



Invitation to tender:

Preparation of a report regarding insurances of companies working in the upstream oil, gas and geothermal energy business.

Office/Departement

Centre for Energy
Resources

Date

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1. Purpose

According to section § 30 of the model license and the Danish Subsoil Act section 24 e companies who are working in the upstream oil, gas and geothermal business are obliged to be insured appropriately. The size of the insurances shall be balanced with respect to the risk of the activities and the cost of insurances.

The need for appropriate insurances is amplified by the fact, that co-licensees according to section 31 in the model license are jointly and severally liable for damages, cf. section 35 in the Danish Subsoil Act.

Neither the Danish Subsoil Act nor the model license describes which insurance products companies must take out. These requirements are, however formulated in an "Insurance Declaration" (see annex B). The operator of a license must annually submit this declaration to the Danish Energy Agency.

In the insurance declaration the operator of the license declares, that the companies have taken out insurances for Control of Well (COW) and Third Party Liability (TPL) and that the total insurances of the co-licensees have a certain minimum coverage depending on the activities going on Onshore or Offshore. Also the declaration implies that the total coverage has to be higher in case of expensive drillings.

The current requirements have been into force for almost a decade. **The Danish Energy Agency therefore considers that it is appropriate to investigate if the current insurance requirements are sufficient in size and scope.**

See also point 2 and 3 below. ("Background" and "Description of the tasks and its deliveries").

Danish Energy Agency

Amaliegade 44
DK-1256 Copenhagen K

P: +45 3392 6700

E: ens@ens.dk

www.ens.dk

1.1 Contracting authority

The tender will be carried out by the following party, which is also contracting authority:

Energistyrelsen
Amaliegade 44
1256 København K

1.2 The framework for the offer

The framework for the offer is max. 300.000 DKK excl. VAT

The offer should include all applicable taxes except VAT and all costs, including any costs for travel, food and accommodation, office supplies and material production etc.

According to the wording in the standard contract 50 % of the payment will be made when the DEA has approved the draft report before it enters into public hearing. The payment of the remaining 50 % of the overall budget will be made upon DEA's approval of the final report.

1.3 Contractual basis

The standard contract of the Danish Energy Agency will be applied and is attached as Annex A.

2. Background

The issue of safety is a very integrated part of the daily work procedures among companies working in the upstream oil, gas and geothermal business. This is done with good reason as the consequences can be extensive both for the personnel working with the extraction of oil and gas and for the surrounding environment. Besides the physical consequences of accidents the economic consequences for companies working in the industry and other affected industries can also be significant. The cost of an accident might be significant if it leads to a pollution of the surrounding environment.

According to Danish legislation the economic consequences of pollution must be paid by those who have caused the pollution (i.e. "polluter pays" principle). This principle is stated in section 35 of the Subsoil Act, which in section 1 states that "*A licensee shall be liable to pay damages for any loss, damage or injury caused by the activities carried out under the licence, even though such loss, damage or injury was caused accidentally.*" (Unofficial translation) According to the commentary to

section 35 the strict liability includes both damage to property belonging to others and injury to persons, including employees, contractual partners, etc.

It is important that all co-owners of a license have sufficient financial capacity to remedy any damage which might happen as a result of the activities in the license. Companies do not always have a large financial capacity. It is therefore important that companies according to section § 30 of the model license and Danish Subsoil Act section 24 e are insured appropriately. The size of the insurances shall be balanced with respect to the risk of the activities and the cost of insurances¹.

Section 24 e: *“A licensee’s liability for damages under licences issued pursuant to this Act shall be covered by insurance. The insurance shall provide reasonable cover, in light of the risks involved in the performance of the activity and the premiums to be paid.” (Unofficial translation)*

The need for appropriate insurances is amplified by the fact, that co-licensees according to section 31 in the model license are jointly and severally liable for damages, cf. section 35 in the Danish Subsoil Act.

Neither the Danish Subsoil Act nor the model license describes which insurance products companies must take out. These requirements are, however formulated in an "Insurance Declaration" (see annex B). The operator of a license must annually submit this declaration to the Danish Energy Agency.

