

**COMMENTS OF BAY STATE WIND  
IN RESPONSE TO REQUEST FOR INFORMATION OSW-2018  
OFFSHORE WIND RENEWABLE ENERGY CREDITS**

Bay State Wind LLC (“BSW”) respectfully submits the following comments in response to Request for Information OSW-2018 (“RFI”) issued by the New York State Energy Research and Development Authority (“NYSERDA”) on designed to encourage the procurement of electricity from new offshore wind (“OSW”) generating facilities by New York State consumers.

BSW is a joint venture between Ørsted<sup>1</sup> – the global leader in offshore wind – and Eversource<sup>2</sup> – New England’s premier transmission builder. Bay State Wind brings the experience of developing 24 projects around the world, on time and on budget, as well as deep expertise in building transmission within New England, and sophisticated knowledge of the region’s electrical grid. Together, the companies are developing Bay State Wind - a proposed offshore wind project located within a U.S. Bureau of Ocean Energy Management lease area located 120 miles from Long Island. BSW has a keen interest in the New York State market, and in participating in future New York solicitations by delivering cost-effective, clean energy into the New York control area and by driving economic growth through the creation of a local supply chain and quality jobs.

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**1. The first solicitation will be issued in the fourth quarter of 2018 (Order, p. 27).**

**a. How much time do proposers need to develop proposals, *i.e.*, time between issuance of the RFP and the proposal submission date?**

Bidders will require 3 months to prepare and submit proposals.

**b. What factors (e.g., available staff, geotechnical and engineering studies, supply chain negotiations, ongoing data collection) drive the time needed to prepare proposals?**

Since developers have been on notice for some time regarding this solicitation, and many of the steps noted above require many months of ongoing effort before and after bid submission, it is not so much the need to complete these steps that drive the preparation schedule. Rather, the time to prepare the bid is more a function of internalizing the final RFP requirements and preparing responsive materials.

Staff resources is also an issue that may inhibit a more expedited schedule. It should be noted in this regard that neighboring states (CT, RI, NJ) also have ongoing solicitations that many NY-eligible developers may also be participating in. Also, the proposals will be developed during a period that traditionally presents schedule challenges, including multiple holidays.

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<sup>1</sup> The Ørsted vision is a world that runs entirely on green energy. Ørsted develops, constructs and operates offshore wind farms, bioenergy plants and innovative waste-to-energy solutions and provides smart energy products to its customers. Headquartered in Denmark, Ørsted employs 5,600 people. Ørsted’s shares are listed on Nasdaq Copenhagen. In 2016, the company’s revenue was DKK 61 billion (EUR 8.2 billion).

<sup>2</sup> Eversource (NYSE: ES) transmits and delivers electricity and natural gas and supplies water to approximately 4 million customers in Connecticut, Massachusetts and New Hampshire. Recognized as the top U.S. utility for its energy efficiency programs by the sustainability advocacy organization Ceres, Eversource harnesses the commitment of its more than 8,300 employees across three states to build a single, united company around the mission of safely delivering reliable energy and water with superior customer service.

**2. NYSERDA proposes requiring bids to remain firm and binding for 6 months in regard to the OREC pricing provisions and other commercial provisions. Is this duration reasonable, or is a longer or shorter time period warranted? What key factors affect how long a proposal can remain firm? How does this timeframe affect the preparation of the proposal?**

The proposed duration is reasonable based on the issuance of the RFP in October, the submission of proposals in January, and the completion of contract approvals within 6 months (July). The expiration of the Federal Investment Tax Credit at the end of calendar year 2019 is a key factor in maintaining that schedule.

**3. The Order requires NYSERDA to seek approximately 800 MW of capacity between procurements in 2018 and 2019. Should the 2018 RFP prescribe a minimum capacity or a minimum annual OREC quantity per bid, and if so, what should the minimum be? Should the 2018 RFP prescribe a maximum capacity or annual OREC quantity per bid, and if so, what should the maximum be?**

The 2018 RFP should establish a minimum capacity bid of 400 MW. As one of the key findings of the NYSERDA OSW Policy Options Paper (“Options Paper”), NYSERDA concluded that “Small initial projects are not likely to deliver cost savings. Due to diseconomies of scale, the costs per unit of energy for projects of 100 MW and 200 MW in size are significantly higher than those for 400 MW projects. As a result, the total Phase I program costs for such smaller projects would be comparable to those of a 400 MW project despite their smaller size and energy output.”<sup>3</sup>

Above this 400 MW minimum bid threshold, NYSERDA should afford developers the flexibility to put forward bid capacities that they believe will best meet the objectives outlined in the Order for cost-effectiveness, local economic development and achievement of the state’s GHG reduction targets. This would include giving bidders the ability to submit bids for as much as 800 MW of capacity, or perhaps somewhat more, consistent with the Order conferring on NYSERDA the ability to recommend more than 800 MW in the first procurement.

Nor should the 2018 RFP prescribe a maximum OREC quantity. This would discourage bidders from maximizing the design and operational efficiency of the windfarm.

