

Ordinance

of the Federal Ministry for Economic Affairs and Energy

Ordinance on the Allocation of Other Energy Generation Areas in the Exclusive Economic Zone

(Sonstige-Energiegewinnungsbereiche-Verordnung – SoEnergieV)

A. Problem and objective

The Offshore Wind Energy Act already enables the Federal Maritime and Hydrographic Agency to make stipulations regarding offshore wind energy installations and 'other energy generation installations' which are not to be connected to the grid in order to allow for the practical testing and implementation of innovative energy generation concepts in a spatially orderly manner which uses little space. However, with a view to ensuring the successful development of such concepts for other energy generation in Germany, it is crucial that the rights to use the areas to be so designated are allocated according to objective, comprehensible, non-discriminatory and efficient criteria.

B. Solution; benefits

Section 71 no. 5 of the Offshore Wind Energy Act contains an authorisation to issue a statutory instrument with a view to developing criteria for the allocation of areas for other energy generation. The Ordinance is to regulate the allocation of other energy generation areas on the basis of objective, comprehensible, non-discriminatory and efficient criteria. The overall goal is to allow for the practical testing and implementation of innovative concepts for energy generation installations that are not connected to the grid in a spatially orderly manner which uses little space, with a particular regulatory focus on the requirements for the suitability of participants and on suitable evidence of the fulfilment of these requirements.

The Ordinance makes sure that the limited areas available for other energy generation as designated by the Federal Maritime and Hydrographic Agency as part of its spatial planning activities are used efficiently. Without this Ordinance, an area would be blocked for all other market participants upon the submission of the first application for approval (on a first-come, first-served basis), and the approval procedure would not allow any conclusions to be drawn regarding the prospects of success of the project planning.

The qualitative criteria of the award procedure are therefore to be used to allocate the areas to those projects that are most promising in terms of their prospects of success and that can be implemented in a timely manner. This also seems appropriate considering the innovative character of potential approaches to other energy generation, such as offshore hydrogen electrolysis, and in view of the experience made during the early development of offshore wind energy in Germany.

C. Alternatives

None.

D. Budget costs excluding compliance costs

None.

E. Compliance costs

According to an ex-ante estimate, the Ordinance entails the following compliance costs for citizens, business and public administration.

E.1 Compliance costs for citizens

This Ordinance entails no additional costs for citizens. In particular, the Ordinance does not impose any new obligations to provide information.

In principle, participation in the award procedures is open to everyone. Given the required volume of investment, however, participation by citizens' undertakings is rather unlikely.

In the event that citizens participate as bidders in an auction round, the relevant compliance cost is detailed under E.2.

E.2 Compliance costs for businesses

As a result of the Ordinance, compliance costs for businesses will increase by an annual 5.45 million euros per award procedure. Compliance costs are the result of the costs incurred for the compilation of the bid and the interest costs for the guarantee covering the provision of a security; the security is returned to the bidders upon conclusion of the auction or, in the case of the bidder awarded an application licence, upon implementation of the project.

The Ordinance regulates the allocation of areas for other energy generation by means of award procedures. For 2022, one award procedure is expected. It is not yet clear how many such procedures will be planned for subsequent years. This is why the compliance cost estimate is based on individual cases. It is estimated that an average of three bids will be placed per award procedure.

In view of the lack of precedents regarding the implementation of other energy generation projects, the following assumptions about the cost of compiling a bid are based on the compliance cost as determined for auctions of areas to be used for offshore wind energy. This seems appropriate given that significant similarities are expected between both types of projects, with the expected differences being likely to act in ways that will both increase and decrease the overall cost. Cost-reducing effects are likely to be caused by the comparatively small size of the areas to be used for other energy generation and by the lack of preliminary investigation data to be evaluated, whereas cost-increasing effects will be produced by the need to consider installations for other energy generation and by the added effort involved in compiling the documents for the bid.

The assumptions are based on statements made by market participants in the context of the evaluation of, inter alia, the Offshore Wind Energy Act as part of preparations for the Progress Report on the Renewable Energy Sources Act, Offshore Wind Energy, commissioned by the Federal Ministry for Economic Affairs and Energy and to be submitted by 31 December 2023. The costs vary depending on a range of factors including the duration of the bid placement and the personnel resources needed. It is assumed that highly qualified employees will be entrusted with the compilation of a bid.

For the purposes of this cost estimate, the duration of a bid placement is assumed to be six months (equalling 960 hours), and personnel expenses are assumed to be incurred for two highly qualified employees (80.40 euros per hour) with wage costs totalling around 77,000 euros per employee (approx. 150,000 euros per bid). For an assumed total of three bids in 2022, this will result in overall bid compilation costs of around 450,000 euros per year.

