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POLICY



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Just Wind: Designing a More Equitable Offshore Wind Industry

Incentivizing Equitable Benefits in BOEM's Lease Sale Auctions

Commonly Used Acronyms:

BOEM: Bureau of Ocean Energy Management

CBA: Community benefit agreement

DAC: Disadvantaged communities

DACBA: Disadvantaged community benefit agreement

EPAct: [Energy Policy Act of 2005](#)

OCSLA: [Outer Continental Shelf Lands Act](#)

OMB: Office of Management and Budget

ONRR: Office of Natural Resources revenue

EXECUTIVE SUMMARY

In line with the Biden-Harris Administration's whole-of-government approach to advancing environmental justice, the Bureau of Ocean Energy Management (BOEM) should:

1. Work with the Office of Management and Budget (OMB) to classify BOEM's offshore wind lease sale activities as a Justice40-covered program, by considering BOEM's lease auction "bidding credits" provided to developers as Justice40-covered federal investments; and
2. Modify the bidding credit system to ensure that at least 40 percent of benefits go toward disadvantaged communities in all future lease

sales.

BOEM is currently tasked with leasing federal waters for the development of offshore wind development through an auction process. Typically in its offshore lease sales, BOEM can consider a combination of a monetary bid from developers and non-cash “[bidding credits](#)” in determining the winner of the auction. Bidding credits are incentives offered by BOEM that act as a bonus on top of a developer’s cash bid, in exchange for committing to programs or initiatives such as investing in domestic workforce training.

The Biden–Harris Administration’s [Justice40 Initiative](#) has made it a goal that 40 percent of the benefits of certain federal investments go to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. However, BOEM’s bidding credits are currently not counted as a “[covered investment](#)” under the Justice40 initiative, creating a missed opportunity for the government to spread benefits from its offshore wind leasing activities to disadvantaged communities. By classifying bidding credits as a Justice40–covered Federal investment and modifying its bidding credit system, BOEM would ensure that its offshore wind leases bring benefits to disadvantaged communities in line with the Biden–Harris Administration’s desire to advance environmental justice across all federal agencies.

BACKGROUND

In 2021, the Biden–Harris Administration [announced](#) a target of deploying 30 gigawatts (GW) of offshore wind in the United States by 2030, enough to power 10 million homes, trigger more than \$12 billion per year in capital investment projects, and create tens of thousands of good-paying jobs in manufacturing, assembly, and construction. The Bureau of Ocean Energy Management (BOEM) is the agency tasked with leasing federal waters for the development of offshore wind development.

BOEM’s Legal Authority

Under the [Outer Continental Shelf Lands Act](#) (OCSLA), the Federal Government exercises exclusive control over the offshore lands in the Outer Continental Shelf, which begin 3 nautical miles from the shore baseline and extend to 200 nautical miles. The [Energy Policy Act of 2005](#) (EPAAct), which made amendments to the OCSLA, [grants](#) BOEM the “lead management authority for marine renewable ener-

gy projects on Federal offshore lands.” Unless BOEM determines that there is no competitive interest in developing a given site, it must [issue leases on a competitive basis](#).

Lease Auction Bidding Credits

BOEM’s ability to enact strict stipulations or mandates in its auctions for offshore wind area lease sales is limited by its authority under the OCSLA. However, under the Code of Federal Regulations [30 CFR 585.220\(a\)\(4\)](#) and [585.221\(a\)\(6\)](#), BOEM is authorized to incentivize certain non-monetary goals by using a multiple-factor auction format. Under this format, BOEM can consider a combination of a monetary bid and [bidding credits](#) in determining the winner of an auction for offshore leases. Bidding credits act as a bonus on top of a developer’s cash bid, with developers receiving credits in exchange for committing to certain programs or initiatives, such as investing in domestic workforce training.

BOEM used the multiple-factor auction format with bidding credits in the [Carolina Long Bay Area auction](#) in 2022, incentivizing developers to invest in domestic workforce training and supply chain development with up to a 20 percent bidding credit for the overall acceptable bid amount. For example, if a developer qualified for a 20 percent bidding credit and provided a \$50 million cash bid, their true offer price would be worth \$60 million. This is the sum total of \$50 million cash and \$10 million bidding credit (20 percent of \$50 million). The multiple-factor auction format allows for a combination of cash and bidding credits to represent a developer’s total bid. The expectation from BOEM is that the developer will choose to invest in domestic goods and services in exchange for a smaller monetary bid.

Executive Order 14008 and Justice40

[Executive Order 14008](#), Tackling the Climate Crisis at Home and Abroad, establishes a policy to promote environmental justice and stimulate economic opportunity for disadvantaged communities by investing in and building a clean energy economy and making environmental justice part of every federal agency’s mission. This executive order established the [Justice40 Initiative](#), making it a goal that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities that are “marginalized, underserved, and overburdened by pollution.”^{1,2} The [Climate and Economic Justice Screening Tool \(CEJST\)](#) defines and maps these disadvantaged communities for the purpose of informing how federal agencies guide the benefits of programs through the Justice40 Initiative.

