

Tender specifications

CONTRACT ON SUBSIDY FOR NEGATIVE EMISSIONS CARBON CAPTURE,
TRANSPORT AND STORAGE

Indhold

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Invitation to tender for Contract on negative emissions carbon capture, transport and storage

1. INTRODUCTION

These Tender specifications provide guidelines for submission of an offer, communication between the tenderer and the DEA, and information about the tender procedure in general.

This tender procedure concerns the DEA's deployment of the NECCS Fund which is a subsidy scheme encompassed by the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022.

Capitalised terms used in the Tender specifications shall have the meaning ascribed to them in Appendix 2, Definitions, unless specified otherwise in the Tender specifications.

2. THE CONTRACT

The Agreement on the Danish Financial Act for 2022 introduced a new market-based subsidy fund, dedicated to the establishment of a value chain for negative carbon emissions via CCS (the "NECCS Fund"). The Fund is scheduled for disbursement between 2025 and 2032.

The purpose of the NECCS Fund is to achieve negative CO₂ emissions by permanently and geologically storing biogenic or atmospheric CO₂. The aim of the NECCS Fund is to contribute to the realization of Denmark's climate targets as outlined in the Danish Climate Act (Danish: "Klimaloven"). The NECCS Fund can support projects of any scale.

The DEA wishes to enter into one or more contract(s) pursuant to which the recipient(s) of the subsidies (each recipient "the Operator") shall ensure and be responsible for capturing, transportation and permanent, geological storage of biogenic or atmospheric CO₂ ("the Contract").

As described in the tender documents the Operator shall every year from 2026 until (and including) 2032 capture and permanently, geologically store a fixed quantity of biogenic or atmospheric CO₂ ("Annual Quantity"). The Operator may also offer to capture and permanently, geologically store CO₂ from start of operating until 31 December 2025 ("2025-Quantity"). These quantities are to be specified by the tenderer in the offer in Appendix 6, Offered Rate and Contracted Quantity.

The Operator may achieve negative emissions with one point source, a combination of point sources or a portfolio of several point sources. The Operator may be any economic operator or a group of operators willing to assume the responsibility for the value chain by performing the contract by itself and/or by engaging sub-suppliers.

The total maximum available subsidy of the NECCS Fund is DKK ~~2,559,200,000~~ ~~2,609,400,000~~ (2023-prices) excl. VAT, covering the period from (and including) 202~~5~~⁴ – 2032. The annual subsidy cap is ~~DKK 50,200,000 in 2024 and~~ DKK 319,900,000 in 2025-2032 excluding VAT.

Table 1: Annual subsidy cap

Year	2024	2025	2026	2027	2028	2029	2030	2031	2032
Annual subsidy cap, million DKK (2023-prices), excl. VAT	50.2	319.9	319.9	319.9	319.9	319.9	319.9	319.9	319.9

The Subsidy will be paid per tonne of biogenic or atmospheric CO₂ captured and permanently and ~~geologically stored~~ ~~geologically stored~~. The Offered Rate per tonne CO₂ will be adjusted throughout the contract period to reflect inflation as described in Appendix 5.

The DEA will award one or more Contract(s) dependent on the available funds based on the received offers. The Contract is not divided into predefined lots. The DEA considers that the funds are deployed most efficiently with contract(s) covering the full value chain in order to realize the required negative emissions and by leaving the award of one or more contracts to the market's ability of capturing and permanently and geologically storing different quantities of CO₂ within the available funds.

3. THE TENDER PROCEDURE

The granting of subsidy under the NECCS Fund is a subsidy scheme encompassed by the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022. The designation of the Contract(s) as a services contract in the contract notice, section II.1.3), etc. does not change this. The conclusion of one or more Contracts is conducted as a competitive bidding process where all economic operators are invited to submit an offer, i.e. as an open procedure, and in accordance with the general principles of the Danish Public Procurement Act.

The DEA will notify the NECCS Fund to the European Commission as an aid scheme in accordance with the procedure prescribed by Article 108 under TFEU and the granting of subsidy and conclusion of one or several Contracts under the NECCS Fund is dependent on the European Commission's prior approval.