**4. Should the 2018 RFP allow bidders to submit multiple bids with differing capacity or OREC quantities? Should this be a continuous range, or should specific discrete target quantities be prescribed by NYSERDA?**

Yes. As noted in the previous answer, NYSERDA should allow developers to determine the optimal size of projects and bid into the solicitation at any project size. NYSERDA should allow developers to bid up to the full 800 MW size and should allow developers to supply multiple mutually exclusive bids.

**5. The Order notes that NYSERDA could award more than 800 MW in the first year alone to secure economic develop benefits or to accept low bid prices that take advantage of the expiring federal tax credits. What should the RFP include to promote these benefits?**

In order to secure the expiring Federal Investment Tax Credit, the RFP should include a timeline that anticipates an executed OREC contract by no later than July 2019.

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<sup>3</sup> NYSERDA Options Paper at 62.

Further, NYSERDA should give developers the ability to submit price bids for projects that exceed their maximum capacity bid by 10%; i.e., if the maximum capacity bid is 800 MW, then developers should be able to reveal what the price would be for the output of an 880 MW windfarm. This can help secure significant cost reductions to the benefit of New York rate-payers. Such added flexibility enables developers to:

- Fully optimize the wind farm's design to take maximum advantage of the lease area's configuration;
- Reduce wake losses through optimized WTG layout; and
- Ensure maximum utilization of the transmission infrastructure.

**6. Are there unique challenges associated with interconnection of offshore wind into downstate New York injection points in New York City and/or Long Island that should be taken into consideration when preparing the RFP? If yes, please identify the challenges.**

Interconnecting significant new capacity into downstate New York poses multiple challenges:

- Identifying points of interconnection that can cost effectively accommodate such capacity without significant upgrades;
- Potential for development of new onshore substations and other transmission infrastructure in a densely populated urban environment; and
- Routing cables through environmentally sensitive shoreline areas.

NYSERDA should require developers to fully document the status of their interconnection strategy. The developer should be asked to detail the status of their interconnection application with NYISO and its associated feasibility, cost and timeline. The developer's progress in securing site control for any required upgrades should be elicited. Further, developers should be asked to fully explain any potential constraints, including but not limited to those above, and how these issues have and will be dealt with to mitigate project risk.

**9. What level of detail should proposers be required to provide to demonstrate the reasonableness of their transmission cost estimates for HVDC or AC export cables, interconnection, and/or transmission system upgrades (if needed) included in their bid prices?**

Developers will be submitting proposals for an all-in product comprised of both generation and transmission. Since the developer ultimately takes on pricing risk, the evaluation should not focus on the reasonableness of the transmission costs, but rather, should request sufficient information to demonstrate project feasibility. The detail requested in previous solicitations conducted in New England is sufficient.

**10. How should NYSERDA consider a strategic partnership between an offshore wind developer and a transmission owner in project viability or other award determinations? Are there reliability, economic, and/or operational benefits associated with such a strategic partnership as it pertains to "wet transmission," i.e., onshore substation, offshore substation and export cable?**

NYSERDA should not consider a bid team configured as a strategic partnership as having inherent reliability, economic or operational benefits. Rather, NYSERDA should examine the technical and financial strength of the project team as a whole (capabilities, project team experience), and the merits, viability and cost-effectiveness of what is being proposed. Bidders should be expected to be forthcoming on how the proposal best meets these objectives.

**11. Should bids be restricted to a single nominal strike price for the entire contract period? If yes, why?**

No.

**a. In the alternative, should proposers be permitted to submit a schedule of nominal strike prices that vary each year? If yes, should a schedule of nominal prices that vary by year be limited to a fixed annual percentage escalator, or should annual changes be allowed to vary from year to year?**

Bidders should be allowed to submit a schedule of nominal strike prices which vary year-to-year. Bidders should be given the flexibility to propose annual escalators and should not be limited to providing a fixed escalator.

**b. If the strike price changes annually, should the schedule of nominal prices be specified by contract year (beginning at actual commercial operation date) or by calendar year?**

Contract year.

## **12. How should negative LBMPs be accounted for under this contracting structure?**

Negative LBMPs should be reflected as part of the index calculation.

**13. Is the current NYISO first year UCAP factor (the ratio of UCAP eligible for payment to the operable capacity of a resource in a given settlement period) of 38% reasonable to apply as a fixed value throughout the OREC contract period? If not, why not?**

We do not believe the first year UCAP factor of 38% should be used nor should it apply as a fixed value throughout the OREC Contract period. For one, this figure was based on a 2005 study. Offshore wind technology and performance has changed substantially since that time. Second, unlike other renewables no seasonal differentiation (summer vs. winter) is made for offshore wind. Offshore wind provides significant winter reliability benefits. Third, as noted in the Options Paper, "once an offshore wind generator has sufficient historical production, the NYISO updates the UCAP value based on the unit's average production during the previous year's capability period." In short, we recommend a study be conducted or consultant hired to determine a value that is more indicative of current technology and that makes a seasonal differentiation.

