

Conditions for tender of State aid for the Production of Power-to-X in Denmark

April 19 2023

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1. The Contracting Authority

Danish Energy Agency
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Tel.: + 45 33 92 67 00
CVR no.: 59 77 87 14
www.ens.dk

All enquiries, including questions, must be submitted electronically via the tender portal during the procurement process using the following hyperlink:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>

2. Adjustments to aid for the Production of Power-to-X

The Danish Energy Agency's tender for the conclusion of contract(s) for aid for the production of Power-to-X in the form of green hydrogen in Denmark, is not covered by the Public Procurement Act¹, the EU Concession Directive² or the EU Utilities Directive³.

The Danish Energy Agency has chosen to issue competitive tenders on the contract(s) for aid, which is why the present tender is being conducted in compliance with the general principles of EU law laid down in the Treaty on the Functioning of the European Union (hereinafter "TFEU") concerning, inter alia, equal treatment, transparency, proportionality and prohibition of discrimination on grounds of nationality. Aid for green hydrogen granted under this tender constitutes State aid within the meaning stated in Article 107(1) of TFEU. The tender has been approved for state aid by the European Commission 13 February 2023 in accordance with the Commission Guidelines on State Aid for Climate, Environmental Protection and Energy 2022⁴ and has been assigned the following no.: SA.103648 (2022/N).

The rights and obligations of the Danish Energy Agency and the winning bidder under this tender are stated in the contract; cf. Appendix 6.

3. The Climate Agreement for Energy and Industry etc. from 2020 and the Agreement on the Development and Promotion of Hydrogen and Green Fuels (Power-to-X strategy) from 2022

The Danish Government (Social Democrats), Left-Denmark's Liberal Party, Danish People's Party, Danish Social Liberal Party, Danish Socialist People's Party, Unity List, Conservative People's Party, Liberal Alliance and Alternativet ratified the Climate Agreement for Energy and Industry on 22 June 2020. Subsequently, the same parties entered into the Agreement on the Development and Promotion of

¹ Act #1564 of 15 December 2015 implementing Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurements and repealing Directive 2004/18/EU

² Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the awarding of concession contracts; cf. Executive Order #1080 of 29 June 2022 on the awarding of concession contracts.

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 #1078 of 29 June 2022 on procurement by entities operating in the water, energy, transport and postal services sectors.

⁴ European Commission Climate, Environmental Protection and Energy State Aid Guidelines 2022 (2022/C 80/01)

Hydrogen and Green Fuels (Power-to-X strategy) on 15 March 2022. According to these two agreements, a subsidy scheme is established for PtX plants in the form of a government tender with a total budget of DKK 1.25 billion. The subsidy will be granted as operating aid and paid per amount of green hydrogen produced over a 10-year period. The purpose of the tender is to achieve the cheapest and largest amount of green hydrogen production within budget.

The Climate Agreement for Energy and Industry etc. and the Agreement on Development and Promotion of Hydrogen and Green Fuels (Power-to-X strategy) are available 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. Tender Documents

The tender documents consist of:

- 1) These terms and conditions, which contain in particular the guidelines for preparing bids for the tender and the requirements set for bidders etc.
- 2) The Bidding Template, including the Declaration of Commitment to establish full capacity and start production of green hydrogen in accordance with that stated in the bid (Appendix 1) (to be completed by the bidder for the submission of bids)
- 3) Template for describing the plants offered in the bid for this tender (Appendix 2) (to be completed by the bidder for the submission of bids)
- 4) On-Demand Guarantee Template (DK/UK) (Appendix 3) (to be completed by the bidder's guarantor prior to signing the Contract)
- 5) Declaration of Intent Template, to provide an on-demand guarantee (Appendix 4) (to be completed by the bidder's guarantor when submitting the bid)
- 6) Conditional Award Letter Template for Marginal Bids (Appendix 5.a) (to be completed by the DEA after the submission of bids, if applicable)
- 7) Template, Reduced Bid from Marginal Bidder (Appendix 5.a) (to be completed by the DEA and the marginal bidder after the submission of bids, if applicable)
- 8) Template to describe the plants that are subject to a reduced bid (Appendix 5.c) (to be completed by the marginal bidder after submission of bids, if applicable)
- 9) Draft Contract (hereinafter referred to as "the Contract") (Appendices 1 to 3 of the tender documents are incorporated as appendices 1 to 3 to the Contract) (Appendix 6)

The complete tender package can be found on the procurement portal using the following link:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>

In the event of any discrepancy between these Terms and Conditions and the Contract, including the appendices, the Contract and appendices shall take precedence.

5. Content of the Power-to-X Aid Tender

5.1 Generalities

These Terms and Conditions apply to the Aid for Power-to-X tender for 2023, which is conducted pursuant to Section 43k of the Renewable Energy Promotion Act⁵. The tender applies to new plants where work on the project has not started; see Item 5.4.

Bidders must specify a Bid Price in their bid (cf. Item 7.1) for the total water electrolysis capacity they will establish and the total amount of green hydrogen they intend to produce during the 10-year aid period, as well as the number of hours at full load. The total amount of green hydrogen that they will produce shall be calculated using the formula provided in Item 7.1.

5.2 Aid for the production of green hydrogen

The tender offers aid for the production of green hydrogen using water electrolysis; see the definition of green hydrogen in Item 5.5.

