



**CENTRAL NEGROS ELECTRIC COOPERATIVE, INC.
THIRD PARTY BIDS AND AWARDS COMMITTEE
(CENECO TPBAC)**

Corner Gonzaga – Mabini Streets, Bacolod City

REFERENCE : **Bid Bulletin No. 10**
Invitation to Bid No. 01, Series of 2023

ISSUE DATE : **February 13, 2023**

FOR : **ALL BIDDERS**

SUBJECT : **ISSUANCE OF ADDITIONAL ITEMS IN THE MATRIX OF COMMENTS**

Please be informed that the following enquiries have been added in the matrix of comments.

Reference Document	Section or Page	Comments or Clarifications	Recommendations or Proposed Revision	TPBAC Comment
PSA 4.9.1	If the SUPPLIER's actual outage for the contract year exceeds total guaranteed outage hours, the SUPPLIER shall pay to the DU the Capacity Fee and Fixed O&M equivalent to the excess outage hours plus One Million Pesos (PhP 1,000,000.00) for every hour of excess. An excess of a fraction of one (1) hour shall be considered as an hour for purposes of this Section.	Will this provision be open for negotiation? If we go beyond outage allowance but we are able to provide RP will this still apply?		Only the amount of penalty is open for negotiation. The Supplier is still liable to pay penalty should outage hours exceed the allowance despite provision of replacement power.

PSA 1.1.34	<p>"Termination Notice" means a written notice, revocable only with the consent of both Parties, clearly stating that it is a notice of termination of this Agreement, issued by the relevant Party in accordance with and pursuant to Sections 14.2.2, 14.3.2, 14.4 or in other provisions of this Agreement providing for such termination notice specifying in reasonable detail the DU Default, SUPPLIER Default or other event giving rise to such termination notice;</p>	<p>Will the TPBAC consider to delete the line: "clearly stating that it is a notice of termination of this Agreement"</p>	<p>"Termination Notice" means a written notice, revocable only with the consent of both Parties, issued by the relevant Party in accordance with and pursuant to Sections 14.2.2, 14.3.2, 14.4 or in other provisions of this Agreement providing for such termination notice specifying in reasonable detail the DU Default, SUPPLIER Default or other event giving rise to such termination notice;</p>	<p>Ok. We will consider the proposed revision.</p>
PSA 2.3.1	<p>DU shall purchase the electricity to be generated by the SUPPLIER from the Power Plant throughout the duration of the Cooperation Period and subject to the terms and conditions of this Agreement; provided that DU shall have no obligation to purchase and/or accept delivery of electricity hereunder following the date on which a Termination Notice that is validly issued by the DU, in pursuant to a SUPPLIER's Default nor be required to pay the capacity or a portion thereof that is unavailable or that it cannot accept</p>	<p>Will the TPBAC consider amending the provision by changing the word "DU" to "Party"?</p>	<p>DU shall purchase the electricity to be generated by the SUPPLIER from the Power Plant throughout the duration of the Cooperation Period and subject to the terms and conditions of this Agreement; provided that DU shall have no obligation to purchase and/or accept delivery of electricity hereunder following the date indicated in a Termination Notice that is validly issued by a Party after a Party's default, nor be required to pay the capacity or a portion thereof that is unavailable or that it cannot accept.</p>	<p>Ok. We will consider the proposed revision.</p>

