk/nearshorewind

The contract will be awarded as a concession contract. The tender procedure is planned to be conducted according to the following indicative timetable: Draft of the full tender specification (i.e. the tender documents), is expected to be published in March 2015. Deadline for application for pre-qualification is 26.5.2015 (see section IV.2.2)). The results of the Environmental Impact Assessments for the 6 sites will be sent in an 8 week public hearing in April-June 2015. The deadline for submitting the indicative tender is expected to be in October 2015. After this, negotiations with the tenderers will be conducted in the end of 2015/beginning of 2016. The final tender specification will be published shortly thereafter. The deadline for the final tender is expected to be in April 2016. Soon after, the concession agreement(s) will be awarded together with licence(s) for preliminary investigations and licence(s) for establishing the nearshore wind farm(s). Any amendments to the timetable will be published on www.ens.dk/nearshorewind

The results of preliminary surveys of the geophysical and geotechnical conditions and an UXO risk assessment study, data on metocean and wind resources for each 1 of the sites have been provided by the Danish TSO (Transmission System Operator), Energinet.dk and made available from www.ens.dk/nearshorewind Certified metocean reports are expected to be published in January 2015. Before submitting indicative tenders, EIAs of the 6 pre-investigation areas have been carried out and made available. The DEA together with the Danish Nature Agency, the 2 authorities that coordinate the EIA procedure, expect to publish the 6 EIAs public hearing

in end of April 2015. The preliminary surveys and the EIAs will provide the tenderers with an opportunity to submit a qualified tender for the Danish nearshore wind farms.

Establishment of the grid connection for the nearshore wind farm will be the responsibility of the concessionaire(s) to the grid connection point on shore. The relevant Executive Order establishing the rules regarding grid connection is currently under review and the relevant provisions regarding nearshore wind farms is expected to enter into force early 2015.

It is noted that the conditions for participation are set up for the purpose of securing that the pre-qualified applicants also meet the requirements regarding financial and technical capacity required to get a license for preliminary investigations and a license for establishing the nearshore wind farm incl. the grid connection. The conditions are also set up for the purpose of securing that the pre-qualified applicants meets the requirements regarding financial capacity required to get a license for electricity production and an authorization to produce electricity. The fulfilment of the requirements for technical capacity in the operation phase will, however, first be assessment by the DEA at the time of application for the above licenses by the concessionaire(s). The assessment whether the concessionaire(s) fulfil the technical capacity is made on the basis of what is considered necessary in order to operate and decommission the nearshore wind farm(s).

The financing of the development, construction and operation of the nearshore wind farm(s) is to be provided by the concessionaire(s). The license and authorisation relevant for the operation phase will be given for 25 years with the possibility of prolongation if allowed under applicable law. The concession agreement(s) offer(s) a fixed price/kWh for 50 000 full load hours (contract for difference) which makes a very predictable income. The fixed price will not be indexed.

II.1.4) **Common procurement vocabulary (CPV)**

31121340, 45000000, 31121320, 31121330, 31121310

II.2) **Quantity or scope of the contract**

II.2.1) **Total quantity or scope:**

The total installed capacity of the offshore wind farms can be up to 350 MW. As mentioned in section II.1.3), no more than 200 MW can be established in 1 area (except Bornholm: up to 50 MW). It is possible to offer a conditional tender for a total installed capacity of up to 350 MW, for example an offer for 200 MW in one site and 150 MW in another site, see II.1.3). Furthermore, it is possible for an applicant to submit more than 1 offer for the different sites.

II.2.2) **Minimum percentage of the works to be awarded to third parties:**

Section III: Legal, economic, financial and technical information

III.1) **Conditions for participation**

III.1.1) **Personal situation of economic operators, including requirements relating to enrolment on professional or trade registers**

Information and formalities necessary for evaluating if the requirements are met A. The applicant must submit a description of the company and the organisation of the applicant (including a description of the ownership structure).

B. If more than 1 economic operator (e.g. a consortium, a joint venture) jointly submit a request for pre-qualification, each participating party of the consortium/joint venture shall submit a short company description (including a description of the organisation and ownership structure). The organisation of the consortium/joint venture must also be described (e.g. the ownership structure and division of tasks within the consortium/joint venture) and the consortium/joint venture must designate a common representative with power of attorney to act with binding effect on behalf of the consortium/joint venture.

C. An economic operator may in principle participate in the submission of more than one application for pre-qualification (e.g. as a member of different consortia, joint venture). In that case, and in the case of an economic operator associated with the applicant submitting an application for pre-qualification, appropriate measures to maintain confidentiality and to protect the competitive process must be implemented. In these situations, the applicant must therefore use different contact points (i.e. different personnel) in the applications submitted. Furthermore, the applicant must demonstrate to the reasonable satisfaction of the DEA that it will maintain confidentiality and avoid distortion of the tender process. The DEA reserves the right to exclude the applicant from further participation in the tender process if appropriate measures are not executed and maintained throughout the tender process.