The DEA will cancel the tender procedure if the approval from the European Commission is not obtained, or if the European Commission stipulates conditions for the approval which necessitate changes to fundamental elements of the tender documents. Reference is also made to paragraph 18 regarding a general reservation to cancel the tender procedure.

4. EXPECTED TIME SCHEDULE FOR THE TENDER PROCEDURE

The expected time schedule for the tender procedure is stipulated below:

Timing	Activity
24 August 2023	Date of the electronic transmission of the contract notice to Tenders Electronic Daily
28 September 2023, 13:00 CET	Information meeting
17 November <u>29 December</u> 2023, 10:00 CET	Deadline for questions Questions submitted after this date will only be answered if they are received in time for the DEA to obtain the information required and communicate the answers within six days before expiry of the deadline for submission of offer, see paragraph 9.
1 December 2023 <u>15 January</u> 2024, 10:00 CET	Deadline for submission of offer
Ultimo February <u>January</u>	Decision regarding award of the Contract(s)

The actual time schedule may end up varying from the expected time schedule stipulated above.

The DEA will communicate any deviations to the time schedule through the electronic tendering system.

5. THE TENDER DOCUMENTS

The tender documents form the basis of tenderers submission of offer. The tender documents are available via the electronic tendering system.

The tender documents consist of the following documents:

- Contract notice
- Guide to the ESPD
- These Tender specifications
- Appendices to the Tender specifications:
 - Appendix A: The evaluation of offers (award criteria and evaluation method)
 - Appendix B: Template for offer submission letter
 - Appendix C: Declaration of intent regarding a performance and warranty guarantee
 - Appendix D: Notification of processing of personal data
- Draft of Contract
- Draft of Appendices **1-10** of the **Contract** which will become part of the Contract when the tender procedure is concluded:
 - Appendix 1: European Commission's Decision SA [no] of [date] [*not enclosed the tender documents*]
 - Appendix 2: Definitions
 - Appendix 3: Requirements specification
 - Appendix 4: The Operator's Solution Description [*not enclosed the tender documents*]
 - Appendix 5: Subsidy and economy scheme
 - Appendix 6: Offered Rate and Contracted Quantity
 - Appendix 7: Code of conduct
 - Appendix 8: Change management
 - Appendix 9: Model performance and warranty guarantee
 - Appendix 10: Information about Sub-Suppliers

The DEA may make changes or clarifications to the tender documents, see paragraph 7.

6. REQUIREMENTS METHODOLOGY

The DEA has divided the requirements in the tender documents into Minimum Requirements and General Requirements.

Minimum Requirements (MR) (in Danish: "mindstekrav") refers to the DEA's fundamental needs. Minimum Requirements (MR) are fundamental elements which cannot be changed during the tender procedure, but see paragraph 7. It is stated in the tender documents which requirements are Minimum Requirements.

General Requirements (R) means all other requirements set out in the tender documents by the DEA that are not Minimum Requirements. All requirements that are not Minimum Requirements, such as the provisions of the Contract, may be changed or withdrawn during the tender procedure, see paragraph 7.

Minimum Requirements (MR) and General Requirements (R) must be complied with by the tenderers in the offer, but see paragraph 15. Minimum Requirements (MR) and General Requirements (R) are not included in the evaluation of offers.

7. CHANGES TO THE TENDER DOCUMENTS

If the tenderer finds elements in the Contract and/or its appendices that are unacceptable or clearly inappropriate, the tenderer may propose a change of the Contract and/or the appendices of the Contract according to the procedure set out in paragraph 9. The DEA will decide on a case-by-case basis whether to incorporate the proposed changes.

On basis of any proposes for changes from the tenderers or other circumstances, the DEA may choose, with due compliance of the principles of equal treatment and transparency, to change the content of General Requirements and/or waive one or more General Requirement(s). The DEA may also add new General Requirements during the tender procedure.

The DEA will not change Minimum Requirements (MR) or fundamental elements in the tender documents. However, linguistic clarifications, correction of obvious mistakes, inappropriateness, etc., may be made at all times during the tender procedure, provided that this can be done without distortion of competition and discrimination of the tenderers.

All corrections to the tender documents will be marked with "track changes" and published in the electronic tendering system.

If the DEA makes substantial changes to the tender documents, the deadline for submission of offer stipulated in paragraphs 4 and 11 will be postponed.

