

§3408. Offshore wind energy procurement

1. Preparation of requests for proposals; offshore wind power projects. The office shall establish a schedule for competitive solicitations for the development and construction of offshore wind power projects to meet the objectives of the program as described in section 3407. The office shall prepare, in consultation with appropriate state agencies, a request for proposals to implement each competitive solicitation. Upon developing a request for proposals for a competitive solicitation under this section, the office shall submit the request for proposals to the commission for approval.

A. A competitive solicitation under this section must specify the date on which a subsequent solicitation must be initiated and the specified date must be within 36 months of a previous solicitation. [PL 2023, c. 481, §6 (NEW).]

B. The office shall make reasonable efforts to consult with entities within this State, including, but not limited to, the commission, the Office of the Public Advocate and entities included in section 3407, subsection 1, paragraph L, and other states or entities regarding coordinated competitive solicitations. [PL 2023, c. 481, §6 (NEW).]

C. A competitive solicitation under this section must seek proposals for offshore wind power projects with not less than approximately 600 megawatts of nameplate capacity or of sufficient size to enable cost-competitive commercial-scale development. A competitive solicitation developed in coordination with other states or entities may seek proposals for offshore wind power projects with a nameplate capacity of less than 600 megawatts if the coordinated solicitation is in an aggregate amount sufficient to enable cost-competitive commercial-scale development. [PL 2023, c. 481, §6 (NEW).]

D. A solicitation under this section must specify bidder criteria, including:

(1) Submission of plans that meet or exceed state and federal requirements or guidelines and are consistent with the recommendations in the Maine Offshore Wind Roadmap issued by the office in February 2023:

(a) To ensure stakeholder engagement, capacity building and equity with particular consideration given to the energy and economic circumstances and opportunities in coastal and socially vulnerable communities, as defined in section 3407, subsection 1, paragraph E;

(b) To achieve economic and community benefits, including, but not limited to, investments in and development of ports, supply chains and the necessary workforce;

(c) To achieve diversity, equity and inclusion in employment and contracting for the project;

(d) To provide for fisheries research, monitoring and mitigation; and

(e) To provide for environmental and wildlife research, monitoring, mitigation and conservation;

(2) A fishing communities investment plan, as described in subsection 4;

(3) An agreement by the responsible entity, if it is approved for a contract under this section, to pay an amount set in the solicitation of at least \$5,000 per megawatt of the offshore wind power project's nameplate capacity to the Offshore Wind Research Consortium Fund in accordance with section 3406, subsection 4;

(4) An agreement by the responsible entity, if it is approved for a contract under this section, to provide financial and technical assistance necessary to implement the plans listed in subparagraphs (1) and (2); and

(5) Workforce requirements, as described in subsection 3.

The office may waive any of the requirements of this paragraph if the office determines that applicable federal criteria, including, but not limited to, federal lease provisions, adequately achieve the applicable requirement. [PL 2023, c. 481, §6 (NEW).]

E. A competitive solicitation under this section must be announced, prior to issuance, through a notice of intent and made available in draft form, including the criteria for the plans required pursuant to paragraph D, for public comment. The office shall:

(1) Conduct at least 2 public comment sessions on the solicitation, at least one of which must be in person, in advance of the publication of a draft solicitation to assist in the development of the contents of the draft solicitation;

(2) Respond in writing to the comments received regarding the draft solicitation;

(3) Coordinate with the Department of Economic and Community Development, the Department of Marine Resources, the Department of Transportation, the Department of Inland Fisheries and Wildlife and the Department of Environmental Protection on the development of the criteria for the plans required pursuant to paragraph D;

(4) Coordinate with the Department of Agriculture, Conservation and Forestry to ensure submerged lands leasing rates and fees, as described in Title 12, section 1862, are aligned with the goals of the program as described in section 3407 and reflect a fair market rate considering fees set by other states in the region for the use of submerged lands in connection with an offshore wind power project;

(5) Seek public input on appropriate contracting mechanisms for inclusion in the solicitations to address market dynamics and impacts to ratepayers, including, but not limited to, indexing and price adjustments;

(6) Request comments on the draft solicitation from each federally recognized Indian tribe in this State and the Maine Indian Tribal-State Commission; and

(7) In developing the plan criteria for the plans required pursuant to paragraph D, consider all comments received under subparagraph (6). [PL 2023, c. 481, §6 (NEW).]

[PL 2023, c. 481, §6 (NEW).]

2. Requests for proposals; offshore wind power projects. The commission shall review a solicitation developed by the office under subsection 1 and, upon finding that the solicitation is reasonably likely to attract competitive bids and further the objectives of the program as described in section 3407, shall issue a request for proposals in accordance with this subsection.