The Justice40 Initiative has a goal to direct 40 percent of overall benefits of certain federal investments toward “disadvantaged communities,” defined as those that are marginalized, underserved, and overburdened by pollution. (White House)

In July 2021, the Director of the Office of Management and Budget (OMB), the Chair of the Council on Environmental Quality (CEQ), and the National Climate Advisor issued formal guidance, M-21-28, [Interim Implementation Guidance for the Justice40 Initiative](#) (hereinafter “Interim Guidance”). Section II.A of the Interim Guidance defines a “covered program”³ as one “that makes covered investment benefits in one or more of the following seven areas”:

- ▶ Climate change;
- ▶ Clean energy and energy efficiency;
- ▶ Clean transportation;
- ▶ Affordable and sustainable housing;
- ▶ Training and workforce development;
- ▶ Remediation and reduction of legacy pollution; and
- ▶ Critical clean water and wastewater infrastructure.

Furthermore, Section II.B of the Interim Guidance provides multiple categories that count as “covered investments,”⁴ including (among others):

- ▶ Federal financial assistance as defined at [2 CFR 200](#); and
- ▶ Direct payments or benefits to individuals.

In [2 CFR 200](#),⁵ “federal financial assistance means “assistance that non-Federal entities receive or administer,” including in the form of “non-cash contributions or donations of property.”

Therefore, according to the Interim Guidance, Justice40-covered programs include any programs that

provide federal financial assistance, including non-cash contributions or donations of property, in one or more of the 7 areas listed in Section II.A of the Interim Guidance (i.e., climate change, clean energy and energy efficiency, etc.). Justice40-covered programs also include those that provide benefits to individuals in one or more of these 7 areas.

US Department of the Interior and BOEM Justice40 Programs

Of the [65 covered programs](#) that the US Department of the Interior (DOI) lists under Justice40 as of August 2022, BOEM only has one covered program — The Alaska Native Science and Engineering Program — and does not currently recognize its wind lease sale activities as a Justice40-covered program. By not including offshore wind leasing activities under the Justice40 Initiative, BOEM and the Biden-Harris Administration are foregoing a key opportunity to spread benefits from offshore wind, such as access to competitive workforce training and education programs, community investments, and good-paying jobs, to disadvantaged communities.

RECOMMENDATIONS

Recommendation 1: BOEM should work with the Office of Management and Budget (OMB) to classify BOEM's offshore wind lease sale activities as a Justice40-covered program by recognizing bidding credits provided to developers as Justice40-covered federal investments.

BOEM's offshore wind leasing activities are not considered a Justice40 program because bidding credits are not currently recognized as "investments." By counting bidding credits as a "covered federal investment" under the Justice40 initiative, BOEM would create an opportunity for the government to spread economic benefits from its offshore wind leasing activities to disadvantaged communities.

Bidding Credits as Justice40-covered Federal Investments

Among other categories, the Justice40 [Interim Guidance](#) offers 2 specific categories that show how BOEM's bidding credits count as Justice40 "covered Federal investments."

First, the Justice40 [Interim Guidance](#) defines a covered investment as "Federal financial assistance as

defined at [2 CFR 200](#).” The code defines Federal financial assistance as “assistance that non-Federal entities receive or administer,” including in the form of “non-cash contributions or donations of property.” Per this definition, bidding credits from BOEM to developers (a non-Federal entity) in a wind lease auction could be considered as both a non-cash contribution (the credit) as well as a partial donation of property (the wind lease area). Thus, bidding credits should be considered Justice40-covered Federal investments under this definition.

In a second qualifying category, the Justice40 Interim Guidance defines a covered investment as “direct payments or benefits to individuals.” In the [2022 Carolina Long Bay Area auction](#), BOEM included a 20 percent bidding credit to incentivize developers to invest in workforce training and supply chain development, with a goal of generating more domestic jobs in the offshore wind industry. In the [2022 California proposed sale notice](#), BOEM introduced an additional 2.5 percent bidding credit for developers to establish community benefit agreements (CBAs) with impacted communities. According to the [Department of Energy](#), CBAs can include “commitments to hire directly from a community, contributions to economic trust funds, local workforce training guarantees, and more.” Therefore, because these bidding credits offered to developers would effectively result in jobs and other “benefits to individuals,” they should be considered a covered federal investment for Justice40 under the Interim Guidance.

BOEM Wind Lease Sales as a Justice40-covered Program

The Justice40 [Interim Guidance](#) provides 7 categories of investment benefits that qualify as covered programs, including 3 that apply to BOEM’s wind lease sales: “clean energy and energy efficiency,” “climate change,” and “training and workforce development.”

