

Conditions for the competitive bidding process for upgraded biogas and e-methane that can be injected to the Danish gas system

[Month] 202[X]

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1. The contracting authority

Danish Energy Agency (Energistyrelsen)
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CVR no. (company reg. no.): 59 77 87 14
<https://ens.dk/>

All enquiries, including questions etc., must be submitted electronically during the competitive bidding procedure via the following link on the portal for the competitive bidding process:

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2. Regulation of the competitive bidding process for upgraded biogas and other gasses from renewable sources

The Danish Energy Agency's competitive bidding process for entering into contract(s) on aid for gas generated in Denmark by upgraded biogas plant and/or e-methane plants is not covered by the Danish Public Procurement Act¹, the EU Concession Contracts Directive² or the EU Utilities Directive.³

The Danish Energy Agency has decided to expose the contract(s) on aid to competition. This competitive bidding process is therefore subject to the general principles of EU law in the Treaty of the Functioning of the European Union (hereinafter “TFEU”), e.g. concerning equal treatment, transparency, proportionality and non-discrimination on the grounds of nationality. Aid for gas granted pursuant to the competitive bidding process for upgraded biogas and e-methane constitutes State aid under TEUF Article 107 (1). The competitive bidding process is approved by the European Commission in [SA.XXXXX] the [date] in accordance with the European Commission’s Guidelines on State aid for climate, environmental protection and energy 2022⁴.

The rights and obligations of the Danish Energy Agency and of the winning bidder(s) under this competitive bidding process are described in the contract, see Appendix 6.

3. Climate Agreement on Energy and Industry 2020 on 22 June 2020

¹ Act no. 1564 of 15 December 2015, which implements Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

² Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, cf. Executive Order no. 1625 of 15 December 2015.

³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, cf. Executive Order no 1624 of 15 December 2015.

⁴ OJ C XXXX

The government (the Social Democratic Party), the Liberal Party of Denmark, the Danish People's Party, the Danish Social Liberal Party, the Socialist People's Party, the Red-Green Alliance, the Conservative People's Party, Liberal Alliance and the Alternative entered the Climate Agreement on Energy and Industry 2020 on 22 June 2020 (hereinafter “**Climate Agreement 2020**”). According to the Climate Agreement 2020, State aid for biogas and other green gasses should be awarded based on a competitive bidding process. Further, it was decided that the duration of the scheme shall be 20 years.

The Climate Agreement 2020 is available in Danish via the link below⁵:

<https://fm.dk/media/18085/klimaaf-tale-for-energi-og-industri-mv-2020.pdf>

Follow-up agreement with reference to Climate Agreement on Energy and Industry (21. December 2021):

https://kefm.dk/Media/637757616832904692/Opf%C3%B8lgende%20af-tale%20ifm.%20Klimaaf-tale%20for%20energi%20og%20industri%20mv._21-12-2.pdf

The Climate Agreement on Green Power and Heating 2022 moved forward the competitive bidding process planned for payout in 2026 to payout in 2025. The agreement is available on the following link:

<https://kefm.dk/Media/637920977082432693/Klimaaf-tale%20om%20gr%C3%B8n%20str%C3%B8m%20og%20varme%202022.pdf>

4. The documents of the competitive bidding process

The documents of the competitive bidding process consist of:

- These conditions of the competitive bidding process, which primarily contain guidelines for preparing bids and requirements for bidders etc.
- Template for bid including declarations on obligation to construct and connect to the grid etc. (**Appendix 1**)
- Template for description of installation(s) covered by the bid (**Appendix 2**) (to be completed by the bidders in connection with bid submission)
- Template for a demand guarantee (DK/UK) (**Appendix 3**) (to be completed by the bidder's guarantor before signing of the contract)
- Template for declaration of intent to provide a demand guarantee (**Appendix 4**) (to be filled out by the bidder's guarantor in connection with bid submission)

⁵ An English summary of the Climate Agreement is available via the link: [https://kefm.dk/Media/C/B/fak-taark-klimaaf-tale%20\(English%20august%2014\).pdf](https://kefm.dk/Media/C/B/fak-taark-klimaaf-tale%20(English%20august%2014).pdf)

- Template for conditional award decision to the marginal bid (**Appendix 5.a**) (to be filled out by the Danish Energy Agency, if relevant)
- Template for reduced bid from the marginal bidder (**Appendix 5.b**) (to be completed by the Danish Energy Agency and the marginal bidder, if relevant)
- Template for description of installation(s) covered by the reduced bid (**Appendix 5.c**) (to be filled out by the marginal bidder, if relevant)

Draft of contract (in the following referred to as “**the contract**”) (**Appendix 6**) (**Appendix 1-3** of the conditions of the competitive bidding process will be included as **Appendix 1-3** to the **the contract**)

All the documents of the competitive bidding process are available on the portal of the competitive bidding process via the following links:

[*]

In the event of discrepancies between these conditions of the competitive bidding process and the **contract**, including appendices, the **contract**, including appendices, prevails.

5. Content of the competitive bidding process for biogas and other gasses from renewable sources

5.1 General

These conditions for the competitive bidding process apply to the **202[X]** competitive bidding process of aid for gas generated by upgraded biogas plant and/or e-methane plants and injected into the Danish gas grid (hereinafter “**the competitive bidding process of 202[X]**”) pursuant to § 35 k of the Danish Gas Act⁶. The competitive bidding process of **202[X]** covers new installations where work on the project has not been started.

5.2 Eligible installations

An upgraded biogas plant will be considered a new installation when the components in the plant are new, including a new reactor and a new biogas upgrading unit. It is permissible to use existing reception facilities. For heat for producing biogas (process heat for reactors and upgrading units), only renewable energy and electricity are eligible energy sources. Gas from the Danish gas system (natural gas) cannot be utilized as fuel for the production of upgraded biogas (process heat).

An e-methane installation will be considered a new installation when an electrolyzer and a catalyzer are new. If the e-methane process, combining H₂ with CO₂ is produced by biological processes in an existing reactor or a separate chamber after an existing reactor, the e-methane plant is considered new, if the electrolyser is new.