8. COMMUNICATION

All communication between the tenderer and the DEA in connection with the tender procedure, including questions regarding the tender documents, must be in English and must be submitted via Digital Tendering System ("Digitale Udbud") (the electronic tendering system).

The electronic tendering system is accessed via the link <https://eu.eu-supply.com/login.asp?B=KA>.

The tender procedure is accessed under the tab "Ongoing procedures". If not already registered as a user, the tenderer may do so under "Online registration". When the tenderer is logged on to the electronic tendering system, this procedure is accessed via "Public RFTs" (requests for tenders). The tenderer may sign up for alerts to receive e-mail notices when new information regarding the procedure is available, e.g. questions. However, the tenderer is advised to stay updated by regularly accessing the electronic tendering system.

If the tenderer should encounter problems with the electronic tendering system, the tenderer may contact technical support, either by e-mail dksupport@eu-supply.com or telephone (+45) 70 20 80 14.

9. QUESTIONS

Questions must be submitted not later than ~~17 November~~29 December 2023.

Questions submitted after this date will only be answered if they are received in time for the DEA to obtain the information required and communicate the answers within six days before expiry of the deadline for submission of offer.

Questions received later than six days before expiry of the deadline for submission of offer cannot be expected to be answered, unless the deadline for submission of offer is also postponed, see section 93(4) of the Danish Public Procurement Act.

The written questions of the tenderers, and the DEA's answers, will be regularly communicated in anonymised form via the electronic tendering system to all tenderers.

10. INFORMATION MEETING

An information meeting will be held on 28 September 2023 from 13.00 to 16.00 CET at Energistyrelsen (Danish Energy Agency), Carsten Niebuhrs Gade 43, 1577 København V.

It will also be possible to participate online. The information meeting will be conducted in English.

Tenderers interested in participating in the meeting shall sign up via the electronic tendering system by sending a message to the DEA via the tab "Messaging" not later than 3 days before the meeting with specification of name of business and number of participants. The DEA reserves the right to reduce the number of representatives per tenderer participating in the information meeting. If the tenderer wishes to participate online the tenderer is asked to specify this in the message. The participants will subsequently receive a link to the online version of the information meeting. The DEA will draw up brief minutes of the information meeting which will be published via the electronic tendering system.

At the meeting, the DEA will explain the background of the procedure and the purpose of the Contract. The DEA will also provide more general information about the structure of the tender documents.

The tenderer may ask questions during the information meeting however the DEA encourages tenderers to submit written questions to the DEA in accordance with the procedure in paragraph 9 prior to the information meeting. If the DEA considers that a question asked at the information meeting is not suited for a reply during the meeting, the DEA will ask the tenderer to put the question in writing in accordance with the procedure set out in paragraph 9. All answers to written or oral questions at the information meeting will be published in accordance with the procedure set out in paragraph 9.

The DEA may conduct further information meetings than indicated above, which will be communicated to the tenderers via the electronic tendering system.

11. SUBMISSION OF OFFER

The offer must be submitted not later than Friday Monday, 1 December 2023 15 January, at 10:00 CET. Offers received after this time will be rejected.

Offers must be in English.

Offers must be submitted via Digital Tendering System ("Digitale Udbud") (the electronic tendering system), see paragraph 8. Offers may not be submitted in any other way, including by e-mail.

The offer is submitted by uploading the offer to the electronic tendering system. When the offer is uploaded and submitted, the tenderer may until the expiry of the offer deadline change the content of the offer or withdraw the offer.

The DEA does not have access to the content of the offer until the expiry of the deadline.

If the offer contains several versions of the same document, the latest uploaded version will apply. The time indicated in the electronic tendering system will determine which version is the latest.

The tenderer is only permitted to submit one offer, and the tenderer is not permitted to submit variant offers.

The tenderer must keep open its offer for acceptance for 4 months from expiry of the offer deadline.

