



Offshore Wind Tax Incentives Solicitation: Guidance for Offshore Wind Company Certification Application

Through the *Offshore Wind Tax Incentives Solicitation OSW-2023-08*, the Massachusetts Clean Energy Center (MassCEC) is seeking applications for company certifications for a new Offshore Wind Tax Incentive Program. In 2022, a new climate bill, An Act Driving Clean Energy and Offshore Wind, was enacted into law¹. The legislation expanded the role of MassCEC in several ways, including the creation of a new Massachusetts Offshore Wind Industry Investment Program to develop and expand offshore wind related employment opportunities and promote renewable energy economic development by supporting and stimulating manufacturing and related supply chain capacity in the Commonwealth. Through this authorization, MassCEC, in consultation with the Department of Revenue, may annually authorize tax incentives to certified offshore wind companies through an Offshore Wind Tax Incentive Program (“Program”), subject to eligibility, qualification, available funding, and other conditions as described in the *Offshore Wind Tax Incentives Solicitation OSW-2023-08*.

A taxpayer or corporation that has been approved by MassCEC as a certified offshore wind company may be eligible for the following tax incentives, described further in the *Offshore Wind Tax Incentives Solicitation OSW-2023-08*:

1. A one-year partially refundable credit against tax liability for the creation of not less than 50 (fifty) net new permanent full-time employees.
2. A five-year refundable credit for an owner of an offshore wind facility against tax liability for up to 50 % (fifty percent) of its qualified total capital investment of not less than \$35,000,000 (thirty-five million dollars) in the facility and the facility will employ not less than 200 (two hundred) net new full-time employees by the fifth year of the applicable certification period.
3. A five-year refundable credit for a tenant of an offshore wind facility against tax liability, provided that: (a) the owner of the facility has made a qualified total capital investment in the facility that equals not less than \$35,000,000 (thirty-five million dollars); (b) the tenant leases and occupies an area of the facility that represents not less than 25% (twenty-five percent) of the owner's qualified total capital investment in the facility; and (c) the tenant will employ, in the aggregate with other tenants at the offshore wind facility, not less than 200 (two-hundred) new full-time employees at the facility by the fifth year of the applicable certification period.

¹ Modifications to the program and tax credits were made by the *Act Relating To Economic Growth And Relief For The Commonwealth* (November 2022). The primary statutes governing the program and tax credits are: MGL c. 23J, s. 8A; MGL c. 62, s. 6 (bb) & (cc); MGL c. 63, s. 38LL & s.38MM.

Pursuant to the statute, MassCEC must certify an offshore wind company for eligibility for the Offshore Wind Tax Incentives. While certification is a prerequisite to receiving certain awards from MassCEC, successful certification does not entitle a company to receive any award from MassCEC. MassCEC has full discretion and authority to determine (1) which certified offshore companies, if any, are entitled to receive incentives under the Program and (2) the amounts of any such incentives. Submission of an application does not guarantee the award or receipt of any incentives under the Program.

Certification approved by MassCEC will be valid for 5 years starting with the tax year in which certification is granted. Certified offshore wind companies must each file an annual report with MassCEC certifying whether it has met the specific targets established in its approved certification proposal and, if not, detailing its progress towards those targets. MassCEC may revoke the certification of an offshore wind company after an investigation and a determination that the certified offshore wind company is in material noncompliance with its certification proposal. Revocation shall take effect on the first day of the tax year in which MassCEC determines the certified offshore wind company to be in material noncompliance.

Applicants may be subject to additional due diligence at the discretion of MassCEC. All Applicants agree to cooperate with MassCEC in any additional due diligence.

As a public entity, MassCEC is subject to Massachusetts' Public Records Law.

Procedures for Handling Documents Identified as "Confidential Information"

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at M.G.L. c. 66 (the "Public Records Law"). The Applicant acknowledges and agrees that any documentary material, data, or other information submitted to MassCEC are presumed to be public records. The Applicant acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any particular document, material, data or other information is exempt from or subject to public disclosure.

In the event its Application includes the submission to MassCEC of documents that Applicant believes may be proprietary in nature and may fall within the parameters of the "trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant" provision of Chapter 23J, Section 2(k) exemption (the "MassCEC Exemption") and/or some other applicable exemption, the following procedures shall apply:

- (1) At the time of the Applicant's initial submission of documents to the MassCEC, the Applicant must clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Confidential Information." It is the Applicant's responsibility to ensure that all such documents are sufficiently identified as "Confidential Information," and Applicant's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under Public Records Law.