**14. Should bids be restricted to a single nominal OREC price for the entire contract period? If yes, why?**

No.

**a. In the alternative, should proposers be permitted to submit a schedule of nominal OREC prices that vary each year? If yes, should a schedule of nominal prices that vary by year be limited to a fixed annual percentage escalator, or should annual changes be allowed to vary from year to year?**

Bidders should be allowed to submit a schedule of nominal strike prices based which vary year-to-year.

**b. If the OREC price changes annually, should the schedule of nominal prices be specified by contract year (beginning at actual commercial operation date) or by calendar year?**

Contract year.

**15. How should negative LBMPs be accounted for under this contracting structure?**

Negative LBMPs should be reflected as part of the index calculation.

**17. Per the Order, the Fixed OREC and Index OREC bids will be weighted for consideration in the price component of the evaluation (Order, pp. 39-40, Appendix B). What weighting should be chosen for each option and why?**

For the reasons articulated in the NYSERDA Options paper and reinforced by Bay State Wind and other developer comments on the SAPA Notice, we believe the Index OREC will prove to be the financing mechanism that reduces risk to the developer, thereby enabling the lowest overall program cost borne by ratepayers. In contrast, we believe the Fixed OREC will leave considerable merchant risk with the OSW developer, increase the cost of capital, and therefore entail a significant price premium borne by ratepayers. As such, the Fixed OREC should be considered a backstop mechanism that addresses the jurisdictional risks identified in the Commission Order and therefore should be weighted accordingly; i.e., given no more than 10% weighting.

**18. What bid price evaluation process “lessons” have been learned from offshore wind procurements in other jurisdictions that NYSERDA should take note of for purposes of the 2018 RFP?**

Price bids should be considered firm, with no reopeners for potential cost exceedances.

Bids should be for full project scope, i.e., ORECs should reflect the full price for bundled generation attributes and offshore transmission.

NYSERDA should provide full transparency of the modeling utilized in the evaluation. To develop bids that provide the greatest perceived value to New York State, forward curves for power, capacity and RECs should be provided prior to bid submittal.

Bids should be regarded as the developers’ best and final offer. There should not be a subsequent round of price negotiation. This will encourage developers to put their best foot forward with the initial offering and will prevent potential gaming and questions regarding the fairness and transparency of the evaluation process.

NYSERDA should make available a draft OREC contract for review and comment prior to the issuance of the final RFP.

The evaluation process should consist of two phases: Phase 1 - an initial screening of proposals during which the evaluation team would have the opportunity to submit questions to bidders allowing them to clarify elements of the proposal and ensure conformance with the RFP requirements; and Phase 2 – a detailed qualitative and quantitative assessment of each proposal, again allowing an opportunity for the evaluation team to pose clarifying questions to bidders on elements of the proposal.

**19. NYSERDA will use a maximum acceptable bid pricing metric in the solicitation (Order, p. 42). What factors should and should not be considered in setting the maximum acceptable bid price?**

NYSERDA should base the maximum acceptable bid price based on inputs from the net economic benefits analysis set forth in the Options Paper, and should make applicable adjustments for variability in project size, location and technology. Additionally, adjustments should be made to incorporate additional risks that developers will be required to take on as a result of providing fixed and/ or index

ORECs, which are significantly different from the PPAs awarded in recent solicitations. Additionally, adjustments should reflect labor requirements stipulated in this solicitation.

As the Options Paper reveals, there is a significant risk premium associated with the offtake mechanism adopted in the Order compared to the mechanism used in other states. Simply extrapolating the prices from those states would result in an overly restrictive price cap benchmark.

**20. How should the Index OREC strike price be adjusted to account for the included energy and capacity components in order to be structurally comparable to the Fixed OREC price, for purposes of both (i) comparison to the maximum acceptable bid price; and (ii) calculation of a weighted average bid price?**

The risk premium imbedded in a Fixed OREC Strike Price will reflect a developer's projections for market price and hedging risks as compared to the Index OREC. Therefore, the difference between these two prices would provide an understanding of the risk premium.

**21. Are there other provisions that are consistent with the structure of the order that would, if included in the RFP, allow for more competitive pricing?**

The PSC's Order gives NYSEERDA the discretion to establish a procurement term between 20-25 years. Bay State Wind believes NYSEERDA should establish a fixed procurement term of 25 years. This will allow developers to amortize the significant capital expenditure of the windfarm over the project's expected useful life and will lower the unit cost of ORECs. Moreover, it will ensure that the expected economic and environmental benefits of the project will be delivered to ratepayers and citizens of New York over the life of the asset.

Additionally, since the Order requires us to account for energy and capacity in our proposed OREC bid price an adjustment should be incorporated to reflect the actual revenue received. Therefore, the energy and capacity components of the price indices need to reflect the zone in which the generator is delivering power. Utilizing any other construct to develop these indices creates another layer of risk and will only add to the premium. It is important that the index used for purposes of bid evaluation be capable of distinguishing between power market prices across the various NYISO load zones. Power prices vary to a great extent between the more congested load zones in and around the New York metropolitan area and Long Island (Zones J and K) and Upstate New York. A single index that averages across power markets will distort the true revenue potential for OSW resource output.