BOEM’s wind lease sales result in the deployment of clean energy (a covered program under “clean energy and energy efficiency”) and consequently, the reduction of greenhouse gas emissions (a covered program under the “climate change” category). Moreover, BOEM has [proposed](#) the use of bidding credits to incentivize establishing CBAs with impacted communities. BOEM is asking developers to form CBAs to promote and facilitate “expeditious and orderly development”⁶ of offshore wind farms on the outer continental shelf. This activity should also fall under both the “climate change” and “clean energy and energy efficiency” programs provided in the [Interim Guidance](#). Finally, the use of bidding credits for incentivizing investments in workforce training and supply chain development should fall under the category

of “training and workforce development” in the Interim Guidance’s list of Justice40–covered programs.

Next Steps

According to the [Interim Guidance](#), “Agencies should consult with OMB when determining whether their program is a covered program.” BOEM, through its Office of Budget and Program Coordination, should consult with OMB to demonstrate that offshore wind lease sales fall within the scope of the Justice40 Initiative. A draft qualitative list of example benefits of the program is included in Appendix B to support this request. Per the Interim Guidance, agency representatives should email EJ@omb.eop.gov to consult on the determination of covered programs.

Recommendation 2: In line with the Justice40 Initiative, BOEM should utilize bidding credits to support 40 percent of benefits going toward disadvantaged communities in all future lease sales. It can do this by either (a) modifying the bidding credit for workforce training and supply chain development or (b) providing additional bidding credits for establishing community benefit agreements with disadvantaged communities.

[Executive Order 14008](#) states that “40 percent of the overall benefits” of federal investments from covered programs should flow to disadvantaged communities. To keep in line with this goal, BOEM should modify the bidding credits offered to developers in future wind lease sales to incentivize a portion of benefits going toward disadvantaged communities. This brief proposes 2 options for modifying these bidding credits based on the bidding credit approaches and questions laid out in BOEM’s [2022 California proposed sale notice](#). (Appendix A: Operational Appendix, under “Determining Eligibility,” provides additional information on screening for disadvantaged communities.)

OPTION 1: BOEM could modify the bidding credit for workforce training and supply chain development to incentivize a portion of these investments going toward disadvantaged communities.

In both the [2022 Carolina Long Bay Area auction](#) and the [2022 California proposed sale notice](#), BOEM proposed a 20 percent bidding credit to developers for investments in workforce training and supply chain development. To achieve the Justice40 target, BOEM could split this bidding credit into 2 parts:

1 for general investments and 1 for targeted investments in disadvantaged communities.

Instead of the full bidding credit offered as a single bonus, 40 percent of the credit would be earmarked for workforce and supply chain investments made in disadvantaged communities to align with the Justice40 target. Making general investments in workforce training and supply chain development would only qualify for up to 60 percent of the bidding credit. If BOEM used the same 20 percent workforce training and supply chain development bidding credit proposed in the Carolina and California wind lease auctions, 8 percent of the bidding credit would be reserved for Justice40-aligned investments and 12 percent would be allowed for general investments, respectively.

This approach would most directly support Justice40 goals by incentivizing targeted investments in disadvantaged communities for 40 percent of the total bidding credits available for workforce training and supply chain development (40 percent of 20 percent bidding credits is 8 percent bidding credits). Figure 1 shows the current bidding credit framework on the left (based on the [California proposed sale notice](#)) and the proposed approach on the right.

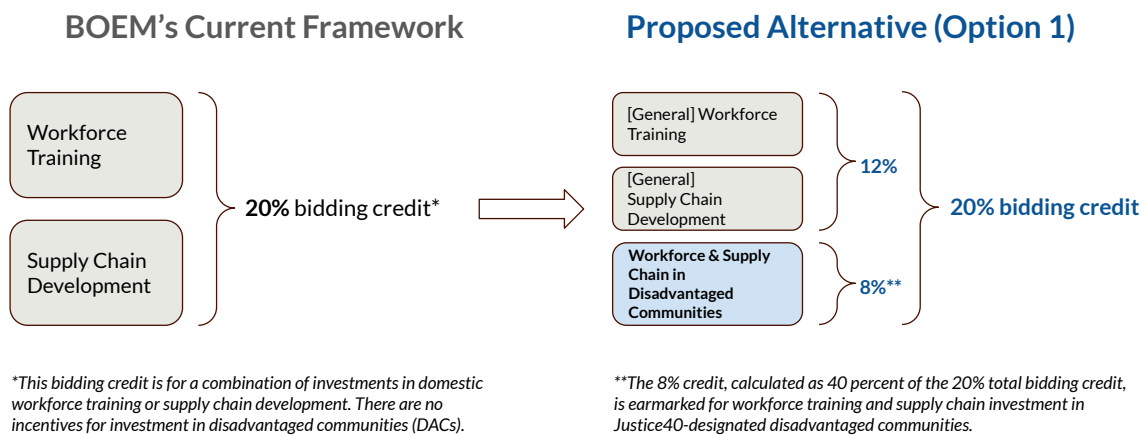


Figure 1:

Current bidding framework (left) and the proposed Option 1 framework (right).

BOEM should require that, to claim this bidding credit, winning bidders must make a financial contribution of at least 80 percent of the bidding credit cash value. BOEM already used such a provision in the [Carolina Long Bay auction](#) in May 2022. (This is further explained in Appendix A: Operational

Appendix, under “Financial Commitment for Bidding Credit.”)