In addition to the costs of compiling the bid, bidders are required to make security payments amounting to 2 euros per square metre of space; the security is returned to the bidder upon conclusion of the auction or upon successful implementation of the projects. Taking into account the areas designated in the 2020 site development plan, an amount of approx. 55 million euros in securities is determined for the 2022 award procedure. Every bid entails material costs for interest payments for the guarantee to be deposited as security. Assuming an interest rate of 1 per cent for the guarantee, annual costs of approx. 550,000 euros will be incurred. Bidders who do not receive an application licence will be reimbursed for their security payment. Assuming a total of three bids for the 2022 award procedure as well as a four-month period for the provision of security, interest costs for the guarantees for the two unsuccessful bids would amount to a total of around 370,000 euros.

In the case of the bidder who is awarded an application licence, the security is not returned until implementation. In accordance with the implementation deadlines set out in section 14, securities will be provided for a total duration of 152 months (including the duration of the auction procedure). For a period of approx. 80 months until evidence is provided of the technical operational readiness of the installations pursuant to section 14 (1) no. 5, security is, in principle, to be provided in full, with interest payments for the guarantee amounting to approx. 3.6 million euros over this period. For a remaining period of approx. 72 months until evidence is provided of the average quantity of energy produced by the installations as set out in section 14 (1) no. 6, security is, in principle, to cover only 30 per cent of the total amount, with interest payments for the guarantee totalling around 990,000 euros for this period. Thus, the bidder awarded an application licence will incur a total of approx. 4.6 million euros in guarantee-related interest costs.

Assuming a total of three bids in 2022, one-off material costs due to guarantee-related interest will amount to a total of approx. 5 million euros.

The obligations of bidders awarded an application licence pursuant to section 14 to provide evidence of compliance with implementation deadlines refer to actions which are already required in the course of the approval procedure and the implementation of the project concerned. In this sense, they do not cause any additional cost or effort.

The compliance costs detailed here fall within the scope of application of the 'one-in, one-out' rule. They will be offset by cuts in bureaucracy to be made elsewhere within the portfolio of the Federal Ministry for Economic Affairs and Energy.

Given the investment volume expected in the case of other energy generation projects, this Ordinance is not expected to affect micro, small or medium-sized enterprises in any major way. Nor is it possible, however, to rule out any impacts on micro, small or medium-sized enterprises. The Ordinance does not impose any particular burden on micro, small or medium-sized enterprises. Therefore, alternative arrangements or measures to ease the burden on micro, small and medium-sized enterprises, such as optional rules, variable deadlines for obligations or fees or specific information services, are deemed unnecessary. Nor are they feasible in any meaningful way.

E.3 Compliance costs for public administration

On the part of the Federal Government, compliance costs for charging fees are incurred by the Federal Maritime and Hydrographic Agency, the auctioning authority as designated by

the Offshore Wind Energy Act. The annual costs for the Federal Maritime and Hydrographic Agency have already been estimated by the Offshore Wind Energy Act (Bundestag printed paper 19/20429, p. 40). This Ordinance does not entail any additional costs other than those set out in the estimate and assessment which was conducted in the context of the Offshore Wind Energy Act.

There are no compliance costs for the Länder and local authorities.

F. Other costs

The Ordinance is not expected to have an impact on individual prices or the price level, particularly the consumer price level.

Ordinance of the Federal Ministry for Economic Affairs and Energy

Ordinance on the Allocation of Other Energy Generation Areas in the Exclusive Economic Zone

(Sonstige-Energiegewinnungsbereiche-Verordnung – SoEnergieV)

of 21 September 2021

- On the basis of section 71 no. 5 of the Offshore Wind Energy Act of 13 October 2016 (Federal Law Gazette I, p. 2258, 2310), as last amended by Article 12a of the Act of 16 July 2021 (Federal Law Gazette I, p. 3026), the Federal Ministry for Economic Affairs and Energy issues the following Ordinance:

§ 1

Purpose and object of the Ordinance

In accordance with section 71 no. 5 of the Offshore Wind Energy Act of 13 October 2016 (Federal Law Gazette I, p. 2258, 2310), as last amended by Article 12a of the Act of 16 July 2021 (Federal Law Gazette I, p. 3026), the Ordinance regulates the procedure for the allocation of other energy generation areas or subareas thereof in the exclusive economic zone, as designated in the site development plan of the Federal Maritime and Hydrographic Agency, via auctions of licences to apply for plan approval procedures for the construction and operation of offshore wind energy installations and other energy generation installations which are not to be connected to the grid (application licences), and provides for the construction of those installations.