- (2) Documents that are not properly identified by the Applicant as “Confidential Information” at the time of their initial submission to the MassCEC may be subject to disclosure under the Public Records Law, and the procedures for providing the Applicant with notice of any formal public records request for documents, as set forth below, may be inapplicable.
- (3) MassCEC will exercise reasonable care to protect documents submitted to MassCEC and labeled by Applicant as “Confidential Information”. **By submitting a signed application to MassCEC, Applicant certifies, acknowledges and agrees that MassCEC’s receipt and storage of documents designated by Applicant as “Confidential Information” does not represent a finding by MassCEC that such documents fall within the MassCEC Exemption or any other exemption to the Public Records Law, or that the documents are otherwise exempt from disclosure under the Public Records Law.**
- (4) In the event that MassCEC receives a formal, written public records request for documents submitted by Applicant in response to the solicitation, MassCEC shall notify the Applicant and may, but shall not be required to, provide Applicant an opportunity to present the MassCEC with information and/or legal arguments concerning the applicability of the MassCEC Exemption or some other exemption to the subject documents. MassCEC shall then produce all responsive documents not subject to exemption from disclosure. MassCEC’s General Counsel is the sole authority within MassCEC for making determinations on the applicability and/or assertion of an exemption to the Public Records Law. No employee of MassCEC other than the General Counsel has any authority to address issues concerning the status of “Confidential Information” or to bind MassCEC in any manner concerning MassCEC’s treatment and disclosure of such documents.
- (5) In the event that MassCEC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MassCEC’s determination before the Supervisor of Public Records, and MassCEC shall notify the Applicant in writing in the event that the requesting party pursues a review of MassCEC’s determination.
- (6) In the event the requesting party pursues a review of MassCEC’s determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MassCEC to disclose such documents to the requester, MassCEC shall notify the Applicant in writing prior to the disclosure of any such documents, and Applicant may pursue injunctive relief or any other course of action in its discretion.

To Apply For Offshore Wind Company Certification and an Offshore Wind Tax Incentive

Please use the attached Word format document format to provide responses to each of the questions/fields below. Please enter information for each question/field. The application and

any accompanying appendices must be submitted in electronic PDF format according to Section VII of the Solicitation. In preparing responses to the questions/fields in the Applications, the Applicant should refer to the relevant sections of the Solicitation.

To the extent that part or all of a response to a question/field in this form may require an Applicant to submit Confidential Information, the Applicant may attach a supplemental document as an Appendix indicating that such Appendix contains Confidential Information. In the main document, indicate that part or all of the response will be contained in the Confidential Information Appendix.

Applicants must provide complete responses to all of the following questions/fields.

1. Applicant Company Legal Name (“Applicant”)
2. Tax Incentive Indicate the type of credit being sought and total amount requested (the five-year credits if awarded will be distributed in equal parts over five taxable years)
3. Federal Tax ID / EIN
4. Year Incorporated
5. Full Name of Authorized Representative (Last, First)
6. Title of Authorized Representative
7. E-mail Address of Authorized Representative
8. Phone number of Authorized Representative
9. NAICS Code and Description (see https://www.naics.com/search/)
10. Business Address
11. Corporate Address (if different from Business Address)
12. Summary of Applicant’s Business/Technology, and Role in the Offshore Wind Industry
13. Top Officers/Key Personnel/Management Team Provide the names, titles, and contact information for company leadership and other key personnel.
14. Number of Employees in Massachusetts What is the current total number of W-2 full-time equivalent (FTE) employees in Massachusetts? Third party contractors, 1099 employees, or interns do not count as part of this number. For purposes of this certification, employees are considered to be full-time equivalent if they work 35 hours or more per week for this company.

15. Project Description and Capital Investment

If the tax benefit for which the applicant is applying is for the qualified total capital investment in an offshore wind facility, please provide a brief description of the facility, the capital project, the key project elements (including physical improvements, redevelopment, and/or new construction to be completed), summary of total project costs with a budget breakdown by project elements and tasks, and an accounting of the owner's total capital investment in the facility, including the types and dates of major capital expenditures. Provide details on what expenditures constitute the qualified total capital investment. Explain how the project fits into the Applicant's overall business strategy and indicate the project's commencement and completion dates (expected or actual). Explain how the project will contribute to the manufacture, fabrication and assembly of domestic supply chain components of the offshore wind industry within the Commonwealth.

16. Projected Revenue Generated in Massachusetts for the period 2023-2027

17. Plans to Achieve Projected Revenue in Massachusetts

Outline the goals and objectives and describe the specific strategies and actions which the offshore wind company will take to achieve its projected new state revenue. Please describe how the tax credits being sought factor into these plans. Please also describe how these plans will leverage additional funding or attracting additional resources to the Commonwealth.

18. New Taxable Income from Capital Investment in Offshore Wind Facility

Provide an estimate of the projected taxable income based on the projected revenue generated in Massachusetts for the period 2023-2027 described above.

19. New Hire Commitment

Estimate the number of W-2 FTE employees to be hired in each calendar year 2023-2027. Consultants, 1099 employees, or interns do not count as part of this number. For purposes of this program, employees are considered to be full-time equivalent if they work 35 hours or more per week for this company. Please note that this figure reflects the application commitment for net new hires under the program. Once the application is submitted, the commitment cannot be adjusted either up or down. This number will be part of the basis of any award made and will be included in the tax award agreement to be executed by an awardee. Please describe the methods by which the company shall obtain the new employees.