OPTION 2: BOEM could create an additional bidding credit for establishing community benefit agreements (CBAs) with disadvantaged communities that may not be directly impacted by the development of the offshore lease area.

This second approach to integrating Justice40 principles into the lease auction process fits into the “potential additional credit” that BOEM explicitly considered and requested comments on in the May 2022 [California proposed sale notice](#).⁷

In the [California proposed sale notice](#), BOEM proposed a 2.5 percent bidding credit for commitments to establish a CBA “with a community or stakeholder group whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is directly impacted by the Lessee’s potential offshore wind development.”⁸ Communities that fit this definition of being “directly impacted” are essentially limited to fishing businesses, commercial and recreational boating users, and coastal communities that are economically dependent on these activities. It is important to ensure that these communities are fairly compensated for any impacts to which they are exposed. However, the language excludes disadvantaged communities that are not necessarily directly impacted by the offshore development, but that have been historically underserved or affected by environmental inequities, and that still stand to benefit from the major investment in offshore wind development. It is important to consider benefits to these communities, as the Interim Guidance notes that “President Biden is committed to securing environmental justice and spurring economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment.”⁹ Establishing CBAs is one key way to share the benefits of offshore wind with such disadvantaged communities.

To promote benefits in line with the Justice40 Initiative, BOEM could create an additional bidding credit for establishing CBAs with disadvantaged communities. To differentiate them from other CBAs, we propose calling these Disadvantaged Community Benefit Agreements (DACBAs). Among other benefits, such as community investment projects or compensation, developers could establish DACBAs to commit to workforce training, job creation, supply chain development, or community investment projects in disadvantaged communities. Bringing such benefits to disadvantaged communities could help build a larger coalition of supporters and mitigate potential opposition to offshore wind development, and in turn facilitate “expeditious and orderly development”¹⁰ of offshore wind farms on the

outer continental shelf, in line with OCSLA.

The figure below shows the current bidding credit framework on the left (based on the [California proposed sale notice](#)) and the proposed approach of Option 2 on the right. Option 2 uses a 2.5 percent DACBA bidding credit equal to the 2.5 percent bidding credit for CBAs, but BOEM should solicit feedback to determine the right amount to incentivize use of this bidding credit and to balance the benefits between impacted communities offshore and disadvantaged communities onshore.

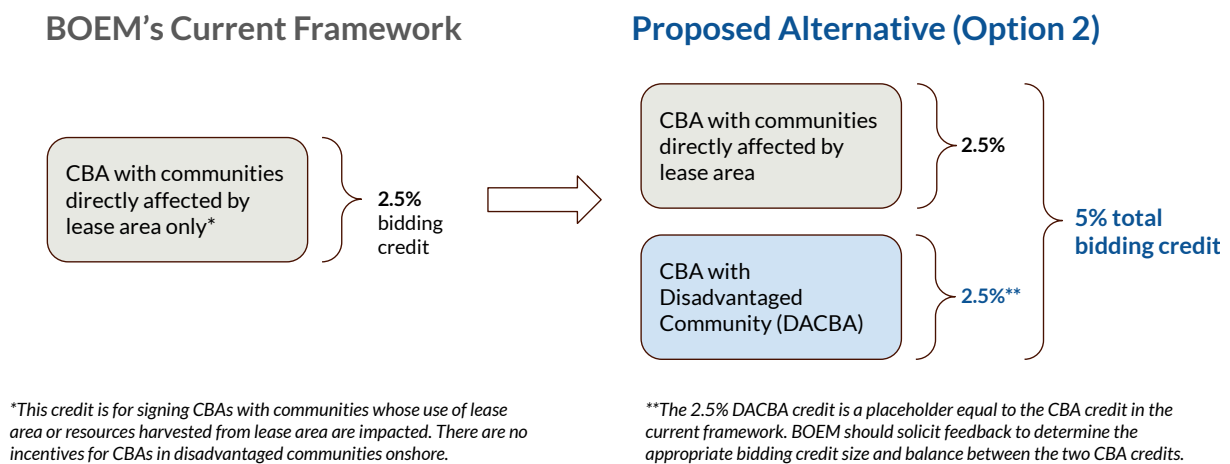


Figure 2:

Current CBA framework (left) and the proposed Option 2 framework (right).

To claim this bidding credit, BOEM should require that winning bidders make a financial contribution of at least 80 percent of the bidding credit cash value. BOEM already used such a provision in the [Carolina Long Bay auction](#) in May 2022 for the workforce training and supply chain development credit. (This is further explained in Appendix A: Operational Appendix, under “Financial Commitment for Bidding Credit.”)