§ 2

Definitions

For the purposes of this Ordinance,

1. “subarea” means a definable area which is located within other energy generation areas and has been put up for auction as such by the Federal Maritime and Hydrographic Agency,
2. “handover point” means the place in which the energy carrier produced in an other offshore energy generation installation is either fed into an existing line or a line yet to be built or is transported ashore; if the final energy carrier is consumed at sea, the handover point is the entry point into the consumption point,
3. “final energy carrier” means the energy carrier which is not converted or processed any further within the other energy generation area.

Subject of the auctions

In the case of other energy generation areas or subareas thereof as defined in the site development plan according to section 5 (2a) of the Offshore Wind Energy Act, eligibility for an application licence is determined by the Federal Maritime and Hydrographic Agency via individual auctions. Any other energy generation areas that no longer meet the requirements of spatial planning pursuant to section 5 (3) sentence 2 no. 1 of the Offshore Wind Energy Act are not put up for auction. The Federal Maritime and Hydrographic Agency must undertake an appropriate examination prior to conducting the auction.

§ 4

General auction provisions

Unless otherwise provided in the following, the general auction provisions pursuant to section 30a of the Renewable Energy Sources Act of 21 July 2014 (Federal Law Gazette I, p. 1066), as last amended by Article 11 of the Act of 16 July 2021 (Federal Law Gazette I, p. 3026), apply accordingly. In this context, the Federal Maritime and Hydrographic Agency takes the place of the Federal Network Agency.

§ 5

Auction procedure

The Federal Maritime and Hydrographic Agency will put up for auction the first application licences in 2022. In the case of alterations or updates to the site development plan pursuant to section 8 of the Offshore Wind Energy Act stipulating any additional other energy generation areas, the Federal Maritime and Hydrographic Agency announces the auction, in accordance with section 6, at the latest within six months of announcing the altered or updated site development plan. If the application licence for an area becomes invalid according to section 13 (2) or (3), the Federal Maritime and Hydrographic Agency is, in principle, to put the area up for auction again to the extent in which the application licence has become invalid.

§ 6

Announcement of the auctions

The Federal Maritime and Hydrographic Agency announces the auctions on its website at the latest six calendar months before the respective bid deadline. The announcements must contain at least the following information:

1. the bid deadline,
2. the designation of the other energy generation areas or subareas for which application licences are put up for auction, as well as a reference to the respective stipulations in the site development plan pursuant to section 5 (2a) of the Offshore Wind Energy Act,
3. the format required by the Federal Maritime and Hydrographic Agency for the submission of the bid pursuant to section 30a of the Renewable Energy Sources Act,
4. the requirements to be met by bids pursuant to section 8,

5. the amount of the security to be provided under section 7,
6. a reference to the implementation deadlines under section 14 and to the corresponding sanctions for non-compliance under section 15,
7. a reference to the undertaking required under section 46 (6) and section 48 (4) no. 7 of the Offshore Wind Energy Act, to be submitted in line with section 66 (2) of the Offshore Wind Energy Act.

§ 7

Security

Bidders must deposit a security with the Federal Maritime and Hydrographic Agency by the respective bid deadline. The security safeguards the respective claims of the federal budget to penalties pursuant to section 15. The amount of the security is determined from the size of the other energy generation area or subarea defined in the site development plan, as referred to in the bid, multiplied by 2 euros per square metre of space. Section 31 (2) to (5) of the Renewable Energy Sources Act applies accordingly, with the Federal Maritime and Hydrographic Agency taking the place of the Federal Network Agency and the federal budget taking the place of the transmission system operator.

§ 8

Requirements to be met by bids

(1) Bidders must designate the other energy generation area or subarea for which the bid is being submitted. Bids may only be submitted for areas which have been put up for auction by the Federal Maritime and Hydrographic Agency. Bidders may submit several bids for different areas in one auction. In the case of sentence 3, they must number their bids and unambiguously mark which documents belong to which bid.