Under the contract, the successful bidder will have access to funds for the actual production of green hydrogen produced by water electrolysis at plants subject to the Contract throughout the aid period; cf. Item 5.3.

The winning bidder will not have the option to terminate the Contract with the DEA (no "opt out" option).

A single bid may be submitted, comprising several water electrolysis plants located at different locations, or several separate bids may be submitted, i.e. one bid for each water electrolysis plant. Any bidder may choose to submit several bids. A bid must contain at least one water electrolysis plant and the same plant cannot be the subject of several different bids.

5.3 Price supplement, aid period and budget

The Danish Energy Agency offers aid via this tender in the form of a fixed price supplement in Danish kroner per GJ of green hydrogen produced in accordance with the price stated in the bid submitted by the winning bidder. Aid will be adjusted annually (indexed) with the consumer price index. The successful bidder will have access to aid funds for a period of 10 years from the start of production as defined in Item 5.9.1.

There is a ceiling of DKK 1.25 billion for the total subsidy that can be paid by the DEA to all winning bidders for the entire 10-year subsidy period from the date of the start of production as defined in Item 5.9.1. The annual ceiling is fixed at DKK 125 million in 2022 prices. The annual payment can be increased by DKK 15 million in 2022 prices, so that the ceiling of DKK 125 million can be exceeded by up to DKK 15 million for a greater production than the amount corresponding to a payment of DKK 125 million (cf. price supplements in the Contract) but still within the overall budget framework. The total

⁵ Act #923 of 18 May 2021 amending the Natural Gas Supply Act, the Renewable Energy Promotion Act and various other laws

payment for the entire aid period may therefore not exceed the amount committed under the Contract. If more than one winning bidder is chosen, the annual increase of DKK 15 million beyond the annual ceiling will be allocated proportionately with the bidders share of the total aid budget of the tender.

If the aid received in one year is less than the bidders annual budget ceiling the unused funds can not be transferred to the following years. If the annual hydrogen production in a given fiscal year is less than needed to meet the bidders annual aid budget ceiling the bidder must accept that the unused budget within a fiscal year will be cancelled.

If the total budget of DKK 1.25 billion can be utilised for aid to bids below DKK 70 per GJ, only one tender round will be held containing the entire budget of DKK 1.25 billion. If this is not possible, the total budget will be divided into two separate tender rounds, where the first round will have a budget of a maximum of DKK 750 million, and the second round has a budget of at least DKK 500 million.

Receiving aid under the Contract is conditional on the winning bidder submitting the relevant permits etc. as described in Item 5.7, and that the hydrogen produced is green in accordance with Item 5.5.

It is also a condition for receiving aid under the contract that the winning bidder complies with the national or European Union legislation in force at any given time regarding e.g. the production, documentation and measurement of green hydrogen, including but not limited to the rules laid down in 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 and regulations etc. issued pursuant to this Directive.

The Contract applies to the actual quantity of green hydrogen produced at the plants subject to the Contract; cf. Item 5.2 above. It will not be possible to receive price supplements for the production of green hydrogen that exceed the amount stated in the contract concluded between the DEA and the winning bidder. The quantity subject to the Contract will correspond to the quantity stated in the bid (cf. Item 7.1) yet subject to Item 6.3.

The winning bidder is not obligated to produce the maximum amount of green hydrogen specified in the bid referred to in Item 7.1 and subject to the Contract. However, the winning bidder will only receive a price supplement for the green hydrogen actually produced at plants subject to the Contract; cf. Item 5.2 above.

5.4 Requirements for new plants

The tender applies to new water electrolysis plants where work on the project has not started.

A plant will be considered a new plant when the water electrolysis plant is new. This means that an existing plant is only eligible for extension if new additional water electrolysis capacity has been added to the plant. In the latter situation, the bidder will have to install a separate meter for eligible hydrogen production under this tender, as referred to in Item 7.8 of the Contract.

The start of work should be understood in accordance with paragraph 19(82) of the Commission Guidelines on State Aid for Climate, Environmental Protection and Energy 2022, according to which the start of work is understood as the first firm commitment (e.g. to order equipment or start construction) that makes an investment irreversible. The purchase of land and preparatory work such as obtaining

permits and preliminary feasibility studies shall not be regarded as a start-up; i.e. commencement of work. In the case of acquisitions, "commencement of work" is the moment of acquisition of assets.

5.5 Green hydrogen requirements

The winning bidder is only eligible pursuant to the contract if the hydrogen produced is green. According to this tender, green hydrogen is defined as renewable hydrogen that can be considered as a renewable liquid or gaseous transport fuel of non-biological origin, in accordance with the Commission's draft on the Delegated Regulation (supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council), published on 23 May 2022 as the consultation-version thereof⁶, establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin.

It will, by default, be the definition and rules in the above-mentioned consultation-version that must be used to document that the hydrogen is green. From the moment when the above-mentioned delegated regulation is finally adopted, it will then be the definitions, methods and rules in the version of this regulation in force at all times, or other legal acts that enter its place, that must be used to document this. For detailed information on the requirements for the winning bidder's documentation of fulfillment of the requirement, see the contract (appendix 6), including point 7.4.