5.3 Aid for gas

⁶ Act no. 923 of 18/05/2021

Pursuant to a contract, operating aid in form of a price premium will be possible to receive for the quantity of gas injected into the Danish gas system that has been generated by the installation(s) covered by the contract for 20 years from the date of the first delivery of gas to the Danish gas system with no option to opt-out. Notwithstanding this, it will not be possible to receive a price premium for the production of gas that exceeds the quantity that is stated in a contract concluded between the Danish Energy Agency and the winning bidder in question.

To receive aid to upgraded biogas and e-methane pursuant to the contract, it is a condition that the winning bidder has submitted an adopted local development plan and/or a dispensation from an adopted local development plan, cf. the Danish Planning Act, an approved environmental impact assessment report or a decision on that there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment, environmental permit, cf. the Danish Act on Environmental protection, building permit, cf. the Danish Building Act and Executive order on building regulations 2018 (BR18) (hereinafter “Permits etc. for Installation”) in writing to the Danish Energy Agency prior to the first time gas is injected into the Danish gas system.

The Permits etc. for Installation will be considered submitted, once the Danish Energy Agency has received the Permits etc. for Installation. If the winning bidder fails to comply with this condition, aid will not be paid until the Permits etc. for Installation have been submitted and it will not be possible to receive aid for the period between the first time gas is delivered to the Danish gas system until the Permits etc. for Installation are submitted.

Bidders that fulfil the conditions to be a foreign investor pursuant to the Danish Investment Screening Act (Act no. 842 of 10 May 2021 on screening of foreign investments, etc. in Denmark), shall be aware that they may be obliged to obtain a permit from the Danish Business Authority according to the Danish Investment Screening Act. Reference is made to the Danish Business Authority and their website for more information on this⁷.

It is possible to submit a single collected bid, covering several installations at different planned locations, or submit multiple bids, one bid for each installation. Each bidder may submit several bids. An installation with one connection to the Danish gas system is considered to be one installation.

If an administrative authority, a Danish board of appeal or a court of law after the time allowed for submission of Permits etc. for Installation should make a decision that sets aside, in whole or in part, the above planning basis, decisions, statements, permits, approvals, any exemptions or the like, the Danish Energy Agency may on the basis of a specific assessment suspend the price premium in the support period or terminate the contract, see for more details, clause 9.6 and 9.8 of the Contract.

5.4 Time of connection

The time of connection to the Danish gas system is defined as the date at which the installation(s) covered by the contract delivers upgraded biogas and/or e-methane to the Danish gas system for

⁷ <https://erhvervsstyrelsen.dk/screening-af-udenlandske-investeringer>.

the first time. This condition is met when the meter located at the MR-station registers the first quantity of upgraded biogas or e-methane being delivered to the Danish gas system.

5.5 Total number of contracts

The total number of contracts to be concluded has not been determined. The intention is to enter into one or several contracts based on the award criterion lowest bid price (see clause 6.1 below), which can be kept within available funds.

5.6 Price premium, aid period and guarantees of origin

Aid will be paid as a price premium in DKK per GJ upgraded biogas or e-methane delivered to the Danish gas system.

There is a cap of [4,000] Mill DKK (2020 prices) on the total aid paid out by the Danish Energy Agency to all winning bidders over the entire 20-year aid period from the date of delivering the first quantity of upgraded biogas or e-methane to the Danish gas system subject to the condition that the Permits etc. for Installations are submitted to the Danish Energy Agency, cf. clause 5.3.

The contract applies to the actual quantity of gas injected into the Danish gas system that has been generated by installation(s) covered by the contract, see clause 5.3 above and clause 5.11.2 below. Notwithstanding this, it will not be possible to receive a price premium for the production of gas that exceeds the yearly quantity of gas that is stated in the contract concluded between the Danish Energy Agency and the winning bidder.

Existing plants that receive aid from a previous aid scheme will also be eligible for support under the aid scheme if the plant is expanded to enable e-methanization in the existing biogas reactor.

For methanation in the reactor or in a separate chamber after the biogas reactor, the support at the connection point to the interconnected gas supply system is calculated as a total measurement of the injected gas. Two or more meters must be established, depending on the specific design of the plant, which can proportionally separate the gas from the existing plant with the expansion of an e-methane plant. The aid is calculated as the proportional share of the injected gas. The aid recipient must report the metering monthly to the Danish Energy Agency's portal.

The production is calculated on the basis of the gas system companies' reporting in accordance with the relevant regulations in force at all times.

If e-methane is produced by injecting hydrogen for methanation in a biogas reactor or in a separate chamber to an existing biogas installation, measurement of the proportional gas share will be based on the energy of the added hydrogen minus a technical deduction of 22% from a loss of hydrogen in the process.

The aid beneficiary must submit an accountant's statement annually, which confirms that the declared quantity based on a meter and calculated as a proportional share of the injected quantity in the gas system corresponds to the aid paid, cf. clause 7.2 of the contract. In addition, the accountant must confirm that the electricity for electrolysis complies with the requirements cf. section 5.8 on "Obligation to use electricity from renewable sources when producing e-methane". A

state-authorized or registered accountant must sign the accountant's statement. The Danish Energy Agency can lay down audit instructions for the state-authorized or registered accountant's statement. The Danish Energy Agency can decide that the measurement system and the measurements must be certified by an independent company or by accredited certification at the expense of the aid beneficiary.

In relation to injecting e-methane into the Danish gas system, the release of hydrogen into the Danish gas system must not amount to more than 2% of the injected e-methane.

Regardless of the above, the price premium will not be applicable in hours where the spot price for gas is not positive.

The price premium is applicable for gas produced by installation(s) covered by the contract for 20 years from the time of connection to the gas system. The time of connection is defined in accordance with clause 5.4 above.

The aid beneficiary may not receive guarantees of origin for amounts of gas supported under the contract. If the aid beneficiary opts out of receiving price premium, the aid beneficiary may receive guarantees of origin for the amount of gas, for which no price premium has been paid.