Finally, as noted in response to Q.17 and Q.40 the Fixed OREC should be regarded as a backstop mechanism and should not otherwise be a material factor in the bid review or contract award processes.

**22. NYSEERDA retains the authority to reject all bids (Order, p. 43). What factors other than the maximum acceptable bid metric should be considered when determining whether to select or reject bids?**

In addition to price, NYSEERDA must be convinced that bids meet a threshold expectation of project viability. NYSEERDA should establish clear and quantitative metrics for project viability. Such project viability parameters should at a minimum cover:

- Bidder's experience with developing, constructing and operating projects of similar technology, size and complexity; and
- Realism of bidder's timelines.

As demonstrated in numerous renewable energy procurements across Europe and the Americas, effective pre-qualification is crucial to the overall efficacy of a tender as it ensures that only serious and realizable bids are evaluated and mitigates the risk of stranded or delayed program capacity.

**23. In addition to project-specific spending and job creation in New York State, the Order encourages investment in enabling supply chain and infrastructure in New York, and commitments to offshore wind industry and supply chain stimulating activities that create real, persistent and sustainable institutional or labor capabilities in New York State, and that lower the cost of future offshore wind projects (Order, pp. 52-53).**

**a. What documentation of such commitments should be required in the RFP to demonstrate real and verifiable investments in these categories?**

The RFP should request information and documentation necessary to test the veracity and firmness of the projected economic benefits in each of these categories. NYSERDA should ask for all supporting evidence and ascribe appropriate weighting depending upon the maturity of the commitment (i.e., letter of support, letter of intent, option agreement, binding contract). NYSERDA should retain a consultant (the costs of which would be recovered through bid fees) to independently assess that information by category in the context of the proposed project and relative to other proposed projects. NYSERDA then can factor that direct and relative independent assessment into its evaluation of which investments are real and verifiable in making an award consistent with the Order.

**b. How should NYSERDA evaluate whether any investment is likely to lower the cost of future offshore wind projects?**

Although Bay State Wind supports the concept, we are concerned that any attempt to translate a bidders' contemporaneous investments into future cost reductions is methodologically tenuous for purposes of bid evaluation. Rather, NYSERDA should rely predominately or exclusively on direct and easily quantifiable metrics such as job-years created and value of investment.

**24. In accordance with the Order's guidance to include a local content provision in the evaluation criteria (Order, p. 52), NYSERDA may require that proposers file an Economic Benefits Plan (EB Plan), to demonstrate its commitments. The purpose of this EB Plan is (i) to explain and justify the proposer's claims, and (ii) to help evaluators consider the viability of claims. What information should be required in an EB Plan to support scoring of:**

**a. Supply chain and supportive infrastructure investments?**

**b. Opportunities for New York State businesses to bid on project expenditures?**

**c. Enabling investments in activities, e.g., workforce development, R&D, other?**

The bid should be supported by information that NYSERDA can use to verify the firmness of the developer's economic development plans comparable to what has been required in recent New England OSW procurements. NYSERDA should discount those claims that are immature, vague or speculative as revealed through the independent consultant recommended in response to Q.23. Among the information that should be supplied to assess the viability of the claims, developers should be required to disclose:

- Description of goods and services that will be purchased, manufactured or performed in New York;

- Identity and capability of project partners;
- Level and timing of investment;
- Duration of commitment;
- Strategic importance of commitment and how it fits into overall regional OSW market development;
- Firmness of commitment as evidenced by letters of support, letters of intent, or contractual agreements;
- Developers' experience in choosing and developing the most efficient infrastructure for the project; and
- How developers ensure competitive and transparent procurement and how developers will ensure inclusion of local companies.

**25. NYSERDA may establish a minimum requirement in the RFP to provide opportunities to New York State firms for project-related expenditures. Options include (i) requiring that opportunities for contracts be communicated to a New York State vendor list maintained by NYSERDA, and (ii) requiring that each proposer provide opportunity for New York State firms to bid on contracts representing some percentage of total project costs.**

**a. What categories of expenditures are reasonable to apply such a requirement to?**

Scopes could include, but are not limited to:

- Consultancy and engineering and works in connection with onshore power transmission;
- Consultancy for project management;
- Operation and Maintenance positions; and
- Service and operations agreements.

**b. With respect to approach (ii), please comment on the practicality of such a requirement; what level of demonstration would be required; what is a reasonable specified percentage of total project costs to require; and what exceptions would it be reasonable to include.**

Local content participation in the bidding process should be limited for the initial solicitation given the nascent stage of market development, and potentially ramp up over time based on analysis of the local supply market. Focus should be on the categories identified in response to (a), above.