5.6 Minimum reduction requirement of 70% for total hydrogen production

The winning bidder must ensure that all hydrogen produced during the 10-year aid period at plants subject to the bid referred to in Item 7.1 has a minimum reduction of 70 % in the emission intensity compared to the fossil reference⁷. The reduction requirement applies to all hydrogen produced at plants subject to the bid, regardless of the water electrolysis capacity covered by the bid; cf. Item 7.1.

Compliance with the minimum reduction requirement must be documented annually by the winning bidder by submitting relevant documentation to the Danish Energy Agency.

If the winning bidder cannot demonstrate the minimum reduction of 70% within one year, the aid in that year will be reduced accordingly to the missing percentage.

5.7. Requirements for environmental permits etc.

The winning bidder is obligated to obtain all necessary permits, approvals, waivers etc. for projects subject to the bid; cf. clauses 1.10 and 9 of the Contract.

⁶ Available here: https://commission.europa.eu/news/commission-launches-consultations-regulatory-framework-renewable-hydrogen-2022-05-23_en

⁷ : The methodology for calculating the emission intensity shall be the methodology set out in the draft Commission Delegated Regulation on establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels, which was published by the Commission for public consultation on 23 May 2022, excluding the methodology set out in the first subparagraph of point 6 of ANNEX A of that draft Commission Delegated Regulation. Available here: https://commission.europa.eu/news/commission-launches-consultations-regulatory-framework-renewable-hydrogen-2022-05-23_en.

From the moment when the above-mentioned delegated regulation is finally adopted, it will then be the definitions, methods and rules in the version of this regulation in force at all times, or other legal acts that enter its place, that must be used to document this.

Furthermore, please be aware of the fact that bidders may be subject to future rules for preparedness in the hydrogen sector as well as rules on IT preparedness for IT systems that are critical for the production or supply of hydrogen. Those rules shall help to ensure that the supply and production of hydrogen can be maintained and continued as far as possible in the event of a safety incident. The rules will be implemented no later than 17 October 2024 as part of the implementation of CER⁸ and NIS 2 directives⁹. The directives are minimum harmonisation directives and the scope and substantive requirements may therefore be extended in connection with Denmark's implementation.

Bidders who meet the conditions for being a foreign investor under the Investment Screening Act must be aware that they may be required to obtain a permit from the Danish Business Authority under the investment screening rules. For further information, please refer to the Danish Business Authority, including the Danish Business Authority's website¹⁰.

Before aid under the Contract can be paid by the DEA, the winning bidder is obligated to submit a number of the required permits, approvals, waivers/exemptions etc. in writing to the DEA (cf. Clause 9.1 #4 of the Contract (Appendix 6)). This concerns an adopted local plan and/or an exemption from a local plan adoption pursuant to the Planning Act¹¹, an environmental assessment or a decision that there is no obligation to prepare an environmental assessment, cf. the Environmental Assessment Act¹², environmental permit, cf. the Environmental Protection Act¹³ and building permits, cf. the Building Act¹⁴ and the Building Regulations 2018 (BR18)¹⁵. The permits etc. must be sent in writing to the DEA prior to the start of production as defined in Item 5.9.1. The permits etc. are considered submitted when the DEA has received them. If the winning bidder fails to comply with this condition, the grant will not be paid until the permits have been submitted. See also Item 5.9.2.

If, after the date of issuance of permits, approvals, exemptions etc., an administrative authority, a board of appeal or a court should make a decision that completely or partially overrides the necessary permits etc. for the winning project, the DEA may, after a specific assessment, suspend the price supplement during the subsidy period or terminate the contract; see further details on this in clauses 9.6 and 9.7 of the contract.

5.8 Stage of projects at the time of submission of bids

Before bidders may participate in the tender, they must have received an opinion from the environmental protection authority as described below. The requirements for the opinion depend on the specific project covered by the bid.

⁸ Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC

⁹ Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 concerning measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)

¹⁰ <https://erhvervsstyrelsen.dk/screening-af-udenlandske-investeringer>.

¹¹ Executive Order #1157 of 1 July 2020 for the Planning Act

¹² Executive Order #1976 of 27 October 2021 for the Act on Environmental Assessment of Plans and Programmes of Specific Projects (EIA)

¹³ Executive Order #100 of 19 January 2022 for the Environmental Protection Act

¹⁴ Executive Order #1178 of 23 September 2016 for the Building Act

¹⁵ Executive Order #1399 of 12 December 2019 for the 2018 Building Regulations (BR18)

If the project is *directly subject to environmental assessment*, i.e. covered by Appendix 1 of the Environmental Assessment Act, the bidder must enclose with its bid an opinion from the environmental authority that the project has been described at a sufficiently detailed level to enable the first public phase of the environmental assessment process to be initiated.

If the project is *not directly subject to environmental assessment*, i.e. covered by Appendix 2 of the Environmental Assessment Act, the bidder must enclose with its bid an opinion from the environmental authority that the project has been described at a sufficiently detailed level to make a screening decision as to whether the project is subject to the requirements for environmental assessment; cf. Section 21 of the Environmental Assessment Act.

In addition, if the project is supplied with electricity from the transmission grid, the bidder must, before participating in the tender, have received a screening agreement from Energinet¹⁶. The Danish Energy Agency must receive a copy of the screening agreement with the submitted bid. The screening agreement must show that it is possible to connect the project to the transmission grid.

The bidder must enclose the described documentation from the environmental authority and Energinet with the bid.