(2) Bidders must submit a project description as part of their bid. The project description must contain the following information, presented in a comprehensible manner and supported by evidence:

1. the energy conversion chain from the primary energy to the final energy carrier as envisaged by the project, including the energy conversion facilities envisaged,
2. the final energy carrier produced in the installation and brought to the handover point,
3. the concept envisaged for the transport of the final energy carrier to the handover point, to the extent that the final energy carrier is not consumed at sea,
4. the utilisation rates as estimated by the bidder for the significant steps of the process of converting the primary amount of energy to the final energy carrier, including transport to the handover point, as well as evidence to support the calculated utilisation rates,
5. the expected annual amount of energy in terawatt hours including, where appropriate, the amount of energy for significant conversion steps,
6. in the case of material energy carriers, information provided under no. 5 is to refer to the calorific value of the energy carrier,

7. a description and specification of the energy provision costs, including the expected future development of the costs and the long-term utilisation potential of infrastructure investments under section 9 (6), listed separately in terms of costs of energy generation, conversion to the final energy carrier and transport of the final energy carrier to the handover point,
8. a classification in terms of technology readiness of the technologies to be applied pursuant to section 9 (4) for the conversion to the final energy carrier, the installation design and the transport of the final energy carrier to the handover point, to be justified and supported by citing appropriate sources in each case; the subsystem 'installation design' is to score at least readiness level 5,
9. an assessment of the scalability of the project in terms of energy generation, conversion to the final energy carrier and transport of the final energy carrier pursuant to section 9 (5),
10. a description of the intended use of all by-products and final products in the form of energy or materials entailed by the production process, including any losses due to conversion or transport,
11. a description of the innovative content of the project, in particular as regards the installation design pursuant to section 9 (4) and operational management,
12. a description of any significant impacts of the other energy generation installations on the marine environment as identified by a preliminary analysis, using the best available data, in particular data which are publicly available or otherwise accessible to the bidder and which are as up-to-date as possible,
13. a project schedule in months
 - a) until the submission of the documents required for the implementation of the plan approval procedure under section 47 of the Offshore Wind Energy Act to the Federal Maritime and Hydrographic Agency, and
 - b) from the issuance of the plan approval decision or planning approval by the Federal Maritime and Hydrographic Agency until the construction and operation of the installations,
14. the planned number of micro, small and medium-sized enterprises that are to be involved in the project,
15. a description of the maintenance concept for the installations,
16. a description of the plans for dismantling the installations,
17. a declaration that no grounds for exclusion apply pursuant to section 11 (2), and
18. the bidder's name, address, telephone number and email address; if the bidder is a partnership having legal personality or a legal person, the following must also be indicated:
 - a) its registered office and
 - b) the name of a natural person who is authorised to communicate with the Federal Maritime and Hydrographic Agency and to represent the bidder in all actions pursuant to this Ordinance (authorised agent).

It must be clear from the project description that the project meets the requirements from the definitions pursuant to section 3 nos. 7 and 8 of the Offshore Wind Energy Act. The Federal Maritime and Hydrographic Agency may specify interoperable data formats to be used for the project description to be submitted by the bidder.

(3) Bidders are required to submit a comprehensible business and financing plan as part of their bid. This plan must include the following information:

1. an investment plan,
2. a financing plan which provides details on equity and loan capital, including any public funding that has been applied for or has already been approved, as well as any other services received from third parties,
3. the expected revenue,
4. a profit and loss forecast, and
5. assumptions about the implementation of the project.

The Federal Maritime and Hydrographic Agency may specify interoperable data formats to be used for the business and financing plan to be submitted by the bidder.

§ 9

Assessment of bids, criteria

(1) Bids that have not been excluded pursuant to section 10 or section 11 are assessed by the Federal Maritime and Hydrographic Agency on the basis of the following criteria:

1. expected annual volume of energy of the final energy carrier at the handover point,
2. energy efficiency performance along the significant steps of the process of converting the primary amount of energy to the final energy carrier, including transport to the handover point,
3. technology readiness,
4. scalability of the project,
5. cost of energy provision, and
6. any foreseeable significant impact on the marine environment.

Fulfilment of the criteria is assessed in points (assessment points).

(2) The calculation of the likely annual amount of energy pursuant to subsection (1) sentence 1 no. 1 is to include the deduction of all losses and the need for ancillary energy for conversion and transport to the handover point. The bid offering the largest amount of energy from the final energy carrier is given the maximum score of nine points. The number of points of all the other bids is determined on the basis of the proportion of the energy quantity offered by the final energy carrier to the maximum energy quantity offered by the final energy carrier. The percentage share of a bid in terms of the maximum amount of energy of the final energy carrier is multiplied by the maximum number of points. As per

number 4.5.1 of DIN 1333, edition of February 1992¹⁾, the figure must be rounded to two decimal places.

(3) The calculation of the energy efficiency pursuant to subsection (1) sentence 1 no. 2 is undertaken by multiplication of the assumed utilisation rates along the successive significant steps of the process of converting the primary amount of energy to the final energy carrier, including transport to the handover point pursuant to section 8 (2) sentence 2 no. 4. The bid offering the best energy efficiency is given the maximum score of nine points. The number of points of all other bids is calculated from the quotients of their respective energy efficiency against the energy efficiency of the bid with the highest energy efficiency multiplied by the maximum number of points. As per number 4.5.1 of DIN 1333, edition of February 1992²⁾, the figure must be rounded to two decimal places.