D. If the concession agreement is awarded to an applicant that consists of more than one economic operator (e.g. a consortium, a joint venture), all the economic operators are required to undertake joint and several liability. If the concession is awarded to an applicant that is a special purpose vehicle ('SPV') the owners are required to undertake joint and several liability.

III.1.2) **Economic and financial ability**

Information and formalities necessary for evaluating if the requirements are met E. The applicant must submit information on the applicant's overall turnover for the 3 latest financial years available and equity ratio as a percentage of total assets (total equity/total assets x 100) for the latest financial year available (i.e. 1 year only). By 'financial year' is meant either calendar years or accounting periods.

F. The applicant is asked to submit information on the applicant's latest long term debt rating if relevant, (see section VI.2), no 6 (II)). It is not required that the applicant provide this information, however, the information can be of relevance in regards to meeting the minimum requirements, see section VI.2), no 6 (II).

G. If more than 1 economic operator submits a joint application for pre-qualification (e.g. a consortium or a joint venture) all the participating parties must submit their own documentation and information, see letter E and F.

H. If the applicant relies on the economic and financial capacity of other economic operator (e.g. a partner, a parent company, subcontractors, founding companies/future owners or 1 or more affiliated companies), the applicant must submit documentation and information of the other economic operators, see letter E and F. Furthermore, the applicant must prove that the applicant has at its disposal the necessary resources, for instance by providing a declaration of support from other economic operators.

I. If an economic operator is authorised by a national financial supervisory authority to provide financial services falling under the scope of the EU Capital Requirement Directive (CRD III and/or CRD IV), the Solvency II Directive or any similar financial regulation including, but not limited to, regulation based on the Basel II Accord and/or Basel 2.5 and the Basel III Accord (hereinafter a 'Financial Institution') and the Financial Institution is an economic operator as mentioned in letter G or H above; the following documentation must be submitted by the said Financial Institution:

(I) copies of the full annual report (including notes and appendices) and audited accounts for the last financial year (by 'financial year' is meant either calendar years or accounting periods),

(II) documentation of compliance regarding the regulatory solvency requirements and any additional individual solvency requirements laid down by the national financial supervisory authority (the date of this documentation must not precede the time of deadline for requests for pre-qualification with more than 4 months, and

(III) a statement of the Financial Institution's overall turnover: 'Revenue' for the 3 latest financial years available.

J. If the concession agreement is awarded to an applicant that relies on the economic/financial capacity of other economic operators (e.g. a partner, a parent company, subcontractors, founding companies/future owners or 1 or more affiliated companies) these other economic operators will be required to undertake joint and several

liability together with the applicant when the contract is signed (but not for the pre-qualification). The exact terms of this liability will be stated in the tender documents.

III.1.3) **Technical capacity**

Information and formalities necessary for evaluating if the requirements are met K. The applicant must provide documentation for references within the area of project development and management of construction of offshore wind farms:

A maximum of 5 references may be submitted. The references may relate to completed projects as well as projects that are still under construction. Note however the minimum requirement regarding technical capacity in section VI.2). no 7, which requires that 1 of the references concern a project where construction is completed. For each project used as a reference the applicant is asked to provide the following information:

- a) Name of offshore wind farm;
- b) Contact person at the contracting entity, the authority who awards license or the like (preferably including phone number and e-mail address);
- c) Contract signing date/Date of concession, permit, license etc.;
- d) Location of the offshore wind farm;
- e) Planned capacity of the project (MW) and installed capacity of the project (MW);
- f) The applicant's role (i.e. owner, main consultant, sub-contractor, member of a consortium, constructor, or other);
- g) The applicant's contribution to the project within the following key areas: Project planning and management, management of construction and risks, and procurement/contract negotiation;
- h) Information regarding whether fixed external deadlines for (partial) completion were met (i.e. deadlines for connection of first and last offshore wind turbine to internal grid etc.). If no external deadlines were applied, the applicant is asked to provide information regarding internal deadlines. Finally, the applicant is asked, to provide an explanation of why a fixed deadline (external or internal) was not met, if relevant;
- i) The current stage of the project and the period the applicant was or has been assigned to the project.

L. The DEA reserves the right to verify any information provided, see letter K above, and requires that the applicant consents to the release of any and all information from any contracting entity (or the like) identified in the application.

M. If more than 1 economic operator submit an application for prequalification (e.g. a consortium, a joint venture), the requested documentation and information must be submitted for all participating parties, see letter K.