PSA 3.3.2	Supplier shall start the supply of electricity under this Agreement only. The effectivity of this Agreement shall be upon issuance of any provisional authority by the ERC. The SUPPLIER shall bill the DU using the rate indicated in said authority. The SUPPLIER shall make the necessary adjustments in accordance with the final approval of the ERC.	Will the TPBAC consider amending the phrase "The effectivity of this Agreement shall be..." to "Supplier shall start the supply of electricity under this Agreement only..." Reason: Effectivity is different from start of supply. A contract is effective upon signing in order for the parties to enforce rights.	Supplier shall start the supply of electricity under this Agreement only upon issuance of any provisional authority by the ERC. The SUPPLIER shall bill the DU using the rate indicated in said authority. The SUPPLIER shall make the necessary adjustments in accordance with the final approval of the ERC.	Ok. We will consider the proposed revision.
PSA 3.3.6	Subject to Section 4.4, in no case shall the contract be made effective without any approval, whether provisional or final, from the ERC.	Will the TPBAC consider replacing the phrase "the contract be made effective..." to "In no case shall Supplier begin the supply of electricity under this Agreement	Subject to Section 4.4, in no case shall Supplier begin the supply of electricity under this Agreement without any approval, whether provisional or final, from the ERC.	Ok. We will consider the proposed revision.
PSA 4.7.3	For every instance of failure to provide replacement power, the SUPPLIER shall pay a penalty amounting to One Hundred Thousand Pesos (PhP100,000.00) plus Distribution, Supply & Metering (DSM) and Reinvestment Fund for Sustainable Capex (RFSC) loss, wherein the latter 2 (DSM, RFSC) are equivalent to the opportunity cost arising from the failure to provide such replacement.	Kindly advise the legal basis for the imposition of this penalty.		Since the supplier fails to provide replacement power, CENECO will also fail to provide power to its consumers, therefore losing the opportunity to earn DSM and RFSC charges

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PSA 4.7.4	The parties agree that the replacement power rate shall be the actual price of replacement power or the prevailing Wholesale Electricity Spot Market (WESM) rate, whichever is lower but shall in no case exceed the Energy Regulatory Commission (ERC) approved tariff under this Power Supply Agreement.	Will this also apply to supply during outages?		Yes. This will also apply to scheduled and unscheduled outages as per our Terms of Reference.
PSA 4.10.3	If the outage hours stated by the SUPPLIER in its offer (guaranteed hours) is less than the allowed outage hours, Total Contract Cost shall be net of the Capacity Fee and Fixed O&M Reduction amount computed using the formula stated in Schedule 5.	Please define Total Contract Cost. Is this different from Contract Price?		Yes. Total Contract Cost is equal to the landed rate multiplied by the billing determinant. Contract Price refers to Electricity Fees per Schedule 4 of the draft PSA.
PSA 8.4	Limit of Liability. Notwithstanding anything to the contrary under this Agreement, SUPPLIER expressly agrees that under no circumstances shall the liability of DU to SUPPLIER for breach of contract, negligent or intentional act or omission or otherwise under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under	Will the TPBAC consider to amend this provision and make this mutual between the parties?	Limit of Liability. Notwithstanding anything to the contrary under this Agreement, the PARTIES expressly agree that under no circumstances shall the liability of BOTH PARTIES for breach of contract, negligent or intentional act or omission or otherwise under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under warranty, indemnity or	Ok. We will consider the proposed revision.


<p>warranty, indemnity or otherwise, exceed the sum of Five Million Pesos (P5,000,000.00) during the term of this Agreement, provided that the limitation on the liability of the DU under this Section shall not apply to Electricity Fees, NGCP charges and any other amount agreed by a Party to be payable by it to the other Party in accordance with the terms and conditions hereof, including interest thereon, which may be due and payable by either Party hereunder.</p>		<p>otherwise, exceed the sum of Five Million Pesos (P5,000,000.00) during the term of this Agreement, provided that the limitation on the liability of the DU under this Section shall not apply to Electricity Fees, NGCP charges and any other amount agreed by a Party to be payable by it to the other Party in accordance with the terms and conditions hereof, including interest thereon, which may be due and payable by either Party hereunder.</p>	
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This additional information shall be sent to the prospective Bidders' official electronic mail address identified in the Intent and Confidentiality Undertaking.

For further queries, please refer to:

CENECO TPBAC Secretariat
 Central Negros Electric Cooperative, Inc.
 Corner Gonzaga-Mabini Streets
 Bacolod City, Negros Occidental

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ENGR. NORMAN A. POLLENTE, MBA
 TPBAC Chairperson