**26. In accordance with the Order, NYSERDA is interested in conveying greater weight to those expenditures and investments that (i) create persistent institutional or labor capabilities in NYS, and (ii) lower the cost of future offshore wind projects (Order, pp. 52-53). Please comment on:**

**a. The proposed approach;**

**b. What information may be reasonable to use as the basis for assigning such additional weight; and**

**c. How much additional weight is appropriate to assign to expenditures or investments that create such benefits.**

See response to 23.b.

If NYSERDA pursues this approach, it should as much as possible rely on econometric modeling (investment dollars, number of trainees enabled, etc.) rather than attempt to subjectively assess the market transformational effects of such expenditures and investments.

**27. NYSERDA may establish penalties or other contractual repercussions, such as those used in its Renewable Energy Standard Tier 1 solicitations, which reduce the contract price in proportion to any shortfall below 85% of the economic benefits claimed, based on the**



**independent audit of benefits realized during the first three years of commercial operations. Here, NYSERDA is considering: (i) reducing the contract price in proportion to the shortfall; (ii) requiring seller to make additional investment to make up a shortfall; or (iii) requiring seller to submit a payment in proportion to a shortfall to fund related activities. Please comment on these alternative approaches.**

Bay State Wind would counsel against the imposition of penalties at this early juncture of the OSW market development. In particular, Option (i) could seriously impact a seller's ability to finance the project, which would increase the cost of energy. Rather, as discussed in response to Q.23 NYSERDA should establish a robust review process, as supplemented by outside consultant support, to test the efficacy of the developers' claimed investment level and expectations for local job creation.

**28. If a fishing compensation program is submitted in conjunction with the fisheries management plan, how should the proposer quantify the economic impacts? How should the fishing compensation plan be considered along with other economic benefits (Order, p. 48)?**

Bay State Wind recognizes that the commercial and recreational fishing community is a key stakeholder as offshore wind development moves forward. While fishing compensation programs are a tool we have used in other projects in Europe and find them a useful and appropriate tool in some circumstances, such mechanisms are used later in the project development timeline, once true impacts of an offshore wind farm can be determined. For example, wind farm layout, construction schedules, and other parameters would need to be known to begin to quantify impacts, and those items are not determined by a wind farm developer until much later in the process. Thus, Bay State Wind does not believe NYSERDA should require that a fishing compensation program be submitted in conjunction with its bid. Instead, NYSERDA should follow the process set forth in the Order – bidders should consult with various stakeholders and implement best practices established by the Technical Working Group on Commercial and Recreational Fishing.

**29. The Order recognizes that the development of offshore wind creates the potential for high-quality employment opportunities and therefore presents a significant potential benefit to New York State. What measures or arrangements do you consider the most efficient and effective ways to:**

- a. Ensure that the maximum potential high-quality employment opportunities are available to New Yorkers?**
- b. Ensure that a properly trained, highly-skilled and qualified workforce is available to fill the various labor needs throughout the duration of the project?**
- c. Ensure opportunities for the participation of New York small businesses?**

Workforce development requires a public-private partnership involving state and local agencies, academic and training institutions, organized labor and the offshore wind supply chain (including, but not limited to developers and major component manufacturers). NYSERDA's Technical Working Group is exploring the means of achieving the objectives listed above.

The most effective way to support these goals is to have developers outline how they are contributing to the above-listed activities and goals, and then score bids on how well they support them. As such, the RFP should not be prescriptive or restrictive, allowing developers the opportunity to discuss and document their strategies and investment-backed activities in support of industry development and maturation.

**30. What information and documentation should be required of proposers to demonstrate viability (please be specific as to the type of information and the level of detail which should be submitted), as follows, based on the criteria listed in the Order (Order, p. 53):**

As indicated throughout these comments, Bay State Wind believes that project viability should be regarded as paramount factor in the bid solicitation and evaluation process. Given the nascent stage of development of the US offshore wind industry, it is critical that the State of New York make its awards to the project developer with the experience, technical acumen, and financial capacity to build and operate the integrated energy infrastructure project of this magnitude and complexity. Moreover, it is imperative that New York State scrutinize all bids to test the veracity of claimed energy, economic and environmental benefits and ensure that the promised benefits actually accrue to the state's ratepayers and citizens at large.

We propose that the following considerations guide NYSERDA's structuring of the solicitation process:

- NYSERDA should avoid overly prescriptive information requirements. Rather, NYSERDA should set the expectation that bidders must adequately document their bids and leave it to developers to muster the information that will best advance their case.
- NYSERDA should strongly consider a post-bid process wherein the evaluation team can further probe information set forth in the bid. This may include: written questions seeking clarification or documentation; and in-depth interviews with each bidder.

Specifically, Bay State Wind would refer NYSERDA to the OSW-specific solicitations recently conducted by Massachusetts and Connecticut. We are generally supportive of the approach taken in those jurisdictions to elicit information from eligible bidders.

The following discussion addresses individual components of the bid.

**a. Permitting Plan and Status: What level of detail should a proposer provide with respect to the project permitting plan and the status of each required permit?**

The proposer should provide information such as an organization chart and short biographies that provides detail on the structure and experience of their permitting team. This information should demonstrate how that team has been successful in permitting other relevant projects in either the same or similar permitting paradigms.