N. If the applicant relies on the experience or capacities of other economic operators (e.g. a partner, a parent company, subcontractors, founding companies/future owners, or 1 or more affiliated companies), the applicant must submit documentation and information for these other economic operators, see letter K above. Furthermore, the applicant must prove that the applicant has at its disposal the necessary resources, for instance by providing a declaration of support from such other economic operators in this respect. It is also noted that the applicant must provide documentation that the applicant has sufficient and timely access to such technical expertise via an irrevocable agreement for the development and management and construction phase with the other economic operator before the concession agreement is signed (but not for the pre-qualification). The exact terms of the conditions for the duration and termination of the agreement will be stated in the tender documents.

Section IV: Procedure

IV.1) **Award criteria:**

The Danish Energy Agency will award the concession(s) to the tenderer(s) who has submitted the offer(s), which makes it possible to obtain establishment of the highest total capacity within the maximum limit of 350

MW at the lowest total average price. Offers that lead to a higher average price than 0.70 DKK/kWh for 50 000 full load hours for 350 MW will only be accepted if approved by the parties to the energy agreement of March 2012. The exact model for award of the concession(s) will be set out in the tender conditions.

IV.2) **Administrative information**

IV.2.1) **File reference number attributed by the contracting authority:**

IV.2.2) **Time-limit for the submission of applications**

Date: 26.5.2015 - 14:00

IV.2.3) **Language(s) in which applications may be submitted**

Danish. English.

Section VI: Complementary information

VI.1) **Information about European Union funds**

The contract is related to a project and/or programme financed by European Union funds: no

VI.2) **Additional information:**

1. The DEA will invite a maximum of 10 applicants.
2. An application should be in one original hard copy together with 4 hard copies of the original and 1 electronic copy.
3. All questions must be sent — in English — to nearshorewind@ens.dk Copies of all questions and answers will be published in the Q&A section on www.ens.dk/nearshorewind in an anonymous form and on an ongoing basis. Further information including the Pre-Qualification Questionnaire (the PQQ), will be posted on the website, so please visit the website mentioned above regularly.
4. Pre-printed material (e.g. financial accounts) may also be submitted in Swedish or Norwegian.
5. Information provided by the applicants will not be disclosed to outsiders unless the DEA is obliged to do so under applicable law. However the DEA reserves the right to verify any information provided.
6. Economic and financial minimum requirements according to III.1.2)

In order to be considered for pre-qualification the applicant must meet the following minimum requirements regarding section III.1.2):

(I) The applicant must have a yearly overall turnover of minimum 4 billion DKK (calculated as an average of the last 3 financial years available). If the overall turnover is stated in another currency than DKK, the DEA will convert the amount stated to DKK in accordance with the exchange rate on the website of the Danish National Bank, www.nationalbanken.dk at the time of deadline for request for pre-qualification, and

(II) The applicant must have an equity ratio (total equity/total assets X 100) of 20 % or above or a long term credit rating of BBB- or above (Standard & Poors and Fitch) and/or Baa3 or above (Moody's) or an equivalent rating from another reputable international credit rating agency.

If the applicant consists of more than 1 economic operator and/or the applicant relies on the financial capacity of other economic operators in order to meet the financial minimum requirements the combined sum of annual overall turnover of all of the economic operators must pass the threshold for overall turnover (in average over the last 3 years) and each economic operator must either pass the threshold for equity ratio (total equity/total assets) or credit rating to meet the financial minimum requirements. The same will apply for the founding companies/future owners if the applicant is a company that is not established at the time of pre-qualification application.

(III) For Financial Institutions as defined in section III.1.2), letter I, the following financial minimum requirement applies in particular as an alternative to the financial minimum requirements set forth in item (II) above: The Financial Institution must comply with the regulatory solvency requirement and any additional individual

solvency requirements laid down by the national financial supervisory authority (the date of this documentation must not precede the time of the deadline for requests for pre-qualification with more than 4 months).

7. Technical minimum requirements according to III.1.3) above.

In order to be considered for pre-qualification the applicant must also meet the following minimum requirement regarding section III.1.3):

The applicant must have at least 1 reference within project development and management of construction regarding an offshore wind farm of minimum 30 MW installed capacity, commissioned in the past 5 years, including all areas mentioned in letter K, g. The reference must concern a project where the construction is completed.

If the applicant consists of more than 1 economic operator and/or the applicant relies on the technical capacity of other economic operators in order to meet the technical minimum requirements the sum of all references for the economic operators shall meet the minimum requirements above (i.e. it is not required that each single economic operator meet the technical minimum requirements above).

8. Selection:

Reduction of the number of applicants who meet the minimum requirements (if more than 10 applicants meet the minimum requirements in no 6 and 7) will take place on the basis of the applicants who, in the opinion of the DEA, have the most relevant references regarding project development and management of construction of offshore wind farms in relation to the assignment put up for tender.