(4) Technology readiness pursuant to subsection (1) sentence 1 no. 3 is assessed for the following subsystems:

1. conversion to the final energy carrier,
2. installation design, and
3. transport of the final energy carrier to the handover point.

In this process, the technology readiness of each subsystem is assigned a readiness level on a scale of one to nine, and assessment points are then awarded. Readiness level 1 requires the observation of the basic principles, readiness level 2 the formulation of the technology concept, readiness level 3 the experimental demonstration of the concept, readiness level 4 the review of the technology in the laboratory, readiness level 5 the review of the technology in a relevant environment, readiness level 6 the testing of the technology in a relevant environment, readiness level 7 the testing of a system prototype in real deployment, readiness level 8 that the system is complete and qualified, and readiness level 9 the functioning of the system in an operational environment. The number of assessment points for the subsystem of the conversion into the final energy carrier pursuant to sentence 1 no. 1 corresponds to the respective readiness level. In the case of the installation design subsystem pursuant to sentence 1 no. 2, the subsystems with the lowest readiness level, which must reach at least readiness level 5, are awarded the maximum score of nine assessment points. Readiness level 6 corresponds to eight assessment points, readiness level 7 corresponds to seven assessment points, readiness level 8 corresponds to six assessment points, and readiness level 9 corresponds to five assessment points. In the transport of the final energy carrier subsystem pursuant to sentence 1 no. 3, the subsystems which use or share a line are awarded nine assessment points. The number of points of all other bids for the transport of the final energy carrier subsystem corresponds to the respective readiness level, beginning with readiness level 8 and ending with readiness level 1. The total number of points for the assessment of technology readiness is the total of the assessment points of all subsystems divided by three. As per number 4.5.1 of DIN 1333, edition of February 1992³⁾, the figure must be rounded to two decimal places.

(5) The assessment of the scalability of the project pursuant to subsection (1) sentence 1 no. 4 is undertaken on the basis of the transferability of the project to larger areas and the production of larger quantities of the final energy carrier. The assessment is based on the following criteria:

1. the envisaged technology for primary energy generation permits a transferability of the project to a capacity of at least 2 gigawatts,

¹⁾ Published by Beuth Verlag GmbH, Berlin and secured in the archives of the German Patent Office.

²⁾ Published by Beuth Verlag GmbH, Berlin and secured in the archives of the German Patent Office.

³⁾ Published by Beuth Verlag GmbH, Berlin and secured in the archives of the German Patent Office.

2. the envisaged technology for conversion into the final energy carrier permits a transferability of the project to a capacity of at least 2 gigawatts,
3. the envisaged transport concept for the final energy carrier permits a transferability of the project to a capacity of at least 2 gigawatts; this is particularly the case if the project envisages a spatially efficient use of existing infrastructure or the possibility of a subsequent expansion of the infrastructure envisaged as part of the project.

The Federal Maritime and Hydrographic Agency assesses the fulfilment of the criteria pursuant to sentence 2 nos. 1 to 3, in each case with three and thus a total of nine assessment points. The maximum number of points out of, in each case, three assessment points is awarded to the bid in which the criteria of scalability pursuant to sentence 2 nos. 1 to 3 exist in each case without restriction. A scalability of the installation concept is deemed not to exist or deemed to be limited if the scaling up of the respective technology does not result in any clear economies of scale in the concept or the technologies will not be available for scaling up for the foreseeable future. In this case, in line with its scalability, the bid receives zero, one or two assessment points for the respective criterion pursuant to sentence 2 nos. 1 to 3.

(6) The calculation of the likely energy provision costs pursuant to subsection (1) sentence 1 no. 5 takes place on the basis of the energy amount cited in subsection (1) sentence 1 no. 1 and the costs of energy generation, conversion to the final energy carrier and the transport of the final energy carrier to the handover point. The bid offering the lowest costs of energy provision is given the maximum score of nine assessment points. The number of points of all the other bids is calculated using the quotients from the value of the lowest costs which are bid for energy provision and the value of the costs of the energy provision of the respective bid multiplied by the maximum score of nine points. As per number 4.5.1 of DIN 1333, edition of February 1992³⁾, the figure must be rounded to two decimal places.

(7) In the assessment of the already foreseeable significant effects on the marine environment pursuant to subsection (1) sentence 1 no. 6, the bid with the least foreseeable effects on the marine environment receives the maximum score of nine assessment points. The number of points given to all other bids must be lower in line with their correspondingly greater effects on the marine environment.