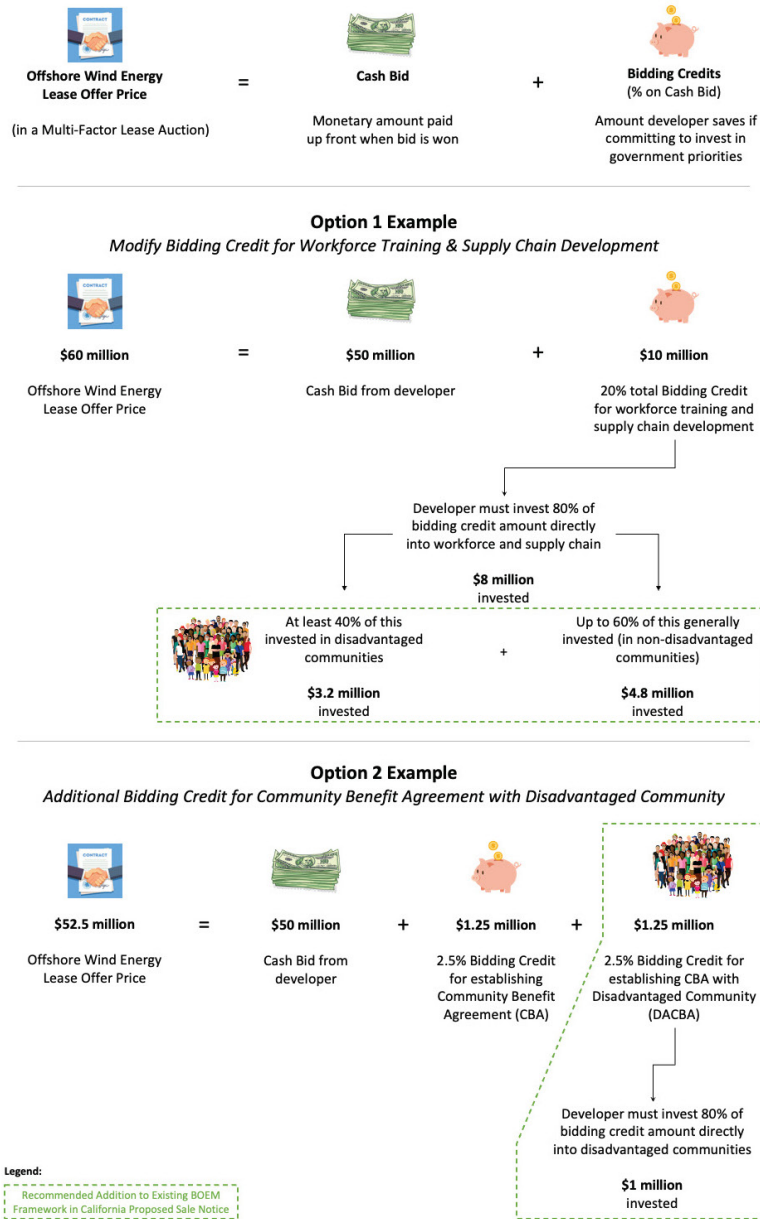


Figure 3: Infographic visualizing current bidding credit frameworks and proposed modifications to incentivize investment in disadvantaged communities.

Deciding Between the Bidding Credit Options

Each option to modify the bidding credits in BOEM's wind lease sales has advantages and disadvantages.

Difficulties in Tracking and Management

Option 1 more clearly meets the 40 percent criteria set forth by the Justice40 Interim Guidance, because it requires that 40 percent of the workforce training and supply chain development investment flow to disadvantaged communities in order to secure the full bidding credit. However, there may be challenges in tracking and partitioning developers' investments, and this approach may require additional administrative burden after the investments are made. (Appendix A: Operational Appendix shows further details on how to calculate the financial investments required to obtain the full bidding credit; see the section titled "Financial Commitment for Bidding Credit.")

For example, if a developer must make \$50 million in workforce training and supply chain investments in order to secure the full 20 percent bidding credit, at least \$20 million (40 percent of the \$50 million total) must be spent in disadvantaged communities. In this scenario the developer would get the full 20 percent bidding credit (12 percent for general investments, plus 8 percent for disadvantaged community-specific investments).

If, however, the developer spent the \$50 million total but only \$10 million in disadvantaged communities (half the committed amount, or 20 percent of the \$50 million, instead of the required 40 percent), then the developer should only be eligible for 4 percent, or half of the 8 percent bidding credit designated for disadvantaged communities. The developer would, however, get the 12 percent general bidding credit. In this scenario, the developer would get a 16 percent bidding credit in total (12 percent plus 4 percent). As a penalty, BOEM would need to recoup bid funds from the developer for not meeting the full investment commitment. (The methodology for this is included in the "Documentation and Enforcement" section in Appendix A: Operational Appendix.)

While such a methodology more closely tracks the Justice40 Initiative's goal of 40 percent of benefits flowing to disadvantaged communities, it also introduces another layer of complexity in the calculations. However, BOEM's timelines for the developer to furnish evidence and the available tools for determining eligibility (both described in Appendix A: Operational Appendix) should allow for these additional calculation steps to be done.