**b. Financing Plan: What level of disclosure should a proposer be required to submit to demonstrate financial strength, e.g., audited financial statements, project pro forma, expressions of interest from equity and debt investors, other?**

Bay State Wind suggests that proposers submit the following to demonstrate financial strength:

- Audited financial statements of the proposer and its owners;
- Detailed description of proposer's / owners' experience in developing, constructing, operating and financing large scale offshore wind projects; and
- Detailed description of proposer's / owner's experience and ability to access capital markets.

**c. Developer Experience: How should proposers demonstrate that each member of the proposed project team has sufficient relevant experience to finance and develop the project?**

NYSERDA should request that bidders demonstrated they have sufficient relevant experience and expertise to successfully develop, finance, construct and operate the proposed project. Development, financing, and construction experience can be established by demonstrating that the bidder's project management team have the requisite experience and competencies, including but not limited to:

- Successful development, construction, and operation of a similar type of project; and
- Successful development, construction and operation of one or more projects of similar size or complexity or requiring similar skill sets.

In addition, NYSERDA should call for information on the bidder's collective corporate experience and history in developing OSW projects as a key indicator of the likelihood of successfully completing the project being bid on-time and on-budget.

**d. Proposed Technology: What level of detail should a proposer provide with respect to the project design and construction plan? How specific must a development plan be with respect to turbine arrangement, number and size of turbines, foundation design, turbine / blade selection, electrical collector station, export cable design / route, landfall location, and interconnection point(s)?**

NYSERDA should request that bidders be as specific as possible as they can be with respect to the above-enumerated points. Developer should be required to document the status of each of these elements and provide supporting evidence. Further, developers should be required to document their risk mitigation plans if any of the elements above are determined to be infeasible and how such mitigation plans allow the project to maintain schedule and budget. Greater credit should be accorded to **bids that are the most advanced, specific, and credible.**

**e. Development and Logistics Plan: What level of site control should be required for the necessary port facilities and other support infrastructure? What level of detail should be required in order to demonstrate the reasonableness of proposer's equipment procurement plan, including selection and scheduling for construction vessels? Should proposers be required to submit a decommissioning plan, and if so, what level of detail and specificity should be required?**

NYSERDA should request that bidders demonstrate the logistical viability of the project through a construction plan covering the necessary equipment needed, including vessels and local port facilities.

Bidders should not be required to submit a decommissioning plan because BOEM guidelines specifically require projects in federal waters to have such a plan as part of their Construction and Operations Plan (COP) approval. Since the decommissioning plan under BOEM covers all related facilities submitting a redundant decommissioning plan to New York is not necessary.

**f. Interconnection Status: Should the RFP require additional minimum requirements, beyond a valid interconnection request having been submitted to NYISO, with respect to completion of interconnection studies and the project's status in the interconnection process? If so, what should the requirements be? Please describe in detail how transmission and interconnection cost risk should be analyzed by NYSERDA.**

Requirements should be consistent with those laid out in prior New England solicitations.

**g. Reasonableness of Project Development Milestones: What milestones should be included in the development plan? What factors determine the reasonableness of the milestone schedule?**

NYSERDA should request that bidders demonstrate that its project can be developed, financed, and constructed within a commercially reasonable timeframe.

NYSERDA should specifically request bidders to provide a detailed schedule that provides sufficient time for the receipt of necessary permits, regulatory approvals, interconnection agreements and other commitments required to build the project.

**h. Community Outreach: How should proposers be required to credibly demonstrate their community outreach and support?**

Community outreach can be documented through the development and execution of the developer's stakeholder engagement plan. This can be buttressed by an enumeration of meetings and other outreach targeted to distinct stakeholder interests and communities.

Community support can manifest itself through a variety of means including letters of support from community thought leaders, community sponsorships (whether ad hoc or through a community benefits agreement), favorable press coverage and the like.

Again, NYSERDA should not be prescriptive in how the developer makes this demonstration but it should insist on tangible evidence to support the developer's claims.

**i. Environmental Impact: At the time of proposal submission, what geotechnical, geophysical, biological, and archeological studies should be completed and available?**

**j. Wind Resource Assessment: At the time of proposal submission, what wind resource studies, turbine power curve data, energy yield calculation, gross (turbine) output, expected availability, and losses by category should be available or provided? Should this information be indicative or binding? What changes should be allowed?**

Bidders should provide either (a) at least one year of hourly wind resource data measured by a floating lidar situated in the lease area, or (b) a wind resource assessment report from a qualified wind resource assessment firm. For purposes of evaluating such data (a) should be treated as more reliable than (b) as it provides a more accurate representation of the wind climate given that measurements have been taken within the lease area and at the exact hub height of the proposed project's WTGs, whereas (b) will need to rely on generic wind measurement data from met masts located in proximity of the lease area. Bidders should provide a site adjusted power curve as well net and gross annual energy production projections. As the net annual energy production figure will factor in all losses it wouldn't be necessary to provide a detailed breakdown of losses. Bidders should also provide their project's expected annual availability.