The aid beneficiary can, by notification to the Danish Energy Agency, opt out of receiving price premium in whole or in part. The aid beneficiary can, by notification to the Danish Energy Agency, resume receiving price premium, however no earlier than [1] month after the date on which the opt-out takes effect. Opt-out and reinstatement take effect from the first day of one month and with at least one-month's prior notice. Notification and readmission must be submitted on the relevant form, which will be published by the Danish Energy Agency at www.ens.dk. The period in which price premium are opted out of is included in the fixed periods for receiving price premium pursuant to the contract, see clauses 7.14 and 7.15 in the contract.

The offered price premium per delivered GJ of upgraded biogas or e-methane shall be stated exclusive of value added tax ('VAT') in the offer.

Whether the aid is subject to VAT, including whether it is the aid beneficiary or the Danish Energy Agency who has to settle the VAT with the Danish tax authorities, depends on the VAT status of the aid beneficiary as well as the utilization of the produced and supported upgraded biogas or e-methane.

The aid beneficiary and the Danish Energy Agency shall in connection with the conclusion of the contract for aid clarify the circumstances which are of importance as to whether the price premium is subject to VAT and whether the settlement of VAT is the responsibility of the aid recipient or the Danish Energy Agency. It shall be noted that the aid recipient may request the Danish Tax Agency for a binding answer to clarify the VAT treatment of the aid received.

5.7 The stage of the projects at the time of the submission of the bid

Bidders are responsible – prior to submitting a bid – for finding a suitable geographical location for the installation(s) covered by the bid. Further, the bidders are responsible – prior to submitting a bid – for having obtained an opinion from the competent authority on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report, i.e. “scoping opinion”, pursuant to the Danish Act on Environmental Impact

Assessment⁸ § 23. A full environmental impact assessment can be accepted instead of the “scoping opinion”. In case of the project not being encompassed by the requirement of an environmental impact assessment and permit, and therefore will not receive the scoping opinion, the bidder must have obtained a decision that there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment § 21 in order to participate in the competitive bidding process.

For offers for the production of e-methane, when submitting an offer for projects that are directly subject to environmental assessment, i.e. covered by appendix 1 in the Danish Act on Environmental Impact Assessment, a statement from the environmental authority must be attached where the project is described at a sufficiently detailed level so that the first public comment phase of the environmental assessment process to be initiated. In practice, this will mean that there must be a description of what the project is about, where it is to be located geographically, whether the location is in accordance with the planning conditions in question, and what potential environmental impacts the project will have on the surroundings, including neighbors, soil and groundwater, landscape, nature and water areas. A scoping opinion cf. § 23 of the Danish Act on Environmental Impact Assessment, or a full EIA report can be accepted instead of the above statement from the environmental authority.

For e-methane projects that are directly subject to environmental assessment, i.e. covered by appendix 2 of the Danish Act on Environmental Impact Assessment, a statement from the environmental authority must be attached where the project is described at a sufficiently detailed level for the environmental authority to make a screening decision on whether the project is covered by requirements for an environmental assessment, cf. the Danish Act on Environmental Impact Assessment § 21. A screening decision, cf. the Danish Act on Environmental Impact Assessment § 21, can be accepted instead of the statement regarding the screening decision.

In addition, bidders must have concluded – prior to submitting a bid – a conditional contract with Energinet, or Evida on connection to the gas system, which is conditioned upon the bidder being awarded a contract with the DEA from the competitive bidding process.

Bidders who wish to bid for aid for gas generated by an upgraded biogas installation or an e-methane installation must submit the relevant documents required under the above with their bid. Further, the bidders must submit the conditional contract with Energinet or Evida.

5.8 Obligation to use electricity from renewable sources when producing e-methane

For the production of e-methane from electricity, the winning bidder must comply with the Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (hereinafter “**The Delegated Regulation**”).

If the winning bidder, who produces e-methane, fails to comply with The Delegated Regulation, the Danish Energy Agency is entitled to suspend the price premium in the supported period until

⁸ Act no. 1976 of 27/10/2021

the winning bidder, who produces e-methane, complies with The Delegated Regulation, for more details see clause 9.5 and 9.7 of the contract. A failure to comply with The Delegated Regulation and thus a suspension of the price premium will entail a reduction of period with the price premium proportionately.

5.9. Obligation to comply with the sustainability requirements etc., including energy crop and methane loss

The winning bidder is obligated to comply with the, applicable at all times, sustainability requirements etc. for biogas production including energy crop and methane loss set out in the Danish Promotion of Renewable Energy Act⁹ or regulation under the provisions of this Act.

E-methane covered by the contract concluded between the winning bidder and the Danish Energy Agency must be produced on carbon dioxide from “raw” biogas or from an upgrading installation for biogas where hydrogen produced by electrolysis is added.

If the winning bidder fails to comply with the applicable sustainability requirements, the Danish Energy Agency is entitled to suspend the price premium in the aid period until the winning bidder complies with the sustainability requirements set out in the Danish Promotion of Renewable Energy Act or regulation under the provisions of this Act, see for more details clause 9.5 and 9.7 of the contract. A failure to comply with this requirement and thus a suspension of price premium will entail a reduction of period with the price premium proportionately.

5.10 Obligation to construct projects and connect them to the grid, and extension of the time limit for grid connection

5.10.1 Obligation to construct projects and connect them to the grid

A winning bidder is obligated to construct the installation(s) covered by the contract and to ensure the installation(s) is connected to the Danish gas system.

Within three years from the date of signing the contract, a winning bidder must have connected the upgraded biogas installation(s) and/or the e-methane installation(s) covered by the contract to the grid, however see clause 5.10.2 below.

The obligation to connect to the system will be considered met when the installation(s) covered by the contract delivers gas to the Danish gas system for the first time within the time limit for system connection of three years, however see clause 5.10.2. The time of system connection is defined in accordance with clause 5.4. Further, it is a requirement that the winning bidder have sent the Permits etc. for installation(s) to the Danish Energy Agency, cf. clause 5.3, in order for the obligation to construct the project and connect it to the system is considered as met.

