

OFFSHORE WIND MULTI-STATE COORDINATION
MEMORANDUM OF UNDERSTANDING
BY AND AMONG
THE STATES OF
CONNECTICUT AND RHODE ISLAND AND THE COMMONWEALTH OF MASSACHUSETTS

This **Offshore Wind Multi-State Coordination Memorandum of Understanding** (“MOU”) is entered into on the 3rd day of October 2023 (the “Effective Date”) by and between the Massachusetts Department of Energy Resources (“MA DOER”); Connecticut Department of Energy and Environmental Protection (“CT DEEP”); and the Rhode Island Office of Energy Resources (“RI OER”). Each of MA DOER, CT DEEP and RI OER is referred to as a “Party” and, collectively, as the “Parties.”

RECITALS

WHEREAS, the Parties (or their respective electric distribution companies (“EDCs”), as applicable), have each individually issued or will issue a request for proposals (“RFP”) seeking commercially reasonable proposals from offshore wind developers (“Bidders”) to enter into cost-effective long-term contracts for offshore wind energy generation and associated Renewable Energy Certificates (“RECs”), pursuant to respective state laws;¹

WHEREAS, each RFP contains, or will contain, requirements for proposals from Bidders to create and foster economic development and quality, high-demand jobs;

WHEREAS, each Party is interested in viable projects that can be developed, permitted, financed, and constructed within a commercially reasonable timeframe;

WHEREAS, each Party has entered into a Memorandum of Understanding on Offshore Wind Supply Chain Collaboration with the United States Department of Energy, the United States Department of the Interior, the United States Department of Commerce, and the United States Department of Transportation and the States of Connecticut, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, and Rhode Island, and the Commonwealth of Massachusetts, to support the development of a coordinated, resilient, and sustainable regional offshore wind supply chain along the east coast of the United States;²

WHEREAS, each Party agrees regional collaboration on the offshore wind supply chain is advantageous for sector development, as states can benefit from one another’s manufacturing strengths and build a sustainable network;

WHEREAS, each Party seeks to select (or seeks for their EDC to select) projects that demonstrate competitive, commercially reasonable pricing that are cost-effective and beneficial

¹ The relevant statutes are the Affordable Clean Energy Security Act, R.I. Gen. Laws 39-31 *et seq.* (Rhode Island); Section 83C of Chapter 169 of the Acts of 2008 *et seq.*, as amended by the Energy Diversity Act, and the Act Driving Clean Energy and Offshore Wind (Massachusetts); and Conn. Gen. Stat. § 16a-3n (Connecticut).

² Memorandum of Understanding on Offshore Wind Supply Chain Collaboration, available at <https://www.whitehouse.gov/wp-content/uploads/2023/09/Federal-State-MOU-on-East-Coast-Offshore-Wind-Supply-Chain-Collaboration.pdf>.

to electric ratepayers in their respective states, as determined by each Party or their EDC, over the term of any resulting contract;

WHEREAS, the Parties or their EDCs may, as part of the bid evaluation process, share confidential bid information to assist in proposal evaluation and selection, following approval, to the extent required, from Bidders, which shall be addressed by each Party or their EDC during the respective RFP process;

WHEREAS, the Parties, seeking to advance their state energy and environmental goals, desire to enter into this MOU for the purpose of considering, without obligation, the participation of and coordination with other states in each Party's respective solicitation and/or the applicable solicitation(s) by their respective EDCs;

NOW, THEREFORE, the Parties memorialize their mutual understanding as follows:

MEMORANDUM OF UNDERSTANDING

I. Coordination Requirements and Contingent Proposals.

- A. Each Party, in consultation with their respective EDCs, if applicable, agrees (or, if applicable, has confirmed that their EDC that has or will issue the RFP agrees) to consider the participation of and coordination with other Parties in their solicitations, if such participation and coordination has a positive or neutral impact on such Party's or its EDC's ratepayers and would provide other benefits, including but not limited to, improving project viability.
- B. The Parties agree to work in good faith to ensure that multi-states bids are considered by the Parties and their EDCs, if applicable, as multi-state bids, as opposed to single-state proposals, first, and the Parties will ensure (and request that their EDCs, if applicable, ensure) that no two bids representing the same capacity are selected in different single-state solicitations. Bidders should be instructed to not withdraw bids from any single state solicitation to prevent the dual selection of negatively contingent bids. The Massachusetts RFP Section 1.7.2 shall (and any other RFP may) not assume a proposal is valid after the proposal is (1) demonstrated to be negatively contingent to a multi-state or single-state selection and (2) is selected by one or more states under this MOU or by another state.
- C. The Parties agree that for any proposal(s) to be considered for multi-state selection, Bidders must indicate in their bid submission the states that are desired to be included in the multi-state selection, and the Parties and/or EDCs as applicable must supply all proposals to all Parties that are a signatory to this MOU (or to the EDC that has issued an RFP, as applicable), if eligible, subject to the confidentiality provisions of individual RFPs and this MOU regarding the manner and obligations of how any such confidential information shall be treated.
- D. Parties, and their EDCs, if applicable, may request Bidders to submit at least one multi-state proposal for all Parties or their EDCs, as applicable, to consider proportional sharing