A. The office shall file with the commission the first solicitation by July 1, 2025 unless another date is established by mutual agreement between the office and the commission. [PL 2023, c. 481, §6 (NEW).]

B. The commission shall issue the first request for proposals by the later of January 15, 2026 and 3 months after the first auction by the federal Department of the Interior, Bureau of Ocean Energy Management for offshore wind power leases in the Gulf of Maine. [PL 2023, c. 481, §6 (NEW).]

C. If, within any 3-year period between January 15, 2026 and January 1, 2039, the commission has not found a solicitation submitted by the office to be reasonably likely to further the objectives of the program as described in section 3407, the commission shall expeditiously develop and issue a request for proposals consistent with the requirements of this section. [PL 2023, c. 481, §6 (NEW).]

D. The commission shall review and make a determination regarding a solicitation submitted by the office within 6 months of the date of submission. [PL 2023, c. 481, §6 (NEW).]

E. If the commission determines that a contract for an amount greater than those specified in subsection 1, paragraph C is in the public interest, it may select resources and approve contracts accordingly. [PL 2023, c. 481, §6 (NEW).]

F. In conducting a solicitation and selecting offshore wind power projects under this section, the commission shall ensure that selected projects result in contracts that are cost-effective for electric ratepayers over the term of the contract, taking into consideration potential quantitative and qualitative economic, environmental and other benefits to ratepayers.

The commission shall give priority to offshore wind power projects that:

- (1) Have generation facilities located outside of Lobster Management Area 1;
- (2) Include agreements compliant with subsection 3 or 29 United States Code, Section 158(f) and are open to disadvantaged business enterprises and small businesses;
- (3) Provide employment and contracting opportunities for:
 - (a) Members of federally recognized Indian tribes in this State;
 - (b) Workers from disadvantaged communities as defined by:
 - (i) The United States Council on Environmental Quality's climate and economic justice screening tool or by an agency of this State using standards similar to those in the screening tool as determined by the commission;
 - (ii) The United States Department of Commerce, Economic Development Administration's economic distress criteria; or
 - (iii) The United States Department of Energy's disadvantaged community criteria; and
 - (c) Certified businesses;
- (4) Provide community benefits, as determined preconstruction through consultation with federally recognized Indian tribes in this State, a stakeholder engagement process that includes disadvantaged communities, as described in subparagraph (3), division (b), and investments in fishing communities;
- (5) Provide financial contributions or technical assistance to support research, monitoring and mitigation of impacts to wildlife, fisheries and habitats and the minimization of environmental impacts from the offshore wind power project and related transmission and interconnection infrastructure;
- (6) Provide economic benefits to the State, including using an offshore wind port located in this State;
- (7) Maximize the hiring of residents of this State;
- (8) Maximize economic, employment and contracting opportunities for residents of this State and all businesses in this State; and
- (9) Provide ratepayer benefits, including, but not limited to, enhanced electric reliability, resource adequacy including contributing to reducing winter electricity price spikes and overall price impacts, avoidance of line loss and mitigation of transmission costs to the extent possible.

The commission shall allow the office to review the bids submitted pursuant to this subsection. The office may provide input to the commission upon review of the bids, which may include an assessment as to whether any bids submitted are consistent with the goals of the program as described in section 3407, subsection 1. [PL 2023, c. 481, §6 (NEW).]

G. The commission may direct one or more transmission and distribution utilities to enter into long-term contracts for energy, capacity or renewable energy credits from offshore wind power

projects selected by the commission in accordance with this subsection. [PL 2023, c. 481, §6 (NEW).]

H. If, at the close of a competitive bidding process conducted under this section, the commission determines that the proposals submitted do not satisfy the requirements of paragraph F, the commission shall reject all proposals and shall open a new competitive bidding process under this subsection. [PL 2023, c. 481, §6 (NEW).]

I. Notwithstanding Title 5, section 8071, subsection 3, the commission, after consultation with the office, may establish by rule reasonable fees that bidders must submit with proposals for offshore wind power projects. Fees collected pursuant to this paragraph may be used for the administration of this section, section 3406 and section 3407. Upon request of the office, the commission may transfer fees collected in accordance with this paragraph to the office for the administration of this section, section 3406 and section 3407. [PL 2023, c. 481, §6 (NEW).]

[PL 2023, c. 481, §6 (NEW).]

3. Community and workforce enhancement standards. The following community and workforce enhancement standards apply to contractors and subcontractors involved in the construction of an offshore wind power project pursuant to this section.