The right to aid pursuant to the contract will lapse, if an installation covered by the contract is not connected to the system or is connected to the system after exceeding the time limit for system connection of three years, however see clause 5.10.2. Further, a winning bidder may also be subject to liquidated damages if the installation(s) covered by the contract does not produce and inject the quantity of gas as stated in the contract into the Danish gas, see clause 5.11.1. In consequence,

⁹ Consolidated act no. 1791 of 02/09/2021

there might accrue situations where the aid pursuant to the contract may lapse and the winning bidder have to pay liquidated damages.

Installation(s) covered by the contract must be connected and inject the gas into the Danish gas system pursuant to the rules on system connection set out in the Danish Gas Act¹⁰ or regulation under the provisions of this Act.

5.10.2 Extension of the time limit for connection to the gas system

A winning bidder is entitled to an extension of the time limit for connection to the gas system of the installation(s) covered by the contract, cf. clause 5.10.1 above, in the event of a delay caused by one or more of the following circumstances:

1. Circumstances relating to the Danish Energy Agency.
2. Circumstances arising for which the winning bidder is without fault and over which the winning bidder has no control, for example war, pandemic, extraordinary natural events, fire, strikes, lockout or malicious damage.
3. Public injunctions or bans, which are not caused by circumstances attributable to the winning bidder.
4. A requirement for a stay of execution following directly from legislation or from a decision on a stay of execution by an appeals board or a court of law.
5. If the winning bidder does not obtain required permits, dispensations and approvals etc. from the authorities, although the winning bidder has applied for these from the relevant authorities no later than one year before expiry of the time limit for connection to the gas system, see clause 5.10.1 above. This does not affect the requirements set out in clause 5.7.
6. The gas distribution system operator or the transmission system operator is not ready to connect the upgraded biogas plant and/or the e-methane plant to the Danish gas system because the winning bidder has not been able to obtain the required permits, dispensations and approvals etc. from the authorities, although the winning bidder has applied for the required permits, dispensations and approvals etc. from the relevant authorities no later than one year before expiry of the time limit for connection to the gas system, see clause 5.10.1 above. This does not affect the requirements set out in clause 5.7.
7. The gas distribution system operator or the transmission system operator is not ready to connect the installation(s) covered by the contract to the Danish gas system within the time limit for connection to the gas system (see clause 5.10.1 above) and the winning bidder has concluded a unconditional written agreement about connection to the gas system of the installation(s) covered by the contract no later than one year before the expiry of the time limit for the connection, see clause 5.10.1 above. This does not affect the requirements set out in clause 5.7, whereby the bidder must have concluded a conditional contract with the Danish transmission system operator, Energinet, or Evida before submitting the bid.

¹⁰ Consolidated act no. 1100 of 16/08/2023

8. If the construction of the installation(s) covered by the contract cannot be started due to a major preliminary survey, see section 26(3) of the Danish Museum Act pursuant to Consolidating Act no. 358 of 8 April 2014, or if the project has to be discontinued due to archaeological surveys, see section 27 of the Danish Museum Act pursuant to Consolidating Act no. 358 of 8 April 2014.

The extension of the time limit will correspond to the actual delay caused by the circumstance in number 1-8 claimed by the bidder. Winning bidders who are entitled to an extension of the time limit must immediately submit a written request to the Danish Energy Agency for the Danish Energy Agency's consent to the extension. In connection with such a request, the winning bidder must be able to substantiate that the delay in question was caused by the circumstance claimed by the bidder, and that the delay could not reasonably have been avoided or limited.

Regardless of the above, price premiums will not be applicable after 24 years from signing the contract concerning upgraded biogas plant and/or e-methane plant. If installation(s) covered by the contract is connected to the gas system later than four years after conclusion of the contract, irrespective of the reason, the period with price premiums will be reduced proportionately with the delay exceeding the four years.

5.11 Obligation to produce and inject upgraded biogas and e-methane to the gas system and extension of the time limit for connection to the gas system

5.11.1 Obligation to produce and inject upgraded biogas and e-methane to the system

Each winning bidder is obligated to produce and inject the quantity of gas generated by the installation(s) and covered by the contract into the Danish gas system.

The quality of the upgraded biogas and/or e-methane must comply with the at all times applicable rules for quality of gas to the Danish gas system¹¹.

Within six years from the date of signing the contract, a winning bidder must have produced and injected the yearly quantity of upgraded biogas and/or e-methane to the Danish gas system that is stated in the contract.

The obligation to produce and inject the quantity of gas as stated in the contract to the Danish gas system will be considered met when at least 80 pct. of the annual the quantity of gas covered by the contract have been injected to the Danish gas system in a period of 12 consecutive months within the time limit of six years from the date of signing the contract, however see clause 5.11.2 below. The injection of the gas must be in accordance with the regulation of injection of gas to the Danish gas system in force at any time.

The obligation to inject gas generated by installation(s) covered by the contract will be considered met, when the Danish Energy Agency have received documentation in writing stating this.

Liquidated damages must be paid corresponding to the amount calculated in accordance with the contract (see clause 14 in the contract) if an installation(s) covered by the contract does not produce

¹¹ At the moment, executive order no. 230 of 21/03/2018

and inject at least 80 pct. of the yearly quantity covered by a contract to the Danish gas system in a period of 12 consecutive months within the time limit of six years from the date of signing the contract, however see clause 5.11.2. As a consequence hereof, liquidated damages must for instance be paid in case of the installation(s) covered by contract is never connected to the Danish gas system. In consequence, there might accrue situations where the aid pursuant to the contract may lapse and the winning bidder has to pay liquidated damages.

Installation(s) covered by the contract must be connected to the gas system and the upgraded biogas and/or e-methane must be injected into the Danish gas system pursuant to the rules on connection and injection of gas to the Danish gas system set out in the Danish Gas Act¹² or regulation under the provisions of this Act.