In the insurance declaration the operator of the license declares, that the companies have taken out insurances for Control of Well (COW) and Third Party Liability (TPL) and that the total insurances of the co-licensees have a certain minimum coverage depending on the activities going on Onshore or Offshore. Also the declaration implies that the total coverage has to be higher in case of expensive drillings.

3. Description of the tasks and its deliveries

3.1 The report

The Danish Energy Agency should immediately be able to use the recommendations in the report to assess whether the insurances which companies currently take out are appropriate in scope and size.

¹ The issue of financial capacity is covered in article 4 in the EU Offshore Safety Directive and implemented in the Danish Subsoil Act in 2015. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0030&from=EN>

There are currently no specific requirements from the authorities as to which costs a COW or TPL insurance exactly should cover. Without explicitly formulated requirements as to what a COW, a TPL or other insurances exactly should cover, there is a risk that the insured party does not take out insurance which provides sufficient coverage for the activities undertaken. This increases the financial risk of co-licensees and the Danish state. Accordingly the insurance requirements should be well-defined and transparent and provide for reasonable coverage for accidents.

COW and TPL insurance are particularly important in case of exploration activities and in the production phase. However the need for insurance products (including COW and TPL) is varying during the lifecycle of a license. As an example insurance for COW is not relevant in a phase of the license which only implies desktop studies. Also it is reasonable to assume that the need for insurance (size of coverage) is varying according to the extent of activities and the risk exposure of the various activities.

Accordingly the report should among other include the following:

- A general description of the insurance market for upstream oil, gas and geothermal business. Specifically the report should include an overall description of the various types of insurers, including self-insurance (company market, Lloyds Market, mutuals, captives). This part of the report should also reflect on the risk of default by the different insurers. If relevant the report should include recommendations on how this risk can be diminished.
- A mapping of the relevant commercially available insurance products as well as available, relevant market capacity, i.e. limits available at normal market terms. The mapping should be subdivided in onshore and offshore activities and take into consideration the various phases of a lifecycle of a license (i.e. from initial desktop studies until decommissioning). This part of the report should include recommendations in regard to which insurance products the authorities should require companies to take out during the individual phases of a license (current requirement is COW and TPL).
- A mapping and a description of the scope of coverage of the available insurance products, including add-on insurance options. This part of the report should include recommendations about minimum requirements by the authorities in regard to the scope of coverage of the individual insurance products.
- A mapping of the insurances which are actually taken out among companies working in the Danish upstream oil, gas and geothermal business - including information on coverage (limits, scope of coverage and deductibles). This part of the report should reflect on the background for the likely differences in

coverage. The mapping should be subdivided in an appropriate manner which enables the Danish Energy Agency to assess the importance of various factors (i.e. drivers) when explaining the differences in coverage. These drivers could among other be differences in the level of activities, the risks of the activities, onshore and offshore differences, differences in risk aversion among companies, and other.

- Based on national and international comparable insurance practices the report should provide recommendations in regard to minimum size and scope of coverage for insurances. The recommendations should take into consideration the drivers determining the differences in coverage (c.f. bullet above). The recommendations should also reflect on the issue and size of deductibles.
- A mapping of the regulatory requirements regarding insurance products in the Netherlands, UK and Norway.

The report has to take into account that section 35 in the Danish Subsoil Act uses a broad definition of damages. The report should however mainly consider insurances providing cover for liabilities towards third parties (i.e. no need to describe Property Damage and Loss of Production insurances unless there is an element of liability cover in such insurances as for example the removal of wreck cover) or where the insurances are not required pursuant to other legislation.

3.2 Participation in the process

The offer has to take into account that there in addition to the drafting of the report also will be a political process, where the chosen consulting company has to assist the Danish Energy Agency in among other the drafting of hearing answers.

As a part of the project there will be established a monitoring group consisting of representatives of the industry and various government bodies. The group will to some extent follow the progress of work and if relevant submit professional contributions during the drafting period.

Also it is the intention that the consultant company just before the report enters into public hearing will present the draft report and its conclusions to other authorities and industry representatives.

The Danish Energy Agency will be coordinating all contact to the industry, other government authorities, etc. If the offer from the consulting company implies additional assistance by the Danish Energy Agency this should be clearly stated in the offer.

3.3 Timetable

The tender is intended to be initiated Monday the 23rd May 2016.