A. A contractor or subcontractor shall:

(1) Ensure that all construction workers earn compensation at or above the Maine emerging industry compensation threshold; and

(2) Meet the requirements outlined in Title 26, section 1317. [PL 2023, c. 481, §6 (NEW).]

B. Prior to the commencement of each contractor's or subcontractor's construction work on the offshore wind power project, if that contractor or subcontractor determines that additional construction workers are necessary in excess of the contractor's or subcontractor's currently available and qualified employees to fulfill the contractor's or subcontractor's contractual obligations, the contractor or subcontractor shall:

(1) Use the services of contractors or subcontractors that use a hiring hall in order to meet their workforce needs; and

(2) Provide regular employment opportunities first to members of the affected community and residents of this State and then to individuals who reside in the New England region. [PL 2023, c. 481, §6 (NEW).]

C. If a contractor or subcontractor, after an exhaustion of all efforts required by paragraph B for a period of 90 business days, while remaining in compliance with all other standards and requirements of this subsection, is unable to employ enough construction workers to fulfill the contractor's or subcontractor's contractual obligations, the contractor or subcontractor may use any means necessary to fulfill the contractor's or subcontractor's contractual obligations for a period of no more than 30 business days. [PL 2023, c. 481, §6 (NEW).]

D. If, after complying with the procedures and timing required by paragraphs B and C, a contractor or subcontractor determines that additional construction workers are needed, that contractor or subcontractor may use the following means to fulfill the contractor's or subcontractor's contractual obligations.

(1) The contractor or subcontractor shall provide the opportunity to fill a minimum of 50% of all remaining construction worker hours to contractors or subcontractors that use a hiring hall in order to meet their workforce needs.

(2) If contractors and subcontractors that use a hiring hall in order to meet their construction workforce needs cannot maintain the minimum threshold of 50% of the remaining construction worker hours for a period of 10 consecutive business days, the requesting contractor or

subcontractor may use any means considered necessary by that requesting contractor or subcontractor to fulfill the contractor's or subcontractor's contractual obligations, including continued engagement with contractors and subcontractors that use a hiring hall in order to meet their construction workforce needs, in order to maintain the 50% threshold. [PL 2023, c. 481, §6 (NEW).]

E. Subject to compliance with all other provisions of this subsection, a contractor or subcontractor responsible for construction work may continue to operate and implement a registered apprenticeship program and other relevant continuing education programs in order to meet an ongoing or new construction workforce demand. The registered apprenticeship program must have graduated apprentices within one year prior to the commencement of the registered apprenticeship program's sponsor's or subsponsor's construction work on the offshore wind power project.

Contractors and subcontractors responsible for construction work that operate a registered apprenticeship program pursuant to this paragraph:

- (1) Shall meet or exceed the apprenticeship percentage requirements specified in Title 26, section 3502, subsection 1;
- (2) Are subject to the penalties specified in Title 26, section 3502, subsection 3; and
- (3) Shall provide proof within 7 calendar days of a request from the Department of Labor that all apprentices employed on the offshore wind power project are enrolled in a registered apprenticeship program. [PL 2023, c. 481, §6 (NEW).]

F. If a contractor or subcontractor responsible for construction work determines the construction workforce needs to be decreased at any point throughout the completion of the offshore wind power project, reductions in the construction workforce or layoffs must be performed in the following priority:

- (1) Based on the skills needed, keeping those workers whose skills are still needed for the completion of the offshore wind power project; and
- (2) Based upon seniority on the offshore wind power project, with the last construction worker commencing work on the offshore wind power project being the first construction worker to receive a layoff. [PL 2023, c. 481, §6 (NEW).]

G. A contractor or subcontractor responsible for performing construction work:

- (1) Shall carry workers' compensation coverage and contribute to unemployment insurance for each construction worker on the site of the project;
- (2) May not hire or employ the services of a temporary staffing agency or organization;
- (3) Is prohibited from employing or using independent contractors as defined in Title 39-A, section 102, subsection 13-A, not including Maine-based individual owner-operators or sole proprietors in the transportation industry;
- (4) Shall keep an accurate record showing the name and occupation of all construction workers employed by the contractor or subcontractor performing construction work on the offshore wind power project. The record must also show for each construction worker the hours worked, the title of the job, the hourly rate or other method of remuneration and the actual wages or other compensation, in compliance with the Maine emerging industry compensation threshold. The contractor or subcontractor shall keep a copy of the record at the construction site and allow inspection of the record during all reasonable hours by Department of Labor, Bureau of Labor Standards and, as applicable, the public authority and its officers and agents that let the contract;

(5) Shall post a clearly legible statement of all Maine emerging industry compensation threshold wage and benefit rates to be paid to each class of construction worker employed on the offshore wind power project. This statement must be kept posted throughout the duration of the offshore wind power project and be easily accessible at the offshore wind power project construction site; and

(6) Shall retain documentation of compliance with the requirements of this subsection. The records made pursuant to this subsection must be retained for 3 years after the termination of the contract for the construction work performed. [PL 2023, c. 481, §6 (NEW).]