20. Average New Hire Salary

Provide an estimated average annual salary and taxable income for the new hires committed above for 2023-2027. Please provide the estimate of base salary only, do not include bonuses or any other additional compensation.

21. New Hire Taxable Income

Provide an estimate of the projected taxable income pursuant of new employees described above.

22. Diversity and Inclusion

Please provide a brief description of what programs and policies are in place to promote diversity and inclusion at your company. If available please include diversity statistics of the executive management team, board of directors and organization as a whole. Provide the Applicant's Diversity/Equity/Inclusivity Plan or Policy.

23. Wage Affirmation

Provide a statement that the Applicant affirms that, in connection with the construction and redevelopment project for which MassCEC funding is being sought, it will (i) provide its employees with the minimum hourly wage rates as determined pursuant to the Massachusetts Division of Occupational Safety's Prevailing Wage Program (the "Prevailing Wages") and (ii) contract only with contractors and subcontractors that, to applicant's knowledge, provides their respective employees with Prevailing Wages.

24. Employment Classification

Provide a statement that the Applicant affirms that it will not unlawfully misclassify workers as self-employed or as independent contractors and certifies compliance with applicable state and federal employment laws and regulations, including but not limited to minimum wages, unemployment insurance, workers' compensation, child labor, and the Massachusetts Health Care Reform Law, Chapter 58 of the Acts of 2006, as amended.

25. Employment Due Diligence

Provide a statement that the Applicant affirms that it will not knowingly employ developers, subcontractors, or other third parties or entities that unlawfully misclassify workers as self-employed or as independent contractors, or that fail to comply with applicable state and federal employment laws and regulations, including but not limited to minimum wages unemployment insurance, workers' compensation, child labor, and the Massachusetts Health Care Reform Law, Chapter 58 of the Acts of 2006, as amended.

26. Indictment

Within the past five years, has the Applicant or any of its officers, directors, employees, agents, or subcontractors of which the Applicant has knowledge, been the subject of an indictment, judgement, conviction, or grant of immunity, including pending actions, for any business-related conduct constituting a crime under state or federal law?
[Yes or No]

27. Government Suspension

Within the past five years, has the Applicant or any of its officers, directors, employees, agents, or subcontractors of which the Applicant has knowledge, been the subject of a government suspension or debarment, rejection of any bid or disapproval of any proposed contract, including pending actions, for lack of responsibility denial or revocation of prequalification or voluntary exclusion agreement?
[Yes or No]

28. Violation of Law

Within the past five years, has the Applicant or any of its officers, directors, employees, agents, or subcontractors of which the Applicant has knowledge, been the subject of any governmental determination of a violation of any public works law or regulation, or labor law or regulation or any OSHA violation deemed “serious or willful?”

[Yes or No]

29. Authorized Respondent Signature and Acceptance

I verify that I am authorized to commit my organization and to make this application on behalf of the organization. I certify that the above information is correct and that the statements made herein, including all attachments and exhibits, are true and correct to the best of my knowledge. The submission of false information to MassCEC is subject to prosecution under the False Claims Law at M.G.L. c. 12, sections 5A – 5O. I understand that this application for Offshore Wind Company Certification for the 2023 Offshore Wind Tax Incentives Solicitation may be disqualified if it does not contain all required information. On behalf of the Applicant, I understand and acknowledge that all materials submitted as part of this application may be subject to disclosure under the Massachusetts Public Records Law.

Furthermore, I understand and acknowledge that I have followed the procedures set forth below for any documents that I believe may be confidential and proprietary in nature and that may fall within the parameters of MassCEC’s statutory exemption from the Massachusetts Public Records Law at M.G.L. c. 23J section 2(k); and that MassCEC’s receipt of such documents does not represent a finding by MassCEC or the Supervisor of Public Records that such documents fall within such exemption.

By signing below and submitting this Application to MassCEC, the applicant expressly authorizes the Massachusetts Department of Revenue to release, upon request, to MassCEC and any person or entity authorized to act on its behalf information contained on applicant’s tax filings relevant to the award applied for pursuant to this Application and/or granted by MassCEC. MassCEC agrees to keep such information confidential and to use such information solely for the purpose of evaluating this Application and administering the Program.

I acknowledge and agree that MassCEC has sole discretion to determine which applicants receive awards under the Program and which applicants are designated certified offshore wind companies. I understand that if MassCEC determines that if the applicant fails to substantially achieve the new state revenue, job growth and capital investment projections set forth in the certification proposal, or if the applicant engages in any act, omission, or misrepresentation that frustrates the public purpose of the Offshore Wind Industry Investment Program over the five-year period following certification, applicant’s certification, may be revoked.

I acknowledge and agree that if applicant is awarded a tax incentive from MassCEC, the awardee will be required to enter into an agreement with MassCEC to receive such award.

[Signature of Authorized Respondent]

[End of questions/fields]