(8) The Federal Maritime and Hydrographic Agency is not bound by the information and rating of the bidder pursuant to section 8 (2). Subject to section 12 (1), the total score is the total of all the assessment points which have been determined pursuant to subsections (2) to (7). For the purpose of plausibilisation and validation of the information in the bids, the Federal Maritime and Hydrographic Agency can commission third parties and is entitled to transmit to them for this purpose the non-personal data collected pursuant to sections 8 and 9. Data which represent operating and commercial secrets may only be transmitted to contracted third parties if it is no longer possible to establish a reference to the company.

(9) The Federal Maritime and Hydrographic Agency is entitled to transmit the non-personal data collected pursuant to sections 8 and 9 to the Federal Ministry for Economic Affairs and Energy for the purposes of legal and material supervision and for the purposes of evaluating and revising the legal framework. The Federal Ministry for Economic Affairs and Energy may transmit the data obtained pursuant to sentence 1 to contracted third parties for the purpose of evaluation pursuant to section 99 of the Renewable Energy Sources Act. Subsection (8) sentence 4 is to be applied accordingly to the transmission to commissioned third parties pursuant to sentence 2.

³⁾ Published by Beuth Verlag GmbH, Berlin and secured in the archives of the German Patent Office.

Disqualification of bids

(1) The Federal Maritime and Hydrographic Agency will exclude bids from the procedure if

1. the requirements and format requirements for bids pursuant to sections 4 and 8 were not fully met,
2. the security pursuant to section 7 has not been paid in full by the bid deadline at the Federal Maritime and Hydrographic Agency,
3. the bid includes conditions, time limits or other side agreements, or
4. the bid does not comply with the announced stipulations of the Federal Maritime and Hydrographic Agency where these refer to the submission of bids.

(2) The Federal Maritime and Hydrographic Agency can disqualify bids from the procedure if the security cannot be unambiguously allocated to the bid by the bid deadline.

Disqualification of bidders

(1) The Federal Maritime and Hydrographic Agency can exclude bidders and their bids from the procedure if the bidder has intentionally or through gross negligence submitted bids with false information or including false documents in this or a previous auction.

(2) A bidder may not be given consideration if

1. insolvency proceedings have been opened in relation to the bidder's assets and
 - a) have not been terminated pursuant to sections 212 or 213 of the Insolvency Code or
 - b) an insolvency plan has not been finally and bindingly confirmed in these proceedings which envisages a continuation of the company,
2. the bidder has submitted an application for opening of the insolvency proceedings in relation to their assets about which the insolvency court has yet to decide,
3. the restructuring court has revoked the bidder's restructuring case pursuant to section 33 (2) sentence 1 no. 1 of the Corporate Stabilisation and Restructuring Act of 22 December 2020 (Federal Law Gazette I, p. 3256), or
4. the bidder has been entered into the register of debtors pursuant to section 882b of the Code of Civil Procedure.

§ 12

Procedure and award of the application licence

(1) The Federal Maritime and Hydrographic Agency carries out the following procedure in each auction:

1. it opens the bids submitted on time following the bid deadline,
2. it examines the admissibility of the bids pursuant to sections 8, 10 and 11,
3. it assesses the bids pursuant to section 9,
4. it sorts the bids in line with the total number of points attained pursuant to section 9 (8) sentence 2 in declining order, commencing with the bid with the highest number of assessment points and
5. four months after the bid deadline it awards the application licence subject to the reservation of revocation pursuant to section 15 (3) for the respective other energy generation area or subarea to the bid with the highest number of assessment points or, in the case of equal scores, in line with subsection (2).

Before awarding the application licence, the Federal Maritime and Hydrographic Agency can pose questions to the bidder about their bid. The bidder must answer the questions put to them within two weeks. The Federal Maritime and Hydrographic Agency can grant a longer period if the answer is complex. Failure to answer questions in time or sufficiently can mean that the Federal Maritime and Hydrographic Agency awards fewer points to the extent that the fulfilment of the criteria pursuant to section 9 cannot be adequately assessed.

(2) Should several bidders have the same number of points regarding the criteria in section 9, an assessment of the contribution of the planned project to economic development is undertaken. The bidder who plans to employ the most micro, small and medium-sized enterprises for the project is awarded the application licence.

(3) For each bid awarded funding, the Federal Maritime and Hydrographic Agency registers the information and evidence transmitted by the bidder and the application licence for the bid with the highest number of assessment points.