The offer has to be submitted to the Danish Energy Agency not later than Wednesday the 15th June 2016.

The Danish Energy Agency expects to be able to inform the tenderers about the result of the tender around Friday the 24th June 2016.

Signing of the standard contract of the Danish Energy Agency is expected to be finalized by the end of June 2016.

The first draft of the report is expected to be submitted to the Danish Energy Agency for commenting not later than Sunday 18th September 2016.

A draft of the report will be send into public hearing and should be ready not later than Sunday the 2nd October 2016. The public hearing phase is intended to last for 21 days.

According to the overall timetable the project should be completed by the end of November 2016.

In case that the offer of the tender implies a deviation of the abovementioned timing this should be stated clearly in the offer.

4. Formalities for final delivery

The final product is a report intended for public use.

The owner of the final report will be the Danish Energy Agency. The Danish Energy Agency will be free to use the final report or any extract of the report (including data) for any purpose, which the Danish Energy Agency considers to be relevant.

5. Shaping of the offers

The offer must be submitted in 1 copy in paper form and one electronic copy in pdf format. The offer can be written in Danish or English and must be signed.

5.1. Minimum content of the offer

The offer must contain at least the following:

- Contact information of the offeror
- The offer with a description of the task solution, cf. 3 above.
- A budget with the total cost of the project
- An activity plan with time consumption – in total and distributed on the individual tasks and distributed on the individual employees assigned to the project.
- A description of the relevant qualifications of the consultants in relation to the tasks and references to previous relevant assignments.

6. Assignment

The selection of tenderer will be based on the overall award criterion “the most economically advantageous offer”. The most economically advantageous offer is identified on the basis of the following sub-criteria:

1. The total cost of the tasks (weighting 30 %);
2. The quality of the task solution (weighting 30 %)
3. Experience with similar tasks (weighting 30 %);
4. Staffing and delivery reliability (weighting 10 %)

The offers will be assessed on the basis of point allocated to each sub-criterion. The following scale will be applied. Excellent=10, Very good=8, Good=5, Less good=3, Completely unsatisfactory=0.

Concerning 1: *The total cost of the tasks* means the contracting authority's evaluation of the tenderer's total price for the offer.

Concerning 2: *The quality of the task solution* means the contracting authority's evaluation of the tenderer's proposed task solution.

With reference to point 3 the final report (the product) should on the basis of a clear formulated professional assessment include recommendations on the relevant insurance products (including scope of the insurances) which regulatory bodies should require from companies to take out during the individual phases of licenses (granted on the basis of the Danish Subsoil Act).

Specifically the Danish Energy Agency will evaluate the proposal of the tenderer's based on:

- An assessment of the direct applicability of the proposed solution
- The academic content and debt of the proposed solution

Concerning 3: *Experience with similar tasks* means the contracting authority's evaluation of the tenderer's experience with the subjects that will be covered in the final report.

Concerning 4: Staffing and delivery reliability means the contracting authority's evaluation of the manning in relation to solve the tasks in conjunction with the proposed time frame for the assignment.

7. About the receipt of tenders etc.

The deadline for the receipt of tenders is Wednesday the 15th June 2016 at 09.00.

The offer has to be addressed to:

Energistyrelsen
Att.: Michael Bøgh
Amaliegade 44
1256 København K
E-mail: mib@ens.dk

All bidders will be informed in writing short after the Danish Energy Agency has made its final choice of the consultant. The Danish Energy Agency reserves the right to cancel all or part of the tender or to carry out a new tender if this is required due to objective grounds or reservations. Any reservations by the offeror in relation to the assignment have to be clearly stated in the offer.

Any expenses relating to the preparation of the offer and any possible expenses associated with the contracting is irrelevant for the DEA. The Danish Energy Agency reserves the right to retain the submitted material. The information included in the project description is property of the Danish Energy Agency.

The proposed bids which are submitted on the basis of this tender material will be negotiated confidentially within the framework of "The Access to Public Administration Files Act" (Offentlighedsloven) and "The Law concerning Public Administration" (Forvaltningsloven). The Tenderer is obliged to keep strict confidentiality with respect to any information about the Danish Energy Agency and other stakeholders.