**31. The Commission Order references that the Offshore Wind Master Plan and its incorporated study that concluded that a 20-mile setback from any coastal position would minimize visual impacts during most times of day (pp. 49-50). NYSERDA has the discretion to tailor the setback requirement if it determines that a modified approach is necessary to optimize the overall environmental and economic benefits.**

**a. What factors should NYSERDA consider in determining the RFP's setback requirement?**

NYSERDA should maintain a uniform setback requirement across all eligible lease areas and should not allow variances based on individual developer claims. This is necessary to create a level playing field and give developers greater certainty about the available, developable portions within their lease areas going into the bidding process.

Further, Bay State Wind understands that the Commission's adoption of a 20-mile setback is based on considerations of project viability and the potential for local opposition to arise. Therefore, any adjustment NYSERDA makes to this standard should weigh impacts of public perception against the availability of sufficient lease area and wind resource to meet the state's overall procurement targets.

**32. The Order includes a number of provisions relating to environmental concerns and commercial fishing interests (Order, pp. 47-48) including the development of best management practices and the submission of a fisheries mitigation plan.**

**a. Are there examples of best management practices that could serve as a useful starting point for environmental and commercial fishing considerations?**

New York's own Offshore Wind Master Plan offers appropriate guidance on the development of and timing of the implementation of best management practices. Section 6 and Appendix D of the Fish and Fisheries Study provide a great amount of detail regarding the best management practices recommended by the State, as well as references to the others that are known relative to Fish and Fisheries. In addition, each of the other technical studies offer best management practices to help guide project development and stakeholder interactions, as well.

**b. What information should proposers be required to provide in their fisheries mitigation plan to demonstrate potential mitigation measures in this area? What level of specificity is appropriate?**

Submitting a full mitigation plan is not appropriate at this stage but rather at the stage of the submission of a COP to BOEM. That is the case for two primary reasons: 1) it is not until that time does a developer fully understand and disclose the information about the layout, construction methods and schedule, and other salient details that would inform a mitigation plan, and 2) a mitigation plan should be developed in conjunction with the affected stakeholder group and that conversation could not be fully developed until closer to or after COP submission.

**c. What commitment should proposers provide regarding how they will work with the commercial fishing communities to design and operate sites that provide the greatest practical access for commercial fishing (by gear type) and for commercial vessel (and other maritime shipping interest) navigation and transit through turbine arrays?**

Per our response to 32(a) proposers should commit to adhering to the principals set forth in the Master Plan.

**33. The Order requires that environmental data collected by the developer be made publicly available, except data normally considered proprietary. What environmental data collected by developers should be made publicly available and what data should be considered proprietary?**

As a general matter, Bay State Wind supports the sharing of non-proprietary environmental data collected by developers. The three types of data we consider proprietary, and should not be made publicly available, are: 1) the hub height wind speed data collected by meteorological buoys or towers; 2) proprietary or otherwise sensitive data collected from commercial or recreational fishers; and 3) data that are culturally or historically sensitive (per guidance from BOEM), such as offshore tribal burial grounds and otherwise uncharted shipwrecks.

**35. To encourage the greatest participation by offshore wind developers, what specific considerations should be made in defining eligibility and threshold requirements, bid flexibility, and other procurement mechanics?**

Bay State Wind sees no need to adjust or further define the eligibility and threshold requirements specified in the Commission Order.

As noted previously, we recommend that NYSERDA allow flexibility in the amount of capacity developers may bid (See response to Q.3) and that NYSERDA could ultimately award. NYSERDA should similarly allow flexibility in pricing such that different prices could pertain to increments of additional capacity, contingent bidding (i.e., pricing discounts contingent upon award in a contemporaneous procurement), etc.

Additionally, the energy and capacity components of the price indices need to reflect the zone in which the generator is delivering power. Utilizing any other construct to develop these indices creates another layer of risk and will only add to the premium.

**36. NYSERDA has the discretion to determine additional eligibility requirements for participation in the solicitation beyond those defined in the Order (Order, p. 46).**

**a. Are there additional eligibility requirements that should be included in the solicitation? If so, what are the (dis)advantages of imposing such eligibility requirements on proposers?**

Bay State Wind does not believe that additional eligibility requirements are warranted.

Moreover, Bay State Wind supports the Order's treatment of certain non-price factors and would strongly counsel against transforming these into threshold eligibility requirements.

**37. NYSERDA will have discretion in fixing specific contract terms between 20 and 25 years (Order, p. 41). Should NYSERDA require proposers to submit offers for one or more specified terms, or allow respondents to propose a term length?**

NYSERDA should establish a fixed procurement term of 25 years.