5.9 Obligation to establish full capacity and start production and deadline extensions

5.9.1 Definition of start of production and establishment of full capacity

The winning bidder is obligated to establish full capacity and start production, cf. section 5.9.2 below.

The start of production is defined as the time when the plants described in the contract produce the first quantity of green hydrogen in accordance with the terms of the Contract. The condition is considered met when the first amount of green hydrogen produced at these plants has been measured and documented to the Danish Energy Agency. Measurement and documentation of the green hydrogen produced must be done in accordance with the requirements laid out in Clause 7 of the Contract (see Appendix 6).

Full capacity is defined as the establishment of the full water electrolysis capacity specified in the bid referred to in Item 7.1 below and subject to the Contract. This means that it must be possible for the bidder to produce the total amount of green hydrogen specified in the bid and subject to the Contract. The condition shall be deemed to be fulfilled when the bidder has demonstrated that the water electrolysis plant subject to the Contract has had an electricity input for at least 500 hours corresponding to the maximum power of the water electrolysis capacity specified in the bid. The described documentation must be obtained from Energinet and sent in writing to the Danish Energy Agency no later than 3 months after the 4-year deadline expires (see Section 5.9.2). Also see Clause 1.8 of the Contract.

5.9.2 Deadline for starting production and establishing full capacity

Within 4 years from signing the contract with the Danish Energy Agency, the winning bidder must have established full capacity and started production as defined in Section 5.9.1.

The obligation to establish full capacity shall be deemed to be fulfilled when the winning bidder has established full capacity as defined in Item 5.9.1 within the 4-year deadline.

¹⁶ Energinet owns and operates the Danish electricity transmission grid

The obligation to start production shall be deemed fulfilled when plants subject to the Contract start production as defined in Item 5.9.1 within the 4-year period.

It is a prerequisite for the obligation to establish full capacity and start production to be considered fulfilled that the winning bidder has submitted the required permits etc. to the Danish Energy Agency as described in Item 5.7 above. Furthermore, in order for the obligation to start production to be considered fulfilled, the hydrogen produced must be green; cf. Item 5.5.

If the winning bidder does not establish full capacity within 4 years and documents this as described above, the winning bidder is obligated to pay a retention penalty in accordance with Item 5.11 below and Clause 13 of the Contract. However, a number of exceptions apply to this; cf. Item 5.9.3 below.

If the winning bidder does not start production of green hydrogen within 4 years and demonstrates this as described above, the 10-year aid period starting at the start of production (cf. Item 5.3) will be reduced proportionately to the delay. However, a number of exceptions apply to this; cf. Item 5.9.3 below.

It should be noted that the winning bidder is not obligated to produce the maximum amount of green hydrogen specified in the bid referred to in Item 7.1 and subject to the Contract. The quantity of green hydrogen specified in the bid and the Contract will represent the maximum amount of green hydrogen for which the winning bidder can receive a price supplement during the 10-year aid period; cf. Item 5.3 above.

5.9.3 Deadline for starting production and establishing full capacity

A winning bidder shall be entitled to an extension of the deadline for establishing full capacity and starting production, referred to in Item 5.9.2 above, in the event of a delay resulting from one or more of the following circumstances:

1. Conditions for which the DEA is responsible.
2. Conditions that arise through no fault of the winning bidder and over which the winning bidder does not control such as war, pandemic, unusual natural events, fire, strikes, lockouts or vandalism.
3. Public injunctions or prohibitions that are not due to the circumstances of the winning bidder.
4. Orders to suspend operations arising directly from legislation or a decision by a board of appeal or a court.
5. If the winning bidder does not obtain necessary permits, waivers, approvals etc. from authorities despite the fact that the winning bidder has applied to the relevant authorities no later than 3 years before the deadline for establishing full capacity and the start of production; cf. Item 5.9.2 above. This shall be without prejudice to the requirements stated in Item 5.8.

6. The distribution enterprise or transmissionsystem operator¹⁷ is not ready to connect plants subject to the Contract within the deadline for establishing full capacity and starting production referred to in Item 5.9.2 because the winning bidder has not been able to obtain the necessary permits, exemptions, approvals etc. from the authorities despite the fact that the winning bidder has applied for the necessary permits, exemptions, approvals etc. with the relevant authorities no later than 3 years before the deadline for establishing full capacity and the start of production; cf. Item 5.9.2 above. This shall be without prejudice to the requirements stated in Item 5.8.
7. The transmission system operator enterprise is not ready to connect the plants listed in the Contract within the deadline for the establishment of full capacity and the start of production (cf. item 5.9.2 above) if the transmission system operator can prove that the delay is due to circumstances that could not be foreseen and which are beyond the company's control no later than 2 years before the deadline, cf. point 5.9.2, expires.
8. The distribution enterprise is not ready to connect plants subject to the Contract within the time limit for the establishment of full capacity and the start of production referred to in Item 5.9.2 above, and the winning bidder has signed an agreement for grid connection of the plants subject to the Contract no later than 2 years before the deadline referred to in Item 5.9.2 expires.
9. If the construction of plants pursuant to the Contract cannot be initiated as a result of a major feasibility study (cf. Section 26(3) of the Museums Act¹⁸) or the project must be discontinued as a result of archaeological investigations; cf. Section 27 of the Museums Act.
10. If necessary permits, exemptions, approvals etc. are declared invalid, which is not caused by circumstances attributable to the winning bidder.