12. THE CONTENT OF THE OFFER

12.1 The content of the offer

An offer consists of the following documents:

- (a) Offer submission letter (Appendix B), see paragraph 12.2
- (b) Completed appendices, see paragraph 12.3
- (c) Project Description and Project Schedule, see paragraph 12.4
- (d) ESPD, see paragraph 12.5
- (e) Notification/declaration pursuant to Regulation (EU) 2022/2560 on foreign subsidies, see paragraph 12.6

The tenderer does not have to include the Contract and the appendices of the Contract that are not supposed to be completed/finalized by the tenderer. The Contract and such appendices are deemed accepted by the tenderer.

12.2 Re 12.1(a) Offer submission letter

The tenderer shall enclose in its offer an offer submission letter. Reference is made to Appendix B, Template for offer submission letter.

The offer submission letter should include the following information:

- Name of the tenderer submitting the offer and for groups of operators/consortia the names of all members.
- Exact name(s) and business registration number(s) of the tenderer/the group/the consortium and for all members
- Contact details (e-mail address and telephone number) for the DEA's use in connection with the procedure.
- Information about parts of the offer that are confidential.

The tenderer must further submit the following declarations in the offer submission letter:

- A declaration stating that the tenderer has complied with any and each requirement to repay aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market; and
- A declaration stating that the tenderer is not an undertaking in difficulty as defined in point 20 in the Commission Communication on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Official Journal of the European Union, C 249, 31.7.2014, p. 1.)
- A declaration stating that the tenderer has made no firm commitments, for example, to order equipment or start construction, which would make the project irreversible at the time of submission of the tenderer's offer.
- A declaration stating that the tenderer has not and will not receive any aid – including other State aid, de minimis aid and aid from centrally managed EU funding – for the same costs as those included in project other than the aid to be paid under the Contract.

According to the European Commission's Guidelines on State aid for climate, environmental protection and energy 2022 aid for environmental protection and energy must not be awarded to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. Further, according to the guidelines the Commission will when assessing aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market take account of the amount of aid still to be recovered. The tenderer must therefore submit declarations regarding this with the offer, cf. above.

12.3 Re 12.1(b) Completed appendices

The tenderer is requested to complete the following appendices:

- Appendix C, Declaration of intent regarding a performance and warranty guarantee
- Appendix D, Notification of processing personal data; and
- Appendix 6, Offered Rate and Quantity.

Each appendix provides guidelines explaining how to complete the appendix.

12.4 Re 12.1(c) Project Description and Project Schedule

12.4.1 General

The tenderer shall enclose with its offer a Project Description, which is to be completed in accordance with paragraph 12.4.2.

The tenderer shall as a supplement to the Project Description enclose a Project Schedule, which is to be completed in accordance with paragraph 12.4.3.

As stated in the Tender specifications, paragraph 11, the minimum time frame during which the tenderer must keep its offer open from acceptance is 4 months from the expiry of the deadline for submission of offer. For the purpose of the Project Description and the Project Schedule the tenderer may assume that the Contract is signed on ~~29-15 February~~ March 2024. If the Contract is signed at a later date – within the minimum time frame as mentioned above – the tenderer (Operator) is not entitled to any postponement of any timing in the project, i.e., the tenderer (Operator) bears the risk of the exact timing of the signature of the Contract within the minimum time frame during which the tenderer must maintain the offer. The tenderer (Operator) shall make the necessary adjustments in the Project Description and Project Schedule to cope with the time difference and, if relevant, deliver the adjusted Project Description and Project Schedule for the DEA's review and approval 30 days after Contract Signing, cf. R-1 in Appendix 3, Requirements specification.

The DEA's evaluation of the sub-criteria "Project Maturity" will be based on the Project Description and the Project Schedule. Reference is made to the further description of the sub-criteria in Appendix A, The evaluation of offers, paragraph 1.

It is not required that the tenderer has concluded contracts (conditioned upon award of a contract from the DEA) with sub-suppliers at the deadline for submission of offers. The Project Description and the Project Schedule should reflect the status and planning of the tenderer's project. Information in the offer can be based on concluded contracts (subject to the award of contract with the DEA), requirements requested (or expected to be requested) to sub-suppliers in a procurement or negotiation process, plan for a market dialogue and processes needed for conclusion of contracts etc.

If the tenderer is awarded a Contract, the Project Description and Project Schedule will collectively constitute Appendix 4, Operator's Solution Description, when the Contract is signed.