H. If a construction worker performing construction work at the offshore wind power project site who is paid less than the Maine emerging industry compensation threshold, that construction worker may recover from the contractor or subcontractor responsible for the construction work a penalty equal to the difference between the actual wage and benefits paid and the Maine emerging industry compensation threshold and, in addition to the penalty, reasonable attorney's fees. The surety for the contractor or subcontractor responsible for the construction work is not liable for the penalty or attorney's fees. [PL 2023, c. 481, §6 (NEW).]

I. A contractor or subcontractor shall guarantee against strikes, lockouts or similar disruptions. [PL 2023, c. 481, §6 (NEW).]

J. A contractor or subcontractor shall demonstrate adherence to the inclusive bidding standards and document that adherence. [PL 2023, c. 481, §6 (NEW).]

The Department of Labor shall adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement this subsection. The Department of Labor may adopt routine technical rules relating to the Maine emerging industry compensation threshold.

Notwithstanding any provision of this subsection to the contrary, an agreement that meets the requirements of 29 United States Code, Section 158(f) for the covered work is deemed to comply with the requirements of this subsection.

[PL 2023, c. 533, §4 (AMD).]

4. Fishing communities investment plan requirements. A fishing communities investment plan must include a plan for ongoing investment in fishing communities with a stated annual target rate of investment.

A. The plan must be designed to:

- (1) Support innovation and adaptation in response to environmental change, shifting resource economics and changes in fishing practices associated with offshore wind power development;
- (2) Protect seafood-related working waterfront infrastructure;
- (3) Assist persons fishing commercially at an entry level; and
- (4) Assist persons fishing commercially seeking to provide the responsible entity with offshore services. [PL 2023, c. 481, §6 (NEW).]

B. Investment strategies within the plan may include, but are not limited to, subsidizing commercial lending interest rates, loan guarantees and funding programs or grant programs to support persons fishing commercially and fishing-related businesses and entities established to provide support services to the fishing industry. [PL 2023, c. 481, §6 (NEW).]

C. The plan must identify administration costs separately from the annual target rate of investment. [PL 2023, c. 481, §6 (NEW).]

D. The plan must include a requirement that the responsible entity convene an advisory body made up of representatives, which may include, but are not limited to, representatives from the fishing industry and fishing community, the Department of Marine Resources and relevant commercial

lending institutions, a person appointed by the responsible entity to serve as the liaison to the fishing community and other relevant persons or entities. The advisory body must monitor investment plan performance against the annual target, monitor effectiveness of investment strategies and identify opportunities for improving fisheries and fishing communities through plan investment. [PL 2023, c. 481, §6 (NEW).]

[PL 2023, c. 481, §6 (NEW).]

5. Funding. Notwithstanding section 116, subsection 4, upon receiving a written request from the office, the commission may provide reasonable funding to the office for the purposes of implementing the requirements of this section.

[PL 2023, c. 481, §6 (NEW).]

6. Rulemaking; protective orders. The commission shall adopt rules to implement this section. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. The rules must include procedures for monitoring, measuring and enforcing ongoing compliance by responsible entities with the requirements of this section.

A. The rules must require the responsible entity to provide biannual reports to the commission regarding its compliance with the plans submitted as part of its bid under subsection 2. The rules must require a report submitted by the responsible entity to exclude personally identifying information to the greatest extent practicable. If the report includes confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c), the commission may issue appropriate protective orders in accordance with section 1311-A with respect to those portions of the report and shall make available to the public an appropriately redacted copy of the report. The commission shall provide to the office the redacted copy, which the office shall post on the office's publicly accessible website. [PL 2023, c. 481, §6 (NEW).]

B. The commission shall establish by rule a process for the review, in coordination with the office, of the biannual reports provided by the responsible entity and a mechanism for public participation regarding the contents of the report. [PL 2023, c. 481, §6 (NEW).]

[PL 2023, c. 481, §6 (NEW).]

SECTION HISTORY

PL 2023, c. 481, §6 (NEW). PL 2023, c. 533, §4 (AMD).

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