**38. What factors should be considered in setting a latest allowable commercial operation date (COD) (Order, p. 46)?**

**a. How should the contract address delays in achieving the COD?**

**b. Should liquidated damages (LDs) be employed to foster timely commercial operation? Related to LDs, what factors should be considered in determining the reasonableness of a delayed COD?**

**c. If a selected project is not completed by the contractual COD, what size financial penalty should be levied for failure to perform?**

Developers have substantial reason to seek to achieve the earliest COD possible. But given the litany of potential viability issues (enumerated on page 53 of the Order) that developers face, Bay State Wind believes that NYSERDA's focus should be on crafting contract mechanisms that incentivize developers to propose—and achieve—realistic CODs in their bids (albeit without later penalizing them for delays that are truly beyond their control). Such focus would not only facilitate the selection of a winning bidder (or bidders), but would provide greater certainty for NYSERDA, load-serving entities, and New York ratepayers.

In light of the importance of balancing the benefits of an earlier COD against the need for developers to propose a realistic schedule that facilitates the bidder-selection process and provides greater certainty to all, Bay State Wind believes that developers should not be penalized for delays of COD (or milestones) that they have no ability to prevent. Whether through a thorough definition of force majeure or through another form of exception, developers should not be held liable when—for example—a federal agency fails to process a permit application according to the agency's anticipated timeline (for reasons other than the developer's failure to provide sufficient information on a timely basis).

**39. The development of offshore wind is important to New York both economically and environmentally. Timely completion of an offshore wind project, in a cost-effective manner, is critical. What measures or arrangements do you consider the most efficient and effective ways to:**

**a. Ensure that the project proceeds on-time and on budget, and is protected from potential disruption and delays due to labor disputes?**

**b. Ensure construction management flexibility to coordinate the work of multiple trade contractors, including both union and non-union contractors, who might otherwise be subject to different restrictions, and to efficiently respond to any project-specific construction standards?**

Bay State Wind believes that developers' approach to labor standards should be considered in the evaluation process as an indicator of commitment to local workforce development and project viability, but such standards should not be transformed into specific bid requirements. As Bay State Wind noted in our comments on the SAPA Notice, Bay State Wind does not believe that labor considerations can be reduced to a binary rule requirement, since it fails to capture the wide variance in the quality and scope of potential project labor agreements.

**40. The Order states that “[i]f NYSERDA awards a contract using the Index OREC method, the contract will specify conditions that may trigger a reversion to the Fixed OREC method and price that was bid” (Order, p. 40).**

**a. How should this provision be included in the contract?**

Reversion to the Fixed OREC method should require agreement of the parties that specific circumstances exist creating a commercially unreasonable degree of legal risk as to the validity of the Index OREC method under the U.S. Constitution (as detailed in the response to part b). The contract could provide for arbitration or mediation in the event of a disagreement between the parties as to whether such circumstances exist.

**b. What conditions could trigger the reversion?**

In arriving at its “hybrid procurement approach,” the Order notes that “there is litigation pending on matters concerning the interrelation between low-carbon procurements and wholesale markets, and until a final disposition is obtained there is an element of risk attached to any procurement method that includes adjustments” (Order, p. 39). In pertinent part, litigation is pending in the U.S. Court of Appeals for the Second Circuit regarding New York’s Zero Emission Credit program—similar litigation is pending in the U.S. Court of Appeals for the Seventh Circuit, and other cases may conceivably arise in the near term, as state policy concerning low-carbon energy continues to evolve and the lower federal courts continue to interpret the Supreme Court’s decision in *Hughes v. Talen Energy Marketing*, 136 S. Ct. 1288, 1299 (2016).

Bay State Wind understands the Public Service Commission and NYSERDA’s desire to mitigate this legal risk, but believes that the reversion mechanism should be narrowly tailored to address only decisions that both: (1) are by courts having actual or potential jurisdiction over the constitutional validity of New York’s OREC program (e.g., the U.S. District Courts in New York State and the District of Columbia, the U.S. Courts of Appeals for the Second and District of Columbia Circuits, and the U.S. Supreme Court; and (2) include holdings that invalidate the Index OREC method under the Supremacy or Commerce Clauses of the U.S. Constitution. Before becoming effective under the contract, the Public Service Commission should confirm that the decision(s) directly relates to utilizing the Index OREC and requires the reversion to the Fixed OREC. Any application of the Fixed OREC should be prospective from the Public Service Commission’s confirmation.

NYSERDA should be mindful that the very inclusion of this reversion mechanism creates financial risk for the developer; making it any broader than strictly necessary could lead to risk-based pricing that is at odds with the Index OREC method’s fundamental purpose, namely creating a potential avenue for developers to propose lower prices. Relatedly, it is appropriate that reversion be subject to agreement of the parties under the contract, rather than left to NYSERDA’s discretion, because balancing the legal risk that the reversion mechanism is designed to address is—as the Order states — “a business judgment” (Order, p. 39).

**c. Should there be a limited timeframe within which such a reversion must be exercised?**

If limited to the circumstance described above, Bay State Wind believes the reversion mechanism should be applicable until a final decision in the pending litigation for New York’s Zero Emission Credit program and the effect of that outcome should be assessed shortly thereafter.