5.11.2 Extension of the time limit for the obligation to produce and inject upgraded biogas and e-methane to the Danish gas system

A winning bidder is entitled to an extension of the time limit for the obligation to inject the quantity of gas generated by installation(s) covered by the contract to the Danish gas system, cf. clause 5.11.1, in the event of a delay caused by one or more of the following circumstances:

1. Circumstances relating to the Danish Energy Agency.
2. Circumstances arising for which the winning bidder is without fault and over which the winning bidder has no control, for example war, pandemic, extraordinary natural events, fire, strikes, lockout or malicious damage.
3. Public injunctions or bans, which are not caused by circumstances attributable to the winning bidder.
4. A requirement for a stay of execution following directly from legislation or from a decision on a stay of execution by an appeals board or a court of law.
5. If the winning bidder does not obtain required permits, dispensations and approvals etc. from the authorities, although the winning bidder has applied for these from the relevant authorities no later than one year before expiry of the time limit for injecting a minimum of 80% of the quantity of gas, covered by the contract, in a period of 12 consecutive months, see clause 5.11.1 above. This does not affect the requirements set out in clause 5.7.
6. The distribution company or the transmission company is not ready to connect the upgraded biogas installation and/or the e-methane installation to the Danish gas system because the winning bidder has not been able to obtain the required permits, dispensations and approvals etc. from the authorities, although the winning bidder has applied for the required permits, dispensations and approvals etc. from the relevant authorities no later than one year before expiry of the time limit for injecting a minimum of 80% of the quantity of gas covered by the contract, in a period of 12 consecutive months, see clause 5.11.1 above. This does not affect the requirements set out in clause 5.7.

¹² Act no. 923 of 18/05/2021

7. The distribution company or the transmission company is not ready to connect the installation(s) covered by the contract to the Danish gas system within the time limit for connection (see clause 5.10.1 above) and the winning bidder has concluded an unconditional written agreement about connection of the installation(s) covered by the contract no later than one year before the expiry of the time limit for connection, see clause 5.10.1 above. This does not affect the requirements set out in clause 5.7, thus the bidder must have concluded a conditional contract with the Danish transmission system operator, Energinet, or Evida before submitting the bid.
8. If the construction of the installation(s) covered by the contract cannot be started due to a major preliminary survey, see section 26(3) of the Danish Museum Act pursuant to Consolidating Act no. 358 of 8 April 2014, or if the project has to be discontinued due to archaeological surveys, see section 27 of the Danish Museum Act pursuant to Consolidating Act no. 358 of 8 April 2014.
9. If after the time allowed for the time of system connection, the permits, dispensations and approvals etc. that are required in order to receive aid, cf. clause 5.3 above, are declared void, which is not caused by circumstances attributable to the winning bidder.

The extension of the time limit will correspond to the actual delay caused by the circumstances in number 1-9 claimed by the bidder. Winning bidders entitled to an extension of the time limit must immediately submit a written request to the Danish Energy Agency for the Danish Energy Agency's consent to the extension. In connection with such a request, the winning bidder must be able to substantiate that the delay in question was caused by the circumstances claimed by the winning bidder, and that the delay could not reasonably have been avoided or limited.

In the event that the winning bidder was entitled to an extension of time limit for system connection pursuant to clause 5.10.2, the winning bidder may submit the Danish Energy Agency's written approval of the extension of time limit for system connection. In this context, the winning bidder will be granted an extension of time limit for the obligation to inject the quantity of gas generated by installation(s) covered by the contract to the Danish gas system corresponding to the Danish Energy Agency's approval of extension of time limit for system connection, cf. clause 5.10.2. This written approval of the extension of time limit for system connection will be sufficient for granting an extension of time limit for the obligation to inject the quantity of gas generated by installation(s) covered by the contract to the Danish gas system for up to one year.

5.12 Liquidated damages and guarantee

5.12.1 Liquidated damages

Liquidated damages will be immediately payable upon demand in each of the following situations:

- if, after signing a contract for gas generated by installation(s) covered by the contract, a winning bidder notifies the Danish Energy Agency in writing that, irrespective of the reason, it will not or cannot inject gas generated by installation(s) covered by the contract to the Danish gas system, see however clause 5.11.2 above;

- if the circumstances show that the winning bidder will not or cannot inject gas generated by installation(s) covered by the contract, however see clause 5.11.2 above;
- if installation(s) covered by the contract have not injected the quantity of gas that follows from the contract within six years from signing the contract, see however clause 5.11.2.

5.12.2 Injecting higher quantity of gas to the Danish gas system than the quantity covered by the contract

If gas generated by installation(s) covered by the contract injected to the Danish gas system exceeds the annual quantity of gas covered by the contract, the price premium will only apply to the amount of gas, which is covered by the contract and injected to the Danish gas system in the year in question. The winning bidder will not be able to receive aid for a quantity of gas, which is larger than the quantity that is stated in a contract. The maximum quantity of gas a winning bidder will be able to receive aid for, will be determined in the contract and will remain constant for the entire 20-year aid period.

5.12.3 Calculation of liquidated damages

The liquidated damages depends on the quantity of gas covered by the bid, cf. section A.2 in Appendix 1 or any later Appendix. The liquidated damages will be calculated in accordance with the contract.

The amount of the liquidated damages for each winning project will thus be calculated using the following formula:

$$\text{Liquidated damages} = \text{the annual quantity of gas according to the contract} * 30.00 \text{ DKK per GJ}$$

Bidders are to state the annual quantity of gas in their bid.

5.12.4 Guarantees

5.12.4.1 Declaration of intent to provide a demand guarantee

With the bid, the bidder must submit a declaration of intent (see Appendix 4) in Danish or English from a financial institution stating that said institution will provide a demand guarantee issued to the Danish Energy Agency corresponding to the amount of the liquidated damages, see clause 5.12.3 above. The bidder must use the Danish or English template enclosed as Appendix 4. The Danish version and English version of Appendix 4 have equal status and have the same validity. The financial institution must have a BBB- credit rating or higher.