§ 13

Legal consequences of the application licence and announcement of the application licence

(1) When the application licence is awarded pursuant to section 12 (1) sentence 1 no. 5, the bidder to whom the application licence is awarded has the exclusive right to apply for a plan approval procedure pursuant to the provisions of Part 4 of the Offshore Wind Energy Act to erect and operate offshore wind energy installations and other energy generation installations on the area for which the application licence was awarded. The plan approval procedure binds the bidder awarded an application licence to their information pursuant to section 8 contained in the bid. If the information in the planning documents deviates from the information in the bid which was significant for the award of the application licence, the planning approval authority terminates the procedure by rejecting the application.

(2) If an application licence becomes invalid due to nullity, withdrawal, revocation, other cancellation or for other reasons prior to the launch of the plan approval procedure or during the carrying out of the aforementioned plan approval procedure, the right to apply for

a plan approval procedure pursuant to subsection (1) expires; if the plan approval procedure has already been launched, it is terminated by the planning approval authority. If an application licence is revoked by the Federal Maritime and Hydrographic Agency pursuant to section 15 (3) or becomes ineffective for the reasons cited in sentence 1 following the ending of the plan approval procedure and following the issuance of the plan approval decision or the planning approval for offshore wind energy installations and other energy generation installations on the other energy generation area or subarea for which bids were invited, a plan approval decision or an already issued planning approval for an other energy generation area or subarea becomes ineffective.

(3) If a plan approval procedure is wholly or partly terminated by a decision of rejection or a plan approval decision or planning approval becomes ineffective, an application licence awarded for the relevant other energy generation area or subarea becomes ineffective to the same extent. The other energy generation area or subarea for which bids were invited should in principle be put up for auction once again pursuant to section 5.

(4) The Federal Maritime and Hydrographic Agency announces the application licence on its website, giving the following information:

1. the bid deadline of the auction, the form of energy for which the application licence is awarded, and
2. the name of the bidder awarded the application licence, citing the other energy generation area or subarea.

The application licence is deemed to have been announced one week after the public announcement pursuant to sentence 1.

(5) The Federal Maritime and Hydrographic Agency informs the bidders awarded application licences about the award without delay.

(6) The award of the application licence by the Federal Maritime and Hydrographic Agency pursuant to section 12 (1) sentence 1 no. 5 entitles the bidder awarded the application licence, in addition to the submitting of the application, to funding under the programme to promote the offshore production of green hydrogen.

§ 14

Implementation deadlines

(1) Bidders awarded application licences must

1. within two months of being informed about the award of the application licence pursuant to section 13 (5) submit to the Federal Maritime and Hydrographic Agency a concept for an investigation programme based on the "Standard for the Investigation of the Impacts of Offshore Wind Turbines on the Marine Environment (StUK 4)", status 1 October 2013⁴⁾ to identify the effects on the marine environment,
2. submit to the Federal Maritime and Hydrographic Agency the documents necessary to hold the hearing procedure about the plan pursuant to section 73 (1) of the Administrative Procedure Act and section 47 of the Offshore Wind Energy Act within 24 months following the receipt of information about the award of the application licence pursuant to section 13 (5),

⁴⁾ Published by the Federal Maritime and Hydrographic Agency (BSH), Hamburg and Rostock, as BSH No. 7003 and available for download via the BSH's website at www.bsh.de.

3. provide to the Federal Maritime and Hydrographic Agency evidence of existing financing for the erection of the installations licensed in the plan approval decision or the planning approval within 24 months of the issuing of the plan approval decision or the planning approval; binding contracts for the ordering of the installations to be erected including all necessary ancillary facilities must be presented as evidence of existing financing, whereby this only applies to the foundations, cabling within the wind farm and the infrastructure to transport the produced final energy up to the handover point to the extent that these are envisaged in the concept,
4. provide to the Federal Maritime and Hydrographic Agency evidence that the erection of the installations has begun at the latest 36 months after the issuing of the plan approval decision or the planning approval,
5. provide to the Federal Maritime and Hydrographic Agency evidence that the overall technical operational readiness of the installations has been achieved at the latest 52 months after the issuing of the plan approval decision or the planning approval; this requirement is met if the installed capacity of the installations ready for operation corresponds to at least 95 per cent of the quantity authorised in the plan approval decision or the planning approval,
6. provide evidence to the Federal Maritime and Hydrographic Agency at the latest after six years of operation that the averaged amount of energy produced over the first five years of operation corresponded to at least 90 per cent of the amount of energy of the final energy carrier cited in the bid pursuant to section 8 (2) at the handover point.