9. Changes:

If, during the tender procedure, a group of economic operators (e.g. a consortium, a joint venture) requires a change of its composition, or if a change to the group of owners of a SPV, is required, this can only take place with the prior written consent of the DEA. A change in the composition of a group of economic operators or a change in the group of owners of a SPV includes the exit and/or entry of a member. When deciding whether to allow a required change, the DEA will assess the general nature and extent of the required change and have particular attention on whether the applicant would have been pre-qualified with the changed composition (group of owners). Rules regarding entry/exit during the contract period will be stated in the tender documents. The above mentioned also applies to changes in regard to the economic operators on which the applicant relies on the financial/technical capacity.

10. Penalties and related guarantees:

In order to ensure that only genuine, professional tenderers submit tenders, it is the DEA's intention to introduce a penalty for defective performance in the order of 100 000 000 DKK. In order to ensure payment of this a penalty for defective performance the DEA intends to demand that the concessionaire provides a penalty guarantee. The guarantee must cover the full penalty and must be valid from the signing of the concession contract. The guarantee will be released when a capex of 300 000 000 DKK has been spent on the project by the concessionaire or when the first kWh from the first turbine has been delivered to the collective grid, whichever comes first. The guarantee can be provided by a financial institution, insurance company or the like acceptable to the DEA, with a rating of A- or above. The guarantee can also be provided by a parent company in case the applicant wishes to do so, or as a combination of bank and parent company guarantee. The terms will be stated in the tender documents.

In order to ensure the commissioning of the wind farm by 1.1.2020 and the obligation to decommission the wind farm, the tender documents will furthermore include terms regarding a reduction of the production eligible for subsidies in case of late commissioning of the wind farm and the requirement for a decommissioning guarantee. The terms will be stated in the tender documents.

12. The concession agreement(s) will contain a standard ILO-convention labour clause. The concession agreement(s) will also contain a social clause (creation of apprenticeship).

13. In order to increase local support for the nearshore wind farms, the concessionaire(s) shall offer for sale at least 20 per cent of the ownership shares in the nearshore wind farms to local citizens. Further information on the so-called Option-to-Purchase scheme can be found on www.ens.dk/nearshorewind

14. In order to ensure neighbors of the new nearshore wind farms compensation for loss of property value due to the establishment of the nearshore wind farms, the concessionaire(s) will have a duty to pay full compensation for loss of value to local residential properties greater than 1 per cent of the value of real property deriving directly from the wind turbines and associated masts with aircraft warning lights. A property owner claiming a loss of value, can choose to enter into a voluntary agreement with the concessionaire for compensation for the loss of value, or can ask an impartial valuation authority to make a specific appraisal of the property and determine the scope of the loss.

15. The concession agreement(s) is/are subject to the Danish Parliament (Folketinget) adopting the necessary amendment to the Promotion of Renewable Energy Act (RE Act), which is a precondition for accepting the winning price. The legislation and conditions for price settlement can also be challenged in regard to the EU rules on state aid. If the European Commission finds, that the legislation on the quoted kWh price and conditions for price settlement are not in compliance with the state aids rules, the concession agreement will be annulled since the legislation cannot enter into force. The concession agreement is furthermore conditional upon both an agreement having been reached by a majority of the Danish Parliament on terms, in compliance with the Treaty, of financing the price supplement for the Danish nearshore wind farm(s) and the European Commission having accepted such terms.

I.1) Name, addresses and contact point(s):

Electronic access to information: (URL) nearshorewind@ens.dk

VI.3) **Procedures for appeal**

VI.3.1) **Body responsible for appeal procedures**

Klagenævnet for Udbud
Dahlerups Pakhus, Langelinie Allé 17
2100 København Æ
DENMARK
E-mail: klfu@erst.dk
Telephone: +45 35291000
Internet address: www.klfu.dk

VI.3.2) **Lodging of appeals**

Precise information on deadline(s) for lodging appeals According to the Danish Act no 492 of 12.5.2010 on the Enforcement of the Rules of Procurement, etc., with subsequent amendments, cf. www.retsinformation.dk the following deadlines apply for lodging of complaints:

Complaints regarding an applicant not being selected (pre-qualified) must be lodged with the Complaints Board for Public Procurement (Klagenævnet for Udbud) within 20 calendar days starting the day after the contracting authority has sent a notification to all interested applicants informing them of the pre-qualification.

Other complaints regarding the tender must be lodged with the Complaints Board for Public Procurement within 45 calendar days after the contracting authority has published a notice in the Official Journal of the European Union that the contracting authority has awarded the concession contract. The deadline is calculated from the day following the day when the notice was published.

The e-mail address of the Complaints Board for Public Procurement is set out in section VI.3.1).

VI.3.3) **Service from which information about the lodging of appeals may be obtained**

Konkurrence- og Forbrugerstyrelsen
Carl Jacobs Vej 35