The time extension will correspond to the actual delay caused by the conditions in #1-10 above. If a winning bidder considers itself entitled to an extension of the deadline, the bidder must immediately, and at the latest before the deadline, request the Danish Energy Agency in writing for consent to the deadline extension. The winning bidder shall be able to demonstrate in the request that the delay occurred was due to the circumstances invoked by the bidder and that the delay could not reasonably be avoided or limited.

Notwithstanding of the above, the winning bidder's deadline extension will not exceed 1 year, and price supplements will not be payable by the Danish Energy Agency later than 15 years after the signing of the contract. If, for whatever reason, a winning bidder covered by one or more of the exemptions above does not start production of green hydrogen, as referred to in points 5.9.1 and 5.9.2, within 5 years of signing the contract, the 10-year aid period starting at the start of production referred to in Item 5.3 will be reduced proportionately to the delay beyond the 5 years. If a winning bidder covered by one or more of the exemptions above does not establish full capacity, cf. items 5.9.1 and 5.9.2, within 5 years of signing the contract, the winning bidder shall, for whatever reason, pay a retention penalty in accordance with Item 5.11.

5.10 Total number of contracts

¹⁷ Energinet owns and operates the Danish electricity transmission grid

¹⁸ Executive Order #358 of 8 April 2014 of the Museums Act

The total number of contracts that will be awarded on the basis of this call for tenders has not been determined in advance. It is intended to award one or more contracts on the basis of the award criterion of Lowest Bid Price (see Item 6.1 below), which can be contained within the available funds; see Item 5.3 above.

5.11 Retention Penalty and Guarantee

5.11.1 Retention Penalty

Retention penalty is due for immediate payment on demand if one or more of the following circumstances exist:

- If, after signing the contract, the winning bidder notifies the Danish Energy Agency in writing, for whatever reason, that it will not or cannot establish full capacity within 4 years in accordance with the obligations described in Item 5.9.2 and the Contract. However, see Item 5.9.3 above.
- If circumstances show that the winning bidder will not or cannot establish full capacity within 4 years in accordance with the obligations described in Item 5.9.2 and the Contract. However, see Item 5.9.3 above.
- If full capacity is not established within 4 years in accordance with the obligations described in Item 5.9.2 and the Contract. However, see Item 5.9.3 above.

If one or more of the above factors relate exclusively to part of the capacity subject to the Contract, the retention penalty shall be calculated proportionately; cf. items 5.11.2 and 5.11.3 below.

5.11.2. Construction of less capacity than that stated in the Contract

If the capacity established within the time limit referred to in Item 5.9.2 is less than the capacity stated in the Contract, the winning bidder must pay a retention penalty. The retention penalty shall be paid for the remaining capacity not established within the time limit, as stated in the formula below in Item 5.11.3.

5.11.3 Calculation of retention penalty

The retention penalty is calculated based on the total amount of green hydrogen specified in the Contract, a penalty factor and the percentage of missing capacity that remains to be established, according to the Contract.

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

$$\text{Retention penalty} = \text{penalty factor} * \frac{\text{total amount of green hydrogen}}{10} * \text{xx\% lack of capacity}$$

Where as:

- the penalty factor is 40 DKK/GJ,
- the total amount of green hydrogen is the total declared production over a 10-year aid period in GJ under the contract, and
- the missing capacity is the percentage of missing capacity from the full capacity stated in the Contract

5.11.4 Guarantee

5.11.4.1 Declaration of intent to provide an on-demand guarantee

The bidder must submit a declaration of intent with the bid, see Appendix 4, in Danish or English from a financial institution stating that it will provide an on-demand guarantee to the Danish Energy Agency corresponding to the amount of the retention penalty; cf. section 5.11.3 above. The bidder must use the template attached as Appendix 4, in Danish or English. The Danish version of Appendix 4 and the English version of Appendix 4 are equivalent and equally valid.

5.11.4.2 On-demand guarantee

Before signing the contract, the winning bidder must provide an on-demand guarantee (cf. Appendix 3) from a financial institution in Danish or English for an amount equal to the amount of the retention penalty; cf. Item 5.11.3 above. The winning bidder must use the template (enclosed with the Contract as Appendix 3) in Danish or English. The Danish version of Appendix 3 and the English version of Appendix 3 are equivalent and equally valid. It is a prerequisite for the Danish Energy Agency's signing the contract that the DEA has received the original on-demand guarantee from the winning bidder before the DEA signs the contract.

5.11.4.3 Discontinuation of the on-demand guarantee

The guarantee obligation lapses when full capacity is established and this is documented in accordance with items 5.9.1 and 5.9.2; however, see Item 5.9.3. In situations covered by Item 5.9.3, the on-demand guarantee will lapse when full capacity is established and this is documented within the time limit extension. For details on the termination of the on-demand guarantee, see Clause 5 of the Contract (Appendix 6).

5.12 Joint and several liability

If the DEA signs the Contract with a consortium, the consortium members are jointly and severally liable for all obligations under the Contract.

If the bidder is a company in the process of being incorporated, the founders of the company will assume joint and several liability with the bidder upon signing the Contract until the company's registration; cf. Section 41(3) of the Companies Act.¹⁹

Thus, any claim arising under the Contract can be directed against any of (1) the participants in the consortium, and (2) any founder, where the bidder is a company within the foundation.