(2) The bidder awarded an application licence can apply to the Federal Maritime and Hydrographic Agency for an extension to the implementation deadlines pursuant to subsection (1) nos. 4 and 5. The application must be made before the expiry of the deadline to be extended pursuant to subsection (1) no. 4 or no. 5. The Federal Maritime and Hydrographic Agency will extend the implementation deadlines pursuant to subsection (1) no. 4 or no. 5 once if

1. insolvency proceedings have been launched against the assets of a manufacturer of the installations or protective measures have been imposed pursuant to section 21 of the Insolvency Code and
2. binding contracts on the delivery of installations from the manufacturer were concluded with the manufacturer.

The implementation deadlines must not be extended by more than 18 months.

(3) In the case of an extension to the deadline pursuant to subsection (2), the deadlines pursuant to subsection (1) nos. 4 and 5 are extended by the duration of the extension of the deadline.

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Sanctions for non-compliance with implementation deadlines

(1) Bidders awarded an application licence must pay a penalty to the federal budget in each case if a deadline pursuant to section 14 (1) nos. 2 to 5 is violated. Further to this, bidders awarded an application licence must pay a penalty to the federal budget if the averaged amount of energy produced over the first five years of operation corresponded to less than 90 per cent of the amount of energy of the final energy carrier cited in the bid pursuant to section 8 (2) at the handover point.

(2) The level of the penalty corresponds

1. in the case of violations of the deadline pursuant to section 14 (1) no. 2 to 30 per cent of the security lodged,
2. in the case of violations of the deadline pursuant to section 14 (1) no. 3 to 50 per cent of the security lodged,
3. in the case of violations of the deadline pursuant to section 14 (1) no. 4 to 70 per cent of the security lodged,
4. in the case of violations of the deadline pursuant to section 14 (1) no. 5 to the value which derives from the total of the remaining security multiplied by the quotients of the installed capacity of the installations which are not operationally ready and the total amount approved in the plan approval decision, and
5. in the case of a deviation of the amount of energy produced pursuant to subsection (1) sentence 2 30 per cent of the security lodged.

(3) Without prejudice to the penalties pursuant to subsections (1) and (2), the Federal Maritime and Hydrographic Agency will revoke the application licence if the bidder awarded the application licence does not comply with one of the following deadlines:

1. the deadline pursuant to section 14 (1) no. 3,
2. the deadline pursuant to section 14 (1) no. 4 or
3. the deadline pursuant to section 14 (1) no. 4 extended pursuant to section 14 (2).

(4) Penalties pursuant to subsection (1) in conjunction with subsection (2) nos. 1 to 4 are not to be paid and the Federal Maritime and Hydrographic Agency may not revoke the award pursuant to subsection (3) to the extent that

1. the bidder awarded an application licence was prevented by no fault of their own from complying with the respective deadline, whereby the fault of all persons contracted by them in connection with the construction of the offshore wind energy installations or other energy generation installations, including all subcontracted persons, are ascribed to them, and
2. it is more than likely in view of the circumstances of the individual case that the bidder awarded an application licence is willing and economically and technically capable of constructing the offshore wind energy installations and the other energy generation installations without delay once the impediment has been removed.

(5) It will be assumed that the failure to meet a deadline pursuant to section 14 (1) is due to a fault by the bidder awarded an application licence or the failure of persons contracted by them in connection with the construction of the offshore wind energy installations or other energy generation installations, including all subcontracted persons.

(6) The Federal Maritime and Hydrographic Agency must, on application from the bidder awarded an application licence

1. determine the existence of the preconditions pursuant to subsection (4) and
2. extend the relevant deadlines pursuant to section 14 (1) to the extent necessary.

Reimbursement of securities

(1) The Federal Maritime and Hydrographic Agency will return without delay the securities lodged pursuant to section 7 by the bidder for a specific bid if the bidder has not received an application licence pursuant to section 12 (1) sentence 1 no. 5.

(2) The Federal Maritime and Hydrographic Agency will return without delay the securities lodged pursuant to section 7 by the bidder granted an application licence if and to the extent that this bidder

1. has provided the evidence of the technical operational readiness of the installations pursuant to section 14 (1) no. 5 and the retention of the security is no longer required in full for the payment and securing of claims to further penalties,
2. pursuant to section 14 (1) no. 6 has provided the evidence of the averaged amount of energy produced by the installations and this corresponded to at least 90 per cent of the amount of energy of the final energy carrier cited in the bid pursuant to section 8 (2) at the handover point or
3. has paid a penalty pursuant to section 15 (1) and the retention of the security is no longer required for the payment and securing of claims to further penalties.

Entry into force

This Ordinance enters into force on 1 October 2021.