12.4.2 Content of the Project Description

The objective of the Project Description is to be an overall and collective description of the tenderer's project and the tenderer's strategies and arrangements towards successfully establishing and operating the value chain and ensuring successful performance of the Contract, especially reaching the Commercial Operation

Date on time and securing capture and permanently storage of the Contracted Quantities in each year of the Contract.

To the extent that the tenderer's project is based on carbon capture of biogenic CO₂ from one or more point sources, the Project Description should state the name of the plant(s), address of the plant(s), and, if possible, the registration number for the plant(s) production unit (in Danish: "Produktionsenhed"/"P-nummer"). To the extent that the basis for carbon capture is based on direct air capture of atmospheric CO₂ the Project Description should state the address(es) of where the Carbon Capture Plant(s) will be placed. If the tenderer is not able to give this information in the offer, the tenderer should describe how the tenderer intends to ensure establishment of a Carbon Capture Plant in accordance with the requirements.

Taking the overall objective of the Project Description, see above, into account, the Project Description should cover the following aspects:

- The tenderer's choice of value chain solutions, covering e.g. the basis for carbon capture (i.e. capture from point source(s) or direct air capture) and the carbon capture technology/technologies, the means of transport of the captured CO₂ for storage (e.g. direct pipeline to onshore storage facility or transport by truck or ship to storage site etc.), the permanent storage site and, if any, intermediate storage site(s).
- The tenderer's choices, strategies and arrangements in order to ensure a successful and synchronized integration between the different elements of the value chain. The description should reflect the capacity of each element of the value chain and how the tenderer will ensure that that the tenderer is able to capture and permanently store the Contracted Quantities.
- The status of the tenderer's project at the deadline for submission of offers, covering e.g. the status of contracts and dialogue with potential sub-suppliers and the status of identifying and obtaining approvals, permits and certificates necessary for establishing and operating the value chain, including any dialogue with authorities or third parties regarding such approvals, permits and certificates.
- The tenderer's project management framework addressing how the tenderer will further plan and arrange activities needed for establishing and operating a value chain from Contract Signing until the Commercial Operation Date, e.g. how the tenderer plans to obtain necessary permits, approvals, and certificates, plans to conclude sub-supplier contracts and plans to perform test and commissioning required for the commencement of the operation of the value chain.
- The tenderer's risk management framework and approach for identifying and managing risks in the project during the contract period. Furthermore, the description should cover identified risks in the

tenderer's project, the likelihood and degree of negative impact of each identified risks, and the tenderer's measures for mitigating each risk.

The tenderer's ~~should provide the~~ Project Description ~~in~~ will constitute Sub-appendix 4.A, Project Description when the Contract is signed.

The Project Description shall not exceed 50 A4 pages (including illustrations, figures etc., but excluding the table of content). If the Project Description exceeds this page limit, only the first 50 A4 pages will be included in the evaluation.

12.4.3 Content of the Project Schedule

The tenderer shall enclose a Project Schedule (e.g. a Gantt chart) illustrating the timing and sequence of activities needed for establishing and operating the value chain from Contract Signing until the Commercial Operation Date.

The Project Schedule should reflect the planning of the project and include timing of milestones and activities needed to establish the value chain, e.g., related to obtainment of necessary permits, approvals, and certificates, conclusion of sub-supplier contracts, establishment of the different elements of the value chain, and test and commissioning required for the commencement of the operation of the value chain.

The Project Schedule shall state the timing of the Commercial Operation Date in the format DD.MM.YYYY.

The tenderer should for each activity state the timing in the format DD.MM.YYYY.

The tenderer's ~~should provide the~~ Project Schedule ~~in~~ will constitute in Sub-appendix 4.B, Project Schedule when the Contract is signed.

The Project Schedule is not subject to a page limit.

12.5 Re 12.1(c) ESPD

The tenderer must enclose in its offer an ESPD as preliminary documentation:

- That the tenderer is not subject to any of the grounds for exclusion, see section VI.3) of the contract notice, and

For groups of operators (e.g. a consortium), a separate ESPD must be submitted for each participating economic operator.