Option 2 follows the spirit of the Justice40 Initiative by incentivizing investment in community benefits in disadvantaged communities, but the downside is that it does not specifically calculate 40 percent of the total benefits. However, the advantage of this DACBA bidding credit is simplicity; it is easier for developers to provide evidence and documentation and for BOEM to track eligibility for the bidding credit. There are no proportional calculations to be done, unlike for Option 1.

Differences in Budget Impacts

For Option 1, there is no additional budget impact for BOEM or the Office of Natural Resources Revenue (ONRR), the payee for the wind lease sales, if BOEM chooses to use the same total level of bidding credit as proposed in previous lease sales (20 percent).¹¹ Option 1 merely splits the 20 percent into two partitions (for workforce training and supply chain development in general and disadvantaged communities), and the total bidding credit (reduced lease revenue) remains the same as in previous proposals.

Because Option 2 introduces a new and separate bidding credit, it may result in a slight decrease in lease revenue for ONRR. However, the net economic impacts may still be positive because the revenue lost will instead go directly to disadvantaged communities, spurring economic opportunities and securing environmental justice, in line with the Justice40 Initiative.

As the agency has done in the past with new lease stipulations, BOEM should include both options in its next set of proposed sale notices to solicit feedback from developers, communities, and other stakeholders through public comment. Feedback from the public will ultimately support BOEM in determining the appropriate final option(s) and bidding credit percentages to incentivize developers to advance the goals of the Justice40 Initiative.

CONCLUSION

The Biden-Harris Administration's ambitious offshore wind goals have the potential to create tens of thousands of jobs and billions of dollars of annual investment in the manufacturing supply chain, assembly, and construction. If directed appropriately, such investments can bring numerous benefits to disadvantaged communities that have long been marginalized, underserved, and overburdened by pollution.



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BOEM, under its authority to manage the outer continental shelf leasing process, is able to consider a combination of a monetary bid and non-monetary bidding credits in determining the winner of an offshore wind lease area auction. In line with the [Interim Implementation Guidance for the Justice40 Initiative](#), such bidding credits should be considered “covered Federal investments” that can benefit disadvantaged communities, and thus should fall under the Justice40 Initiative. In addition, following the Justice40 Interim Guidance, BOEM should make every effort to direct 40 percent of the benefits from these bidding credits toward disadvantaged communities that have long suffered from under-investment.

Appendix A: Operational Appendix

This appendix reviews operational details to enable BOEM to implement the above recommendations.

Determining Eligibility

BOEM and the lessee or developer can determine which communities count as disadvantaged and track these investments using the [Climate and Economic Justice Screening Tool](#) (CEJST). The lessee should propose and document its activities and track them using the CEJST, and BOEM should approve or disapprove.

The CEJST is a mapping tool created and updated by the Council on Environmental Quality (CEQ) that defines and maps disadvantaged communities for the purpose of informing how federal agencies guide the benefits of certain programs, including the Justice40 Initiative. The CEJST breaks down all US communities to the census tract level, and visually highlights those defined as disadvantaged communities.

In determining eligibility for bidding credits for workforce training and supply chain investments made in disadvantaged communities, or for bidding credits for signing disadvantaged community benefit agreements (DACBAs), BOEM can screen whether these investments were made within the geographic boundaries of a disadvantaged community, per the CEJST. Alternatively, BOEM may offer some latitude to the lessee if they can demonstrate that the majority of the benefits of their investment went to members of disadvantaged communities (e.g., if a supply chain facility is built in a non-disadvantaged community, but the majority of workers are hired from surrounding disadvantaged communities).

Pre-Lease Auction Requirements

BOEM should require that bidders provide a written conceptual strategy for the bidding credits, including how and how much they plan to invest in disadvantaged communities. This can be included as part of the bidder's financial form (BFF) submission once the final sale notice (FSN) is published.

Financial Commitment for Bidding Credit

For all bidding credits, BOEM should require that winning bidders make a financial contribution of at least

80 percent of the bidding credit cash value. BOEM used such a provision in the May 2022 [Carolina Long Bay auction](#) for the workforce training and supply chain development credit.

First, we present a simplified example in line with the Carolina Long Bay auction that assumes a 20 percent workforce training and supply chain development bidding credit. With an offer price of \$60 million, a winning bidder with a qualified bidding credit would receive a credit of \$10 million toward its winning bid in exchange for an \$8 million financial commitment to workforce training and supply chain development (the \$8 million financial commitment is 80 percent of the \$10 million credit).

Below is a calculation example of Option 1, splitting the workforce training and supply chain development bidding credit into two parts for general investments and disadvantaged community investments. As proposed, the general workforce training and supply chain bidding credit is capped at 12 percent (60 percent of 20), with the remaining 8 percent bidding credit (40 percent of 20) to be designated for investments in disadvantaged communities. This totals 20 percent bidding credit to the bidder. Similarly, the cash value of the bidding credit itself is split into 2 parts, representing 60 percent and 40 percent, respectively.