Liability under joint and several liability occurs only to the extent that the winning bidder breaches the contract and such breach is not remedied by the winning bidder upon request from the Danish Energy Agency. Joint and several liability only includes claims from the Danish Energy Agency.

6. Award criterion, ranking, flexibility mechanism

6.1 Award criterion

¹⁹ Executive Order #1952 of 11 October 2021 of the Danish Companies Act

The Danish Energy Agency will enter into one or more contracts for green hydrogen produced at plants covered by the winning bidder's bid on the basis of the award criterion **Lowest Offered Price Supplement** assessed on the following basis:

- **Price supplement in DKK per GJ for green hydrogen production for 10 years from the time of the start of production defined in Item 5.9.1**

The price supplement for each winning bidder will be determined on the basis of the "pay-as-bid" principle. Each contract will therefore contain the proposed price supplement (expressed in DKK per GJ) for which the winning bidder has made an offer. Similarly, each contract will state the total amount of green hydrogen and the full capacity for which the winning bidder has tendered (cf. Item 7.1 below) without prejudice to Item 6.3.

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

The amount of the price supplement offered must be stated as DKK per GJ to 4 decimal places.

Bids with a bid price over 120 DKK/GJ will not be accepted.

The bidder must indicate a bid price (DKK per GJ) in the bid, the amount of green hydrogen they will produce during the 10-year aid period, and the total water electrolysis capacity that they will establish by the deadline. The offered price, quantity and capacity must be stated in the individual bids (see Appendix 1 and Item 7.1 below).

Contracts will be awarded to bidders with the lowest bid price per GJ until the budget referred to in Item 5.3 is exhausted.

6.2 Order of precedence

The contract will be awarded to the bidder(s) with conditional bids with the lowest bid price as described in Item 6.1 that can be accommodated within the available funds.

If multiple bids contain the same bid price, those offers will be ranked according to the amount of green hydrogen, from greatest to least.

If multiple bids contain the same bid price and the same amount of green hydrogen, those bids will be ranked by lot to the extent that it is not possible to award them all a contract using the available funds.

6.3 Flexibility mechanism

If the DEA finds that there is a marginal offer, the DEA will give the bidder of the marginal offer the opportunity to scale down its amount of green hydrogen and water electrolysis capacity so that it can be kept within the available funds, but at the originally offered bid price stated in appendices 5.a-5.c. "Marginal bid" means a conditional bid which, assessed on the basis of the offered price, may be awarded a contract but which would involve exceeding the available funds.

The Danish Energy Agency will send a conditional award letter to marginal bidders via the tender portal with information about the scaled down amount of green hydrogen that can be accommodated within the available funds; see Appendix 5.a. The conditional award letter will describe that the DEA's award of the contract to the marginal bidder is conditional on the marginal bidder agreeing to scale down the

amount of green hydrogen so that it can be accommodated within the available funds; see Appendix 5.a-5.c.

If the DEA does not receive acceptance of the conditional award letter from the marginal bidder in accordance with appendices 5.a-5.c within 10 working days of the DEA's sending of the conditional award letter, the marginal bidder shall be deemed to have rejected the DEA's offer for scaling down, and the conditional award of the contract will lapse without further notice. The marginal bidder will then receive a rejection of a contract bid; cf. Item 10 below.

If the DEA does not receive an acceptance of the conditional award letter from the marginal bidder and there are no other bids with the same bid price as the marginal bid, the remaining available funds will not be used.

If the DEA does not receive acceptance of the conditional award letter from the marginal bidder and there are other bids with the same bid price as the marginal bid, these will be considered in the order greatest to least amount of green hydrogen. For these bids, a bid that causes the available funds to be exceeded will be offered to scale down. This procedure shall continue until the available funds are exhausted. This approach will only be used in situations where several bids have been submitted with the same bid price as the marginal bid.

7. Bids, declarations and documentation

7.1 The bid

The bid must contain the Bid Letter (Appendix 1), a description of the plant(s) to which the bid relates (Appendix 2) and a letter of intent to provide a on-demand guarantee as described in Clause 5.11.4.1 (Appendix 4). Templates for these appendices, which the bidder must complete, can be found on the procurement portal via the following link:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>

The Bid Letter (Appendix 1) must include a single bid price (the bid price offered), one quantity of green hydrogen that the bidder will produce during the 10-year aid period and one total water electrolysis capacity that the bidder will establish.

The quoted bid price, capacity and quantity are binding on the bidder; however, see Item 6.3. The winning bidder is obligated to establish full capacity; cf. Item 5.9.2 above. The winning bidder is not required to produce the total amount of green hydrogen. The total amount of green hydrogen will be the maximum quantity for which the winning bidder can receive aid as described in Item 5.3 above.

The total amount of green hydrogen that the bidder will produce during the 10-year aid period shall be related to the full capacity that the bidder will establish and shall be calculated using the following formula:

$$(GJ \text{ hydrogen per hour at full capacity}) * (\text{number of full load-hours per year}) * 10$$

The calculation uses the anticipated number of full load-hours per year during the 10-year aid period, where the number of full load-hours for green hydrogen production covered by the offer may not exceed 5500 hours per year (see Appendix 1).