5.12.4.2 Demand guarantee

Prior to signing of the contract, the winning bidder must provide a demand guarantee in Danish or English from a financial institution for an amount corresponding to the amount of the liquidated damages, see clause 5.12.3 above. The winning bidder must use the Danish or English template enclosed with the contract as Appendix 3. The Danish version and English version of Appendix 3 have equal status and have the same validity. It is a prerequisite that the Danish Energy Agency

has received the original demand guarantee from the winning bidder before the Danish Energy Agency signs the contract. The guarantor must have a BBB- credit rating or higher.

5.12.4.3 Lapse of the demand guarantee

The demand guarantee will lapse when 80 pct. of the annual amount of gas covered by the contract has been injected to the Danish gas system in 12 consecutive months within the time limit, however see clause 5.11.2 above. In situations covered by clause 5.11.2 above, the demand guarantee will lapse upon payment of the liquidated damages for the remaining quantity of gas, which has not been injected to the Danish gas system up to 80 pct. of the quantity of gas covered by the contract. The time of the 80 pct. of the annual amount of gas has been injected to the Danish gas system is defined in accordance with clause 5.11.1.

5.13 Joint and several liability

If the Danish Energy Agency concludes a contract with a consortium, all members of the consortium will be jointly and severally liable for all obligations covered by the contract.

If the bidder is an undertaking in the process of being established, the founders of the undertaking will have to assume joint and several liability with the bidder on the date of signing of the contract and until the undertaking has been registered, see section 41(3) of the Danish Companies Act¹³.

Any claim arising pursuant to the contract may therefore be directed towards 1) any of the participants in the consortium, and 2) any founders in situations in which the bidder is an undertaking in the process of being established.

Joint and several liability will only be enforced to the extent that the winning bidder is in breach of the contract and if the winning bidder on demand from the Danish Energy Agency does not remediate such a breach. Joint and several liability only covers claims by the Danish Energy Agency.

6. Award criterion, ranking, flexibility mechanism

6.1 Award criterion

The Danish Energy Agency will conclude contract(s) on gas generated by installation(s) covered by the winning bid and injected to the Danish gas system on the basis of the award criterion **lowest offered price premium**, which will be assessed as follows:

- **The offered price premium in DKK per GJ covering gas production for 20 years from the time of system connection**

The price premium will for each winning bidder be determined according to the principle of "pay-as-bid". Each contract will therefore contain the bid price (expressed in DKK per GJ) that the winning bidder has submitted in its bid. Accordingly, each contract will contain the maximum quantity of production and injection of gas that the winning bidder has submitted in its bid, however see clause 6.3.

¹³ Consolidated act no 1168 of 01/09/2023

The offered price premium is to be a DKK amount which will be indexed according to the net price index. The offered price premium is to be stated as an amount in DKK per GJ with 2 decimal places.

Bids, which comprises upgraded biogas or e-methane, with an offered bid price above 100 DKK/GJ (in 2021 prices) will not be accepted.

In case of very high gas prices, the price premium will be reduced, when the gas price on the spot market for gas exceeds 120 DKK/GJ. The price premium will be reduced with the same amount in DKK as the gas price exceeds the price threshold.

If under the competitive bidding process there are not submitted offers, which are sufficient to use up the available funds in the competitive bidding process, the offer with the highest offered price premium will not be accepted.

6.2 Ranking

A contract will be awarded to the bidder(s) that submit a bid, which is compliant with the requirements set out in these conditions, and with the lowest bid price, see clause 6.1, and that can be kept within the available funds.

If several bids contain the same offered bid price, the bids in question will be ranked according to quantity of gas, from the largest to the smallest.

If several bids, each of which can be accommodated within the available funds, contain the same offered bid price and the same quantity of gas the bids in question will be ranked through drawing lots to the extent that it is not possible to award all of the bids a contract within the available funds.

6.3 Flexibility mechanism

If the Danish Energy Agency decides that there is a marginal bid, the Danish Energy Agency will offer the bidder with the marginal bid the opportunity to downscale its quantity of gas such that it can be contained within available funds, but at the price premium originally offered in accordance with Appendices 5.a-5.c. The "marginal bid" means a bid that complies with the requirements set out in these conditions, which – assessed on the basis of the price in the bid – can be awarded a contract, but which would entail that the available funds would be exceeded.

The Danish Energy Agency will send a conditional award letter to the marginal bidder via the portal for the competitive bidding process with information about the downscaled quantity of gas that can be contained within the available funds, see Appendix 5.a. The conditional award letter will state that in order for the Danish Energy Agency to be able to accept the bid, the bidder will have to downscale the offered quantity of gas such that it can be contained within the available funds, see Appendices 5.a-5.c.

If the Danish Energy Agency does not receive an acceptance of the conditional award letter from the marginal bidder in accordance with Appendices 5.a-5.c no later than ten working days after the Danish Energy Agency has sent the conditional award letter, the Danish Energy Agency will consider this a rejection of the offer to downscale and the conditional offer of contract will lapse

without further notice. The marginal bidder will hereafter receive a refusal of offering a contract, see clause 10 below.

If the Danish Energy Agency does not receive an acceptance of the conditional award letter from the marginal bidder and there are other bids with the same offered bid price as the marginal bid, these will be considered in the order from largest to smallest quantity of gas. For such bids, a bid that would entail that the available funds would be exceeded, will be offered to downscale the amount of gas. This procedure will be applied repeatedly until the available funds are depleted. This procedure will only be applied in situations where several bids have been submitted with the same offered bid price as the marginal bid.

6.4 Available funds

Bidders are to submit an offer with a price premium (DKK per GJ) and, for each technology, the quantity of gas (GJ). The offered bid price premium and the quantity of gas must appear from the individual bid, see Appendix 1.

The contract(s) will be awarded to bidders with the lowest offered price premium per GJ until the available funds have been depleted.

7. Bid, declarations and documentation

7.1 The bid

A bid must contain one amount of price premium (the offered price premium), which is binding for the bidder.

The bid must contain a description of the bidder. The description must contain the following elements:

The name and address of the bidder:

- The name of a contact person, if the bidder is a company
- The registration number of the company, if the bidder is a company (e.g. CVR no. (Danish company reg. no.))
- The national identification number of the person, if the bidder is a natural person (e.g. CPR no.)
- Telephone number of the bidder or of a contact person
- Email address of the bidder or of a contact person.