The bidding credit and subsequent financial commitment would be calculated as follows for a \$60 million offer price and use of the full 20 percent bidding credit (shown as the sum of 12 percent and 8 percent in the equation below):

$$\text{Cash Bid} = \left\{ \frac{\$60 \text{ million}}{1 + (0.12 + 0.08)} \right\} = \$50 \text{ million}$$

BIDDING CREDIT

$$\text{Total Bidding Credit} = \$60 \text{ million} - \$50 \text{ million} = \$10 \text{ million credit}$$

$$\begin{array}{l} \text{General Workforce Training/} \\ \text{Supply Chain Bidding Credit} \end{array} = \$10 \text{ million} * 0.6 = \$6 \text{ million credit}$$

$$\begin{array}{l} \text{Disadv. Comm. Workforce Training/} \\ \text{Supply Chain Bidding Credit} \end{array} = \$10 \text{ million} * 0.4 = \$4 \text{ million credit}$$

FINANCIAL COMMITMENT (INVESTMENT REQUIRED)

$$\begin{array}{l} \text{Winning Bidder's Workforce Training/} \\ \text{Supply Chain Financial Commitment} \end{array} = \$10 \text{ million} * 0.8 = \$8 \text{ million}$$

$$\begin{array}{l} \text{General Workforce Training/} \\ \text{Supply Chain Financial Commitment} \end{array} = \$8 \text{ million} * 0.6 = \$4.8 \text{ million}$$

$$\begin{array}{l} \text{Disadv. Comm. Workforce Training/} \\ \text{Supply Chain Financial Commitment} \end{array} = \$8 \text{ million} * 0.4 = \$3.2 \text{ million}$$

Documentation and Enforcement

BOEM should require lessees to provide evidence that they have made substantial progress in engagement with suppliers, training programs, disadvantaged communities, and any other relevant entities prior to submitting their first construction and operations plan (COP). The lessee should be required to provide documentation showing they have met the financial commitment no later than the submission to BOEM of the first facility design report (FDR) for the lease.

For enforcement and penalties, BOEM should follow the approach used in the [2022 California proposed sale notice](#). Receiving a bidding credit binds the lessee and all future assignees of the lease to the commitment made for the bidding credit. If, based on the documentation and evidence furnished, BOEM determines that the lessee or assignee has failed to satisfy the requirements of the bidding credit, “the amount corresponding to the bidding credit awarded would be immediately due and

payable to the Office of Natural Resources Revenue (ONRR) with interest,¹² with the underpayment interest rate determined by ONRR. Similarly, as proposed in the California proposed sale notice,¹³ at its sole discretion, BOEM could also extend the documentation deadlines beyond the COP or FDR stages.

Appendix B: Draft List of Benefits from Boem Offshore Wind Lease Activities for Justice40 Initiative

This appendix provides a draft qualitative list of types of targeted benefits to support BOEM's request to OMB to classify offshore wind lease activities as a Justice40-covered program. The Justice40 [Interim Guidance](#) states that “the determination of what constitutes a ‘benefit’ will vary by covered program” and that agencies are directed to deliver to OMB a “description of the types of benefits that result from the identified covered programs.”

The draft list below pulls examples from Table 1 in the [Interim Guidance](#), which provides examples of benefits of covered investments identified by the White House Environmental Justice Advisory Council (WHEJAC) and the White House Environmental Justice Interagency Council (IAC) “to be considered by agencies when determining the benefits of covered program.”

Table 1:

Example benefits for disadvantaged communities, adapted from Table 1 in the Justice40 [Interim Guidance](#).

Category	Example Benefits for Disadvantaged Communities
Climate Change	<ul style="list-style-type: none"> ▶ Reduction of greenhouse gas (GHG) emissions and local air pollutants ▶ Increased technical assistance and community engagement of disadvantaged communities
Clean Energy and Energy Efficiency	<ul style="list-style-type: none"> ▶ Deployment of clean energy, including renewable community energy projects
Training and Workforce Development	<ul style="list-style-type: none"> ▶ Increased participation in clean energy good job training and subsequent good job placement/hiring, including providing the free and fair chance to join a union and collectively bargain ▶ Increased participation in good job training programs that target participation from disadvantaged communities, including formerly incarcerated individuals and youth transitioning out of foster care ▶ Increased percentage of good job training programs within energy communities, such as those that include paid employment and that measure and report participant outcomes

The examples in Table 1 assume that BOEM uses bidding credits both for workforce training and supply chain development as well as for establishing disadvantaged community benefit agreements. The final target benefits list will depend on the specific bidding credits BOEM chooses to use to incentivize benefits to disadvantaged communities.

Appendix C: Examples of Similar Credit Models

The bidding credits offered by BOEM allow developers to save on total expenditure and do not impact an existing budget held by BOEM and approved by congressional authority. They are offered in exchange for developers committing a portion of their expenses toward supporting high-priority groups during the project period. Similar incentivization models have been introduced by varying government entities for a range of programs.