The Bid Letter (Appendix 1) must also contain a description of the bidder. The description shall contain the following elements:

- Name and address of bidder
- Name of a contact person if the bidder is a company
- The company's Enterprise Registration Number if the bidder is a company (e.g. CVR number)
- National identification number of the person if the bidder is a natural person (e.g. Danish CVR/civil registration number)
- Phone number of bidder or contact person
- E-mail address of the bidder or of a contact person

If a bid covers several plants, Appendix 2 must be completed for each of these plants subject to the bid.

A single bid may be submitted, comprising several water electrolysis plants located at different locations, or several separate bids may be submitted, i.e. one bid for each water electrolysis plant. Any bidder may choose to submit several bids. A bid must contain at least one water electrolysis plant and the same plant cannot be the subject of several different bids.

The bid must not contain reservations related to these conditions of the tender.

Plants covered by a bid must be located in Denmark.

The bidder bears the full commercial risk for the bid price offered.

7.2 Declarations

The bidder must make the following declarations in the Bid Letter (see Appendix 1):

- 1) Solemn declaration that the bidder has complied with any request for recovery of aid which the Commission, by a previous decision, considered illegal and incompatible with the internal market,
- 2) Solemn declaration that the bidder is not an enterprise in difficulty as defined in Item 20 of the Commission Notification on the Guidelines for State Aid for Rescuing and Restructuring Non-Financial Undertakings in Difficulty²⁰
- 3) Solemn declaration that the bidder will not receive any other state aid to cover the costs to be covered by the price supplement under the contract
- 4) Solemn declaration that the undersigning bidder has no unpaid overdue debts amounting to DKK 100 000 or more to public authorities in respect of taxes, duties or national insurance contributions under Danish law or the law of the country in which the bidder is established²¹

²⁰ Commission Communication on the Framework for State aid for Rescuing and Restructuring Non-Financial undertakings in Difficulty (2014/C 249/01)

²¹ Reference is made to the principles laid out in Section 135(3) of the Danish Public Procurement Act.

- 5) Declaration that work on the project for the construction of the plants subject to the bid has not begun²²
- 6) Declaration that the bidder's bid letter does not contain reservations, including in relation to all documents in the tender documents
- 7) Declaration that the bidder agrees to the DEA processing personal data provided by the bidder as part of the submission of bids, and
- 8) Declaration that the bidder agrees that the DEA is entitled to publish information about the winning bid, including the price supplement, amount of green hydrogen, capacity, location, technology and the name of the winning bidder

7.3 Documentation

The bidder must also include the following documentation when submitting the bid:

- An opinion from the competent environmental authority as described in Item 5.8 and Appendix 2, Item B
- If the project is supplied with electricity via the transmission grid, a screening agreement from Energinet documenting that it is possible to connect the project to the transmission grid as described in Item 5.8 and Appendix 2, Item B

7.4 Incomplete bids

The Danish Energy Agency will not consider bids submitted with missing or inadequate bids, declarations or documentation pursuant to items 7.1-7.3 above.

8. Bidding deadline and formal requirements

The deadline for submitting bids is:

September 1 2023, 12:00

Bids received after this deadline will not be considered.

The bid must include:

- Completed and signed templates for the Bid Letter and the declarations (Appendix 1) (see items 7.1 and 7.2 above)
- A completed template describing the plants offered for this tender (Appendix 2) (see Item 7.1 above)
- An opinion by the competent environmental authority (see Item 5.8 and Appendix 2, Item B)

²² The definition of when a project has started can be found in paragraph 19(82) of the European Commission's Climate, Environmental Protection and Energy Guidelines 2022, (2022/C 80/01)

- If the project is supplied with electricity via the transmission grid, a screening agreement from Energinet documenting that it is possible to connect the project to the transmission grid (see Item 5.8 and Appendix 2, Item B)
- The Declaration of Intent to provide an on-demand guarantee from a financial institution (see Appendix 4) (see Item 5.11.4.1)

All communication must be digital. Bids must be submitted digitally via the procurement portal, which can be accessed directly using this link:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>

Bids cannot be submitted by any other means, including e-mail.

If, for technical reasons, the tender portal is out of operation in the week leading up to the deadline for submitting bids, the Danish Energy Agency reserves the right to extend the submission deadline.

If the bidder considers elements of the tender documents to be unclear, the bidder is asked to send reasoned questions in this regard; cf. Item 14 below.

9. Languages

The bid (cf. Appendix 1) and all other appendices, must be drafted in Danish. However, the required Declaration of intent for the on-demand guarantee (cf. Appendix 4) and the On-demand guarantee (cf. Appendix 3) will be accepted in either Danish or English.

The Danish Energy Agency has prepared the tender documents in Danish. The tender documents are also published in an English translation.

In the event of a discrepancy between the Danish version of the tender documents, including specifications and appendices etc., and the English translation of the documents including specifications and appendices, the Danish version of these documents shall take precedence, subject to items 5.11.4.1 and 5.11.4.2.

10. Allocation

When the DEA has assessed whether the bids received are conditional or not, and which bids have the lowest bid prices within the available funds, the DEA will inform all bidders whether their bids have been accepted or not. Notifications for any marginal bidders shall take place at the same time. In the case of bidders who are not awarded a contract and bidders who have submitted an inadequate bid and are therefore not taken into consideration in accordance with Item 7.4, the notification will also include a brief explanation of the relevant reasons for the decision.

The Danish Energy Agency reserves the right to cancel the tender without awarding contracts.