12.6 Re (e) notification/declaration pursuant to Regulation (EU) 2022/2560 on foreign subsidies

As part of the tenderer's offer, the tenderer shall submit a notification/declaration concerning any financial contributions received from third countries, see Article 29 of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market. Whether a notification or a declaration must be included in the offer depends on the threshold in art. 28, para. 1, point (b), of Regulation (EU) 2022/2560. The obligation is further elaborated in the Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023, particularly in art. 5. The tenderer shall submit the notification/declaration concerning any financial contributions received from third countries by using the form FS-PP in Annex II of the Implementing Regulation (EU) 2023/1441.

The tenderer is encouraged to engage in pre-notification discussions with the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs in sufficient time prior to the notification, see for more information Implementing Regulation (EU) 2023/1441, Annex II, the Introduction, part 6, on 'Pre-notification contacts and waiver requests'.

13. EVALUATION OF OFFERS

The offers are evaluated as stated in Appendix A.

14. THE OFFER MUST BE FINAL AND COMPLETE

The DEA is not allowed to negotiate the offer submitted with the tenderers. The offer should therefore be drafted so that the Contract may be entered into without prior negotiations between the tenderer and the DEA.

Therefore, when filling in/completing the appendices, the tenderer should to the extent possible use wording of legal obligations and not wording such as "this might pertain to ...", "one might also consider to ..." or "usually is used ...", "we have often successfully ...", "one might also envisage .." or "this might be solved by ...". Wording not suitable for legal obligations may, in the given circumstances, be treated as reservations with the ensuing consequences, see paragraph 15 below.

It is the responsibility of the tenderer to ensure that the offer is complete and drawn up in accordance with the guidelines set out in the tender documents.

15. RESERVATIONS IN THE OFFER

It is the responsibility of the tenderer to ensure that the offer is clear and unambiguous to leave no doubt whether reservations are made to the tender documents. Tenderers are therefore advised to seek clarification of any ambiguities and uncertainties in the tender documents by submitting questions, see paragraph 9.

The offer must not contain reservations to Minimum Requirements (MR) in the tender documents. Reservations to Minimum Requirements (MR) will be rejected as non-compliant.

The offer must also comply with all General Requirements (R). Offers containing reservations to General Requirements (R) will be rejected as non-compliant if the reservation concerns fundamental elements of the procurement. "Fundamental elements" mean matters that cause competition to be distorted to a significant degree if reservations are made. Several reservations to elements that are not fundamental may cause the reservations, overall, to constitute a reservation to fundamental elements.

If reservations to General Requirements (R) do not concern fundamental elements, the DEA may choose – but is not obliged – to consider offers with reservations to General Requirements to be compliant if the reservation can be quantified. If the DEA chooses to quantify the reservation, this will take place in the form of a supplement to the Offered Rate evaluated under the sub-criterion "Subsidy". The supplement will correspond to the amount which, on the basis of a legitimate and objective assessment, with a high degree of certainty would be cover the DEA's additional payment that may be caused by the reservation.

If the tenderer is in doubt as to how to fill in or complete appendices or in case of doubt, the tenderer is advised to submit written questions, see paragraph 9.

16. CONFIDENTIAL INFORMATION IN THE OFFER

Documents or information in the offer may be subject to the rules on access to documents. This means that competitors, etc., may request access to offers submitted, since the right of access to documents pursuant to the Danish Act on Access to Documents in Public Files only applies to those with a legal interest in lodging a complaint with the Danish Complaints Board for Public Procurement relating to the case to which the request for access to documents applies and to mass media. According to the practice of the Danish Complaints Board for Public Procurement (*Klagenævnet for Udbud*), requests for access to documents from other tenderers also participating in the tender procedure must be granted by the DEA. However, in the assessment of whether to grant access to documents, the DEA will include considerations as to whether the tenderer has asked that part of the offer be treated confidentially and has indicated which information/elements of the offer must be kept confidential.

If there is information or elements in the offer, which for business reasons are desired to be exempted from access to documents, the tenderer is asked to state so in its offer. However, irrespective of the tenderer's

requests for confidentiality, the DEA will be entitled and obliged to give access to documents to the extent required by law.

17. OPENING AND EVALUATING OFFERS

The DEA will open the offers after the deadline for submission of offer has expired.

The tenderers are not permitted to attend the opening of the offers.