The template for the bid letter see Appendix 1, which the bidder must complete when submitting the bid, is available at the portal for the competitive bidding process via the following link:

[*]

The bid (see Appendix 1) must furthermore include a description of the installation(s), including its geographic location (see Appendix 2). If a bid (see Appendix 1) covers several installations, Appendix 2 is to be completed for each installation covered by the bid. Appendix 2 must among other things include the following elements:

- The quantity of gas of the installation covered by the bid. The quantity of gas is to be stated in whole GJ. If the installation consists of different technologies, the quantity of gas of each technology is to be stated.

In addition, a declaration of intent to provide a demand guarantee (see Appendix 5) must be enclosed with the bid.

A single, collective bid may be submitted, covering several installations at different planned locations, or multiple bids may be submitted, one bid for each installation. Bidders may submit several bids.

The bid must not contain reservation related to these conditions for the competitive bidding process.

Installations covered by a bid must be located in Denmark, except for the Faroe Islands and Greenland.

The bidder bears the full commercial risk associated with the offered price premium.

7.2 Declarations

In the bid letter (see Appendix 1) the bidder must give the following declarations:

- 1) solemn declaration stating that the bidder has complied with any and each requirement for repayment of aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market,
- 2) solemn declaration stating that the bidder 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 (OJ C 249, 31.7.2014, p.1),
- 3) solemn declaration on not to receive any other aid than price premiums pursuant to the contract,
- 4) solemn declaration on not to have unpaid due debt of DKK 100,000 or more to public authorities regarding taxes, duties or contributions to social security schemes pursuant to Danish legislation or legislation in the country in which the bidder is established;¹⁴
- 5) declaration stating that work on the project to construct installations covered by the bid has not started¹⁵,
- 6) declaration stating that the bidders bid letter does not include any reservations, including to all the documents for the competitive bidding process,

¹⁴ See the principles in section 135(3) of the Danish Public Procurement Act.

¹⁵ The definition of when a project has been commenced is given in point 19 (82) of the Guidelines on State aid for climate, environmental protection and energy 2022, (2022/C 80/01)

- 7) declaration stating that the bidder is informed that the Danish Energy Agency will process personal information given by the bidder in connection with submitting the bid; and
- 8) declaration stating that the bidder is informed that the Danish Energy Agency is eligible to publish information regarding the winning bid including bid price, quantity of gas, location, technology and the name of the winning bidder.

7.3 Documentation

The bidder must also submit the following documentation with the bid letter:

- An opinion from the competent authority on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report, i.e. “scoping opinions”, cf. act no 973 dated 25.06.2020 section 23 or a decision that there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment section 21, see however clause 5.3 regarding e-methane projects. A full environmental impact assessment can be accepted instead of the “scoping opinion” and
- A conditional contract with the Danish transmission system operator, Energinet, or distribution system operator, Evida.

7.4 Incomplete tenders

The Danish Energy Agency will not consider bids in which the bidder letter, declarations or documentation pursuant to clauses 7.1-7.3 above are missing.

8. Deadline for bids and formal requirements

The deadline for receipt of bids is

[*] 202[X], at 12:00 noon

Bids received after this deadline will not be considered.

A bid must contain:

- a completed and signed template for the bid letter and declarations (Appendix 1) see clauses 7.1 and 7.2 above,
- a completed template with a description of installation(s) covered by the bid (Appendix 2) see clause 7.1 above,
- An opinion from the competent authority on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report, i.e. “scoping”, cf. act no 973 dated 25.06.2020 section 23 or a decision that there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment section 21, or a full environmental impact assessment can be accepted instead of the “scoping”. For e-methane projects that are directly subject to environmental assessment, i.e. covered by appendix 1 of the Danish Act on

Environmental Impact Assessment, a statement from the environmental authority is attached where the project is described at a sufficiently detailed level for the 1st public comment phase of the environmental assessment process to be initiated. For e-methane projects that are not directly subject to environmental assessment, i.e. covered by appendix 2 of the Danish Act on Environmental Impact Assessment, a statement from the environmental authority must be attached where the project is described at a sufficiently detailed level for the environmental authority to make a screening decision on whether the project is covered by requirements for an environmental assessment, cf. Section 21 of the Danish Act on Environmental Impact Assessment

- a conditional contract with the Danish transmission system operator, Energinet, or Evida
- a completed template with a declaration of intent from a financial institution for the provision of a demand guarantee (Appendix 5) see clause 7.1 above.

All communication must take place electronically. Bids must be submitted via the portal for the competitive bidding process, which can be accessed directly from the following link:

[*]

Bids cannot be submitted in any other way, including by email.

If the portal for the competitive bidding process is down due to technical reasons within the last week before the deadline for the receipt of bids, the Danish Energy Agency reserves the right to prolong the deadline for submitting bids.

If a bidder finds parts of the documents for the competitive bidding process to be unclear, the bidder is invited to submit substantiated questions concerning this see clause 14 below.

9. Language

Bids, including appendices, must be in Danish (see Appendix 1). However, the required declaration of intent to provide a demand guarantee (see Appendix 4) will be accepted in Danish or English.

The Danish Energy Agency has prepared the documents for the competitive bidding process in Danish. The documents for the competitive bidding process will also be made available in an English translation.

In the event of any discrepancy between the Danish version of the conditions for the competitive bidding process, including appendices, and the English translation of the conditions for the competitive bidding process, including appendices, the Danish version of the conditions for the competitive bidding process, including appendices, prevails, see however clauses 5.12.4.1 and 5.12.4.2.

10. Award

When the Danish Energy Agency has assessed whether the bids received are compliant with the requirements, and which bids have the lowest offered bid prices within the available funds, the

Danish Energy Agency will notify all bidders of whether their bids have been accepted. Notification to any marginal bidders will happen at the same time. With regard to bidders that are not awarded a contract and bidders that have submitted incomplete bids and therefore will not be considered (see clause 7.4) the notification will also contain a brief account of the relevant grounds for the decision.