Notification of the award decision to winning bidders does not imply signing the contract. The contract is not considered signed (and the tender completed) until the contract has been signed. The contract may

not be signed until after the expiry of 10 calendar days counted from the day following the day on which the Danish Energy Agency has sent notification of the award of the contract.

It is a condition for the Danish Energy Agency's signing the contract with the winning bidder that the on-demand guarantee for retention penalties (cf. Appendix 3) has been submitted and the original on-demand guarantee is received by the DEA no later than at the time of signing the contract; cf. Item 5.11.4.2 above.

The Danish Energy Agency's decisions regarding this tender can be appealed to the Energy Complaints Board in accordance with the general right of appeal.

11. Abidance and commitment, and the cost of participation

The bidders agree to maintain their bids until signing the contract(s), but no longer than 3 months from the expiry of the deadline for submission of bids (submission deadline).

The bidder's costs related to preparing the bid and participation in the tender process, including costs for obtaining necessary decisions, approvals, licenses/permits and exemptions etc., are the bidder's responsibility, not that of the Danish Energy Agency.

12. Processing of bids

The Danish Energy Agency will treat the bids confidentially.

The Danish Energy Agency reserves the right to publish anonymised statistics on the tender rounds.

The DEA is entitled to publish information about winning bids, including bid prices, amount of green hydrogen, capacity, location, technology and names of bidders. The Danish Energy Agency may also be obligated to grant access to documents in accordance with the rules on public access to documents as described in the Freedom of Information Act²³, the Public Administration Act²⁴ and the Environmental Information Act²⁵.

The Danish Energy Agency is not obligated to return the bid packages to the bidder.

The Danish Energy Agency reserves the right to use external assistance to assess the bids and other documentation if needed.

The Danish Energy Agency considers it essential that the tendering process creates effective competition between bidders and that bidders are treated equally.

13. Checklist

Has the bidder remembered to include these in the bid?

1. Bid Letter (Appendix 1) containing:

²³ Executive Order #145 of 24 February 2020 concerning the Freedom of Information Act

²⁴ Executive Order #433 of 22 April 2014 concerning the Public Administration Act

²⁵ Executive Order #980 of 16 August 2017 concerning the Environmental Information Act

- a. a bid price per GJ, a total amount of green hydrogen (GJ) and a total water electrolysis capacity (MW)
 - b. a declaration of commitment to establish full capacity and start production of green hydrogen,
 - c. a solemn declaration that the bidder does not have any unpaid, overdue public debts of more than DKK 100 000,
 - d. a solemn declaration that the bidder has complied with any request for recovery of aid funds which the Commission has previously found illegal and incompatible with the internal market,
 - e. a solemn declaration that the bidder is not an enterprises in difficulty as defined in Item 20 of the Commission Communication on the Framework on State Aid for Rescuing and Restructuring Non-Financial Enterprises in Difficulty (2014/C 249/01),
 - f. a solemn declaration that the bidder will not receive any other State aid to cover the costs incurred by price increases under the contract,
 - g. a declaration that work on the project has not begun,
 - h. a declaration that the bidder has not entered a reservation with regard to the tender documents,
 - i. a declaration that the bidder agrees that the Danish Energy Agency processes personal data provided by the bidder as part of the submission of bids, and
 - j. a declaration that the bidder agrees that the DEA is entitled to publish information about winning bids, including price supplements, amount of green hydrogen, capacity, location, technology and the names of the bidders.
2. Completed template describing the plants offered for this tender (Appendix 2).
 3. Completed template for the Declaration of intent to provide an on-demand guarantee (Appendix 4).
 4. An opinion by the competent environmental authority (Item 5.8 and Appendix 2, Item B)
 5. If the project is supplied with electricity via the transmission grid, a screening agreement from Energinet documenting that it is possible to connect the project to the transmission grid (see Item 5.8 and Appendix 2, Item B)

The bid shall clearly identify the enterprises or association of enterprises submitting the bid.

14. Questions about the tender documents

The bidders may send written questions about the tender documents. Questions can be sent in Danish or English. Questions and answers asked in Danish are not translated into English, and questions/answers asked in English are not translated into Danish.

The Danish Energy Agency considers it essential that all bidders must be able to submit relevant bids within the framework of the tender documents and specifications. All potential bidders are therefore invited to make use of the opportunity to submit written questions about the tender documents identifying words or terms that bidders may find unclear or inadequate. The Danish Energy Agency reserves the right to make changes to the tender documents during the tender process if this is deemed appropriate in light of the questions received or if it proves necessary for other reasons. However, such changes will not concern fundamental elements.

Questions must be submitted digitally via the procurement portal using the following link:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>

All written questions (in anonymised form) and answers to them will be posted on the tender portal.

Questions received by August 18 2023 will be answered at least six days before the closing date for the submission of bids. However, bidders are encouraged to ask questions well in advance of this time. Questions received during the six days before the closing date for submission of bids cannot be expected to be answered.

It will be possible to ask questions of a purely technical nature concerning the tender portal right up to the deadline for submitting bids. These questions will be answered by the Danish Energy Agency as soon as possible within the deadline for receiving bids.

15. Information about the tender

All information about the tender, including answers to questions and any changes about the tender documents, is published via the procurement portal using the following link:

<https://www.ethics.dk/ethics/eo#/2b3ea81c-1ca9-4d3d-b563-b87f629fb79c/homepage>