After opening the offers, the DEA will initially check whether the offers comply with the formal requirements of the tender documents. The DEA may use a procedure as described in section 159(5) and (6) of the Danish Public Procurement Act, if an offer does not comply with the requirements of the tender documents.

Regardless of the use of the words "must" or "shall" in the tender documents, the DEA reserves the right to obtain further information within the scope of the above-mentioned provisions. However, the DEA is not obliged to obtain further information or documentation from the tenderers.

The DEA may furthermore clarify possible ambiguities in the offers within the scope of the general principles of the Danish Public Procurement Act.

The DEA will assess whether the offers are compliant, including whether the offers contain reservations that will cause the offer to be non-compliant, see paragraph 15.

The offers will then be evaluated as described in Appendix A, Evaluation of offers.

If the DEA identifies reservations to Minimum Requirements (MR) or General Requirements (R) in the offer, DEA may either:

- 1) reject the offer, or
- 2) quantify reservations to General Requirements (R) if possible, see paragraph 15.

After deciding on the award of one or several Contracts, the DEA will notify all tenderers of the award decision. The notification of the tenderers who have submitted a compliant offer, but who are not awarded a Contract, will include a brief explanation of the relevant grounds for the decision, including the characteristics and advantages of the successful offer as compared to the unsuccessful offer and the name of the successful tenderer(s), as well as information about the date of expiry of the standstill period.

18. DOCUMENTATION AND FINALISATION OF THE TENDER PROCEDURE

Before the award of one or several Contracts, the tenderer(s) to whom the DEA intends to award a Contract must submit documentation of the information stated in the ESPD, see section 159(2) of the Public Procurement Act, and sections III.1) and VI.3) of the contract notice.

The DEA may at any time during the tender procedure require that the tenderer presents documentation as stated in the Danish Public Procurement Act, section 152, when that is necessary in order to ensure correct and efficient performance of the procedure, see section 151(2) of the Danish Public Procurement Act. Therefore, as stated in the contract notice, section III.1.2), the tenderers shall with their offer submit the declaration of intent regarding a performance and warranty guarantee, see Appendix C, Declaration of intent regarding a performance and warranty guarantee.

In addition, the tenderer(s) to whom the DEA intends to award a Contract must submit a declaration regarding Article 2, section 2, of Regulation (EU) No. 269/2014 according to which payment of subsidies to the tenderer in relation to the Contract will not conflict with the prohibition.

For the sake of good order, the tenderer(s) may also be requested to submit a declaration regarding Article 5k, section 1, of Regulation (EU) No. 833/2014 according to which an award of the Contract to the tenderer will not conflict with the prohibition.

When the DEA has selected the offer(s) with the best price-quality ratio, see Appendix A, Evaluation of offers, and has obtained the above documentation, the DEA will decide on the award of one or several Contracts.

The DEA is not obliged to award any Contract and reserves the right to cancel the tender procedure.

Even though a Contract has been awarded to one or several other tenderers, the tenderer is bound by its offer until the DEA has signed the Contract(s) but no longer than the date specified for the tenderer to keep open its offer.

The notification of the tenderers of the award decision does not mean that any Contract has been concluded. A Contract is only considered to have been concluded when the Contract is signed.

The DEA does not consider the tender procedure completed until all Contracts has been signed.

The DEA requests that the content of press releases or other publication regarding the award decision be coordinated with the DEA.

According to the Contract, clause 16.1.7, the DEA shall decide how to publish the conclusion of the Contract. If relevant, such announcement shall be coordinated with the Operator in accordance with the market disclosure obligations under MAR ("market abuse regulation").

19. GUARANTEE TO BE PROVIDED PRIOR TO CONTRACT SIGNING

Prior to the signing of the Contract(s) the tenderer(s) who is awarded a Contract shall provide the DEA with an unconditional and irrevocable on-demand Performance and Warranty Guarantee issued by a Guarantor in favour of the DEA.

The Performance and Warranty Guarantee shall be in the form of Appendix 9, Model performance and warranty guarantee, and otherwise in accordance with the provisions of the Contract, including clause 12.

All tenderers are encouraged to in due time during the tender procedure to present the Model performance and warranty guarantee to one or several banks and/or insurance companies and submit any comments or questions that these might have in the digital tendering system in accordance with the procedure described in paragraph 9.