The Danish Energy Agency reserves the right to cancel the competitive bidding process of for gas generated by upgraded biogas plant and e-methane plant without awarding contracts.

Notification of the award decision to the winning bidders does not mean that the contract has been concluded. The contract will not be considered concluded (and the competitive bidding process finally completed) until the contract has been signed. The contract cannot be signed until after a period of ten calendar days calculated from the day after the day when the Danish Energy Agency submitted notifications about the award of the contract.

It is a prerequisite for the Danish Energy Agency's conclusion of the contract with the winning bidder that the guarantee for the liquidated damages (see Appendix 3) has been provided and that the original guarantee for the liquidated damages is handed over to the Danish Energy Agency no later than the time of signing the contract, cf. clause 5.12.4.2 above.

11. Tender validity period and costs of participation

Bidders are bound by their bids until signing of the contract(s), however for no longer than three months from expiry of the deadline for submitting bids (tender validity period).

The bidder's costs in connection with the competitive bidding process, including any costs associated with obtaining the necessary decisions, approvals, licences/permits and dispensations etc., are of no concern to the Danish Energy Agency.

12. Processing of bids

The Danish Energy Agency will treat all bids with confidentiality.

However, the Danish Energy Agency reserves the right to publish anonymised statistics about the competitive bidding process round.

The Danish Energy Agency is eligible to publish information about the winning bid(s), including bid price, quantity of gas, location, technology and the name of the winning bidder. Furthermore, the Danish Energy Agency may be obliged to grant access to documents pursuant to the rules on access to documents in the Danish Access to Public Administration Files Act, the Danish Public Administration Act and the Danish Act on Environmental Information.

The Danish Energy Agency is not obliged to return bids to the bidders.

In the evaluation of bids and other submitted documentation, the Danish Energy Agency reserves the right to use external assistance if necessary.

The Danish Energy Agency considers it material that the competitive bidding process creates effective competition between the bidders and that all bidders are treated equally.

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13. Checklist

Has the bidder enclosed with the bid:

1. A bid letter (Appendix 1) containing:
 - a. a bid price per GJ and quantity of gas
 - b. a solemn declaration on the obligation to construct, connect to the system specified installations and delivers the quantity of gas stated in the bid
 - c. a solemn declaration stating that the bidder does not have unpaid, due debt to public authorities exceeding DKK 100,000
 - d. a solemn declaration stating that the bidder has complied with any and each requirement for repayment of aid which the European Commission, in a previous decision, has declared illegal and incompatible with the internal market
 - e. a solemn declaration stating that the bidder 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 (OJ C 249, 31.7.2014, p.1),
 - f. a solemn declaration stating that the bidder will not receive other aid than the price premiums under the contract,
 - g. a declaration stating that the work on the project has not started,
 - h. a declaration stating that the bidder has not included any reservations to the documents for the competitive bidding process,
 - i. a declaration stating that the bidder is informed that the Danish Energy Agency will process personal information given by the bidder in connection with submitting the bid and
 - j. a declaration stating that the bidder is informed that the Danish Energy Agency is eligible to publish information concerning the winning bid including bid price, quantity of gas, location, technology and the name of the winning bidder.
2. A completed template for the description of installation(s) covered by the bid (Appendix 2).
3. A completed template for letter of intent to provide a demand guarantee (Appendix 5).
4. For bids involving production of upgraded biogas: An opinion from the competent authority on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report, i.e. "scoping", cf. act no 973 dated 25.06.2020 section 23 or a decision that there is no obligation to prepare an environmental impact assessment report, cf. the Danish Act on Environmental Impact Assessment section 21. Alternative, a full environmental impact assessment can be accepted instead of the "scoping". For bid for the production of e-methane: For projects that are directly subject to environmental assessment, i.e. covered by appendix 1 of the Danish Act on Environmental Impact Assessment, a statement from the environmental authority is attached where the project is described at a sufficiently detailed level for the 1st public comment phase of

the environmental assessment process to be initiated. For e-methane projects that are not directly subject to environmental assessment, i.e. covered by appendix 2 of the Danish Act on Environmental Impact Assessment, a statement from the environmental authority must be attached where the project is described at a sufficiently detailed level for the environmental authority to make a screening decision on whether the project is covered by requirements for an environmental assessment, cf. Section 21 of the Danish Act on Environmental Impact Assessment

5. A conditional contract with the Danish transmission system operator, Energinet, or Evida

The bid letter must state which company or combination of companies is/are submitting the bid.

14. Questions concerning tender documents

Bidders may submit written questions regarding the documents for the competitive bidding process. Questions may be submitted in Danish or in English. Questions/answers in Danish will not be translated into English, and questions/answers in English will not be translated into Danish.

It is essential to the Danish Energy Agency that all bidders are able to submit relevant bids within the framework of the conditions for the competitive bidding process. All potential bidders are therefore encouraged to use the opportunity to submit written questions on the documents for the competitive bidding process, pointing out conditions, which the bidders find unclear or inappropriate. The Danish Energy Agency reserves the right to make amendments to the documents for the competitive bidding process during the competitive bidding procedure if this is deemed appropriate in the light of questions received or if it turns out to be necessary due to other reasons. Such amendments will however not concern fundamental elements.

Questions must be submitted electronically via the portal for the competitive bidding process at the following link:

[*]

All written questions (anonymised) and answers to these will be published on the portal for the competitive bidding process.

[*]

Questions received by no later than [date] will be answered at least six days before the deadline for submitting bids. However, bidders are encouraged to submit questions well before this date.

Questions that are received within the last six days of the time limit for submitting bids cannot be expected to be answered.

It will be possible to submit technical questions regarding the portal for the competitive bidding process up until the deadline for receipt of bids. These questions will be answered by the Danish Energy Agency as soon as possible before the deadline for receipt of bids.

15. Information on the competitive bidding process

All information about the competitive bidding process, including answers to questions and any changes to the documents for the competitive bidding process, will be published on the portal for the competitive bidding process:

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