under Section II.C of this MOU. Instructions on how to submit a multi-state proposal are contained within the Multi-State Proposal Form. All Parties shall consider (and request that their EDC consider, as applicable) the multi-state proposal regardless of whether the Bidder has submitted an associated single-state proposal to each Party or their EDC. At least one multi-state proposal shall not be contingent upon selection of any other bid to any Party or their EDC, but other proposals can be contingent upon selection of a multi-state proposal, i.e., if a multi-state proposal is selected, the price of additional MWs for a proposal that is not the multi-state proposal decreases. A multi-state proposal must offer the same price to all Parties or their EDC, as applicable, except as to severable commitments, such as economic development investments at specific locations and environmental commitments, that can be added to the bid and optionally selected by any of the Parties or the applicable EDC individually. The severable commitments should be described in detail in such multi-state proposals including, without limitation, any cost variance associated with such commitments and how such cost variances are applied. Multi-state proposals may be contingent on being selected as part of a multi-state selection.

- E. Parties agree to keep any Confidential Information³ provided by any other Party or their EDCs confidential and will only allow Confidential Information to be disclosed to its staff, consultants, those state employees who have a need to know, and its agents (for purposes of this MOU, “agents” shall include the EDCs who may have already received such Confidential Information as part of the proposals) for the purpose of evaluating such proposals. The Parties agree to have any third-party agents (non-state employees) who have a need to know and work outside of state government sign nondisclosure agreements (“NDAs”), or enter into some other form of contractual agreement regarding confidentiality, in a form reasonably satisfactory to the Party or EDC who is seeking to disclose such Confidential Information prior to receiving Confidential Information. In connection with any Confidential Information, the Parties agree as follows:
1. Notwithstanding any other provision of this MOU, but consistent with any applicable Freedom of Information and/or public records laws, as provided below, as well as any applicable record retention periods and any provisions regarding confidentiality in a Party’s or its EDC’s RFP, the Parties agree to keep all Confidential Information in strict confidence; provided, however, that the Parties shall maintain the strict confidence of any Confidential Information which may constitute a trade secret for so long as such Confidential Information remains a trade secret under applicable law. The Parties shall at all times exercise reasonable care to safeguard such Confidential Information.
 2. The Parties acknowledge that state agencies and authorities are required to comply with applicable Freedom of Information laws or other public records laws, the Massachusetts Public Records Law, M.G.L. c. 66 *et seq.*, the Connecticut Freedom of

³ Confidential Information is defined as any and all information that would be exempt from disclosure by the Parties’ respective Freedom of Information and/or Public Records laws, as applicable, including but not limited to information disclosed by one Party to another hereunder, whether in writing, orally, or by document inspection, which is marked or otherwise identified as being confidential at the time of disclosure, including but not limited to confidential Bidder information.

Information Act, as codified in Chapter 14 of the Connecticut General Statutes, and R.I. Access to Public Records Act – R.I. Gen. Laws §38-2-1 *et. seq.*, which require public access to records in governmental possession. These laws, as well as other applicable state and federal laws, provide certain exemptions to disclosure, which may include exemptions for materials that do not constitute a public record as that term is so defined, materials that are confidential, consultative, or deliberative materials, trade secrets, and materials whose disclosure would cause business harm.

3. The Parties shall inform each other of relevant procedural steps to be taken under their respective state laws regarding the submission of Confidential Information. In addition, a Party who receives a request from a non-party to release, disclose, discuss, or obtain access to any Confidential Information (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts, as permitted by applicable law, to provide reasonable notice of such request to the Party or Parties from whom the information was received. Unless the other Party or Parties consent to disclosure or release of Confidential Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges, exemptions, and other objections that the Party receiving the request determines are relevant and applicable to the disclosure of such information. The Parties understand that this MOU does not prohibit disclosure by a Party of any Confidential Information and/or privileged materials that originated with that Party or were independently obtained. Work products produced during any Parties' bid evaluation process that contain Confidential Information or information derived from such Confidential Information may be filed with state regulatory agencies as necessary, with filing Parties to seek proper protections for such Confidential Information and shall not alter the confidentiality as between Parties.