Bidding Credits for Auction by FCC

In 2019, the Federal Communications Commission (FCC) released a [Public Notice](#) establishing application and bidding procedures for auctioning “Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services.” This auction format offered bidding credits for proposals from “small businesses and consortia” and “rural service providers.” Bidders with small businesses were eligible to receive a 15% or 25% discount on their winning bids, depending on their annual gross revenues. Rural service providers with a limited number of subscribers were eligible to receive bidding credits subject to a \$10 million cap.

Tax Credits

According to [Bloomberg Tax](#), “The [F]ederal [G]overnment uses tax credits to incentivize corporate taxpayers to invest in certain types of projects that produce economic, environmental, or social benefits.” Thus, through both bidding credits and tax credits, instead of paying directly to the federal government the full cost of a project, developers are able to show good corporate citizenship and contribute to social goods and services.

Tax Credits for Renewable Energy Programs under the Inflation Reduction Act 2022

The [Inflation Reduction Act 2022](#) (IRA) includes both an extension of existing production tax credits (PTC) and investment tax credits (ITC) for wind, solar, hydropower, and geothermal projects, as

well as new “technology neutral” PTC and ITC for projects that generate electricity and yield zero greenhouse emissions. In order to make clean energy more accessible, the IRA introduced a series of bonus tax credits for renewable energy projects. To address environmental justice concerns, an additional 10% bonus tax credit is offered to developers who invest in projects located in low-income communities, and another 20% bonus tax credit is offered for projects that are located in low-income residential buildings or are part of low-income economic benefit projects.¹⁴

The Biden-Harris Administration has touted tax credits as being integral to “advancing Justice40” in its fact sheets for communities that are [overburdened communities](#), [rural communities](#), [Black communities](#), [Latino communities](#), and others.

Tax Credits under the Justice40 Initiative

Tax credits, which reduce the cost borne by renewable energy developers without affecting congressionally allocated government budgets, have been recognized as vehicles for advancing the Justice40 initiative.

According to the OMB interim guidance for Justice40, multiple categories count as “covered investments” by Federal Agencies¹⁵, including (among others): (a) federal financial assistance as defined at [2 CFR 200](#); and (b) direct payments or benefits to individuals.

Additionally, tax credits are recognized as Justice40 financing mechanisms in legislation passed at the state level, such as laws passed by [Delaware](#) and [South Carolina](#) for establishing their respective Justice40 Oversight Committees.

The below excerpt from Delaware’s resolution demonstrates the acceptance of tax credits as investments in communities.

WHEREAS, President Biden unveiled a plan to rebuild the infrastructure of the United States and the plan sets the target of delivering 40 percent of the overall benefits from the massive investment in clean energy and our infrastructure to disadvantaged communities; and

WHEREAS, through the use of tax credits, grants, and low-cost flexible loans, the President’s plan addresses racial and environmental injustice to invest in

communities disparately impacted by pollution and provide these communities with the benefits of clean energy investments; and

WHEREAS, many Delawareans see vast areas for improvement in the areas of housing, broadband access, and water systems throughout the State and active participation in the President's plan could help provide affordable housing, reliable and affordable high-speed Internet access, and clean drinking water to everyone in our State; and

WHEREAS, it is important to seize the opportunities provided through this plan and create a committee to locate and help organize disadvantaged communities to ensure that these communities derive the full benefit of these credits, grants, and loans to improve the overall quality of life in Delaware; and

WHEREAS, Delaware cannot afford to fall behind in the push for a cleaner and more just future.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 151st General Assembly of the State of Delaware, the Senate concurring therein, that the Justice Forty Committee be established to study and make findings and recommendations regarding environmental justice in this State.

Thus, bidding credits, following a similar logic and approach of tax credits, can also be seen as an investment under Justice40.

ENDNOTES

1. Hereinafter referred to as “disadvantaged communities”.
2. The White House, Justice40: A Whole-of-Government Initiative, accessed August 2022, <https://www.whitehouse.gov/environmentaljustice/justice40/>.
3. Shalanda D. Young and Gina McCarthy, Executive Office of the President, Office of Management and Budget, Memorandum for the Heads of Departments and Agencies, July 20, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.
4. *Id.*
5. Code of Federal Regulations, title 2 (2022): 200-200.1, [https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.1\(Federal%20financial%20assistance\)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.1(Federal%20financial%20assistance)).
6. US Code 43, §1332(3).
7. Bureau of Ocean Energy Management, *Proposed Sale: Pacific Wind Lease Sale 1 for Commercial Leasing for Wind Power on the Outer Continental Shelf in California*, May 31, 2022, 32443-32458, <https://www.regulations.gov/document/BOEM-2022-0017-0001>.
8. *Id.*
9. See Young and McCarthy, *supra* note 2.
10. See Code of Federal Regulations, *supra* note 5.
11. The 2022 Carolina Long Bay Area auction and 2022 California proposed sale notice both offered a 20 percent bidding credit for workforce training and supply chain development.
12. See US code, *supra* note 6
13. *Id.*
14. As summarized by the [Bipartisan Policy Center](#) under the New Clean Electricity Production Tax Credit (45Y) and New Clean Electricity Investment Tax Credit (48E).
15. See Young and McCarthy, *supra* note 2.