II. Selection of Winning Multi-State Proposals.

- A. Multi-state proposals from Bidders may be contingent on being selected by multiple Parties and/or EDCs, as applicable. Any multi-state selection will consider any multi-state contingent proposals.
- B. Any Party or EDC, as applicable, as determined in its sole discretion, may join a multi-state selection for up to their total procurement authority or may select single-state bids and join a multi-state selection with any remaining procurement authority. A multi-state selection may be made by any two or three Parties and/or EDCs.
- C. Parties and/or EDCs, as applicable, may agree to share a multi-state contingent proposal by proportioning the anticipated megawatts and renewable energy certificates amongst the Parties and/or EDCs, as determined by the respective state or EDC selection representatives. Parties and/or EDCs, as applicable, must agree to the appropriate allocation before a multi-state selection can be made and will be dependent on the states' and/or EDCs' procurement authority. The default apportioning will be based on the proportional load share of each state based on the most recent annual load from ISO-NE, although the final apportioning may vary based on mutual agreement between the Parties.

- D. In the event that MA DOER or CT DEEP issues an RFP seeking proposals from Bidders, the issuing Party agrees to provide RI OER upon request, as well as their respective EDCs, the confidential bid information received from the developer(s), following approval of the document transfer from the Bidder(s). RI OER, and their respective EDCs, may evaluate the confidential bids independently per their own RFP requirements, evaluation criteria, and processes, with the ability to conditionally select developer(s) after the issuing Party has completed its conditional selection process. RI OER, and their respective EDC(s), may request the developer(s) update their bid proposal in a way that is specific to RI OER and its respective EDCs, including with in-state or regional economic development benefits or environmental commitments.
- E. Economic development, environmental commitments, and project development qualitative benefits from multi-state proposals that cannot be severed or allocated will be as proposed in the multi-state proposal(s).

III. General Provisions

- A. The Parties acknowledge that this MOU does not provide legal authority for or obligate any Party (or their respective EDCs) to enter into contracts or other agreements, incur any liability whether express or contingent, or make any binding decisions or commitments with respect to any proposal submitted or selected by any of the Parties. All Parties understand and acknowledge that any activities involving the coordination of other Parties do not entail directing the officials or staff of other states.
- B. Execution of this MOU does not obligate any of the Parties (or their respective EDCs) to award any proposal submitted under their respective RFP or require any other Party (or their EDC) to make a determination that any proposal meets the requirements of their RFP. Unless otherwise agreed to by the Parties, each Party is responsible for its own costs and expenses related to its activities associated with this MOU.
- C. Nothing contained herein shall be construed as creating any legal partnership, joint venture, agency, or any other relationship between the Parties. No Party shall have any right or authority to direct, bind, or obligate any other Party in any manner hereunder. Each Party will be solely responsible for payment of all compensation owed to its employees and employment-related taxes, as well as maintenance of appropriate workers' compensation for its employees and insurance as appropriate.
- D. The term of this MOU shall commence as of the Effective Date and can be terminated either (a) as mutually agreed by the Parties in writing; or (b) by any Party with respect to their obligations hereunder upon written notice to the other Parties. Further, the confidentiality obligations of the Parties and any one of them pursuant to this MOU shall survive termination of this MOU or any Party's withdrawal therefrom to the extent permitted by law.
- E. This MOU may be amended upon the mutual agreement of the Parties hereto.

- F. Any written notice provided under this MOU shall be made to signatory designees established by the Parties after execution by electronic mail with delivery receipt.
- G. This MOU may not be assigned by any Party. The Parties have caused this MOU to be executed by their duly authorized representatives and the MOU is effective as of the Effective Date set forth above.
- H. The Parties agree, to the extent practicable, that any formal external written communication about this MOU or any potential multi-state selection, including press releases, op-eds, or information placed on state websites, will be shared and coordinated with all other Parties in advance.
- I. The Parties to this MOU acknowledge that the terms of the MOU are to be construed in light of and, as necessary, limited by applicable federal law and the requirements of applicable state and local laws of each Party. Nothing in this MOU is intended to modify or supersede applicable federal, state, or local laws; nor is the MOU intended to modify or enlarge the powers of the Parties vis-à-vis or at the expense of the powers of the federal government of the governments of non-party states.
- J. In the event that any provision of this MOU shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability and such invalidity or unenforceability shall not affect any other provision of this MOU.

[Signatures to follow on the next pages]

Massachusetts Department of Energy Resources

By: Elizabeth Mahony

Elizabeth Mahony

Commissioner

Date: 10/3/2023

Rhode Island Office of Energy Resources

By: Chris Kearns

Chris Kearns

Acting Commissioner

Date: 10/3/23

Connecticut Department of Energy and Environmental Resources

By: Katie S Dykes

Katie Dykes

Commissioner

Date: 10/3/2023

