

MATRIX OF COMMENTS

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REFERENCE DOCUMENTS	ITEM/SECTION	PROVISIONS	CLARIFICATION/ RECOMMENDATION/ SUGGESTION	NECA JUSTIFICATION/ COMMENTS
TOR	1.0 Type of Contract	In case of new power plants, they must be capable of supplying the entire requirement of NECA by 2023	<p>Item 1.0 in the Invitation to Bid (ITB) posted on April 25, 2023, states that "Power Supplier/Company shall submit its technical capability. Additional documents such as experiences and Certificate of Good Performance/Track Record with other customers may also be submitted." Correspondingly, submitting the aforementioned documents is not mandatory for a bidder. However, in the Bidding Documents, the requirements under the Technical Documents section contradict this, stating that "experiences, Certificate of Good Performance, and Track Record" are mandatory for ongoing projects, generation portfolio, and operating power plants.</p> <p>In the same item, the ITB also states that "in case of new power plants, they must be capable of supplying the entire requirement of NECA by 2023." The term "new power plants" is not explicitly defined in the ITB or the Bidding Documents. However, under the Technical Documents section, "new power plants" are associated with plants operating for less than five (5) years. Referring to the ITB, only the capability of supplying is required for new power plants, while the Bidding Documents do not include any provisions regarding the supplying capability of the new power plants.</p> <p>Considering the two arguments above, it can be inferred that:</p> <ol style="list-style-type: none"> The Bidding Documents are discriminatory towards new power plants. Although the ITB is comprehensive and attracts potential bidders from both new and operating power plants, there are no provisions specifically addressing the mechanics for new power plants in the Bidding Documents. Focusing solely on ongoing projects, generation portfolio, and operating power plants undermines the purpose of the ITB and the bid itself. The inconsistency between the ITB and the Bidding Documents creates confusion and misalignments between the two documents. <p>In light of the foregoing, we propose redefining "new power plants" as power plants that will begin and undergo the development phase in 2023 and providing separate Class A and Class B documents requirements to address the newly defined "new power plants".</p> <p>- For clarification: What time is the peaking time for Lot 2?</p>	<ol style="list-style-type: none"> Regarding the Technical Documents to be Submitted, if you are offering a new plant, you may submit Track Records and Certificate of Good Performance of your other power plants. This document is needed for the evaluation not only your power plants but also your company that you have an existing customer to the other power plants and to secure that NECA is not the first time customer of the bidder. For new plants, aside from TOR Item 18.0 Eligibility Requirements, please provide the following: <ul style="list-style-type: none"> • Availability of the Land (For lease or procured); • Certificate of Compliance from the ERC; • The company must be on the lists on Certificate of Endorsement of DOE to the ERC; • Certificate of Registration from SEC; • DENR (ECC, SLUP, FLAG, Foreshore Lease Agreement, etc.); • NGCP (System Impact Study, Facility Study); • LGU (Permits, Clearances); and • Gantt Chart for the construction of the plant; <ul style="list-style-type: none"> - For Geothermal: Maximum of 5 years - For Solar: Maximum of 3 years - For Wind: Maximum of 2 years - For Hydro: Maximum of 2 years - For Ocean: Maximum of 3 years Peaking requirements of NECA will start 6 P.M.
TOR	4.0 Contract Duration	The PSA shall take effect for a period of 15 years, unless earlier termination in accordance with the provision of the PSA	<p>- Can the PSAs be individually negotiated per coop?</p> <p>- Can we submit a proposal with a different cooperation period to give the electric cooperative a differentiated tariff?</p>	Each NECA Member Cooperative must have an individual Power Supply Agreement but the Power Supplier must enter into a non-discriminatory power supply agreement with all NECA Member Cooperatives. All PSAs must have the same terms and conditions.
TOR	7.0 Tariff Structure	For existing plants, the total bid for the CRF and Fixed O&M shall not exceed Php 1.50/kWh	<p>- For clarification, this provision only applies to existing plants. Does this mean that a difference CRF and Fixed O&M can be proposed by a New Plant (Unbuilt)?</p> <p>- For new power plants, what basis can be used for the computation of the Variable O&M?</p> <p>- Will the bid be VAT Inclusive or VAT exclusive?</p> <p>- Will the metering point be at the delivery point of the power plant providing the electricity?</p>	<ol style="list-style-type: none"> Yes, but NECA still aim to have a lower bid price. Depends upon the bidder on what will be the computation and composition of the Variable O&M. If you renewable, it is non-VAT, but if Conventional, it is VAT-inclusive. Based on the TOR, the Billing Metering Point is at the delivery point (plant gate) through NGCP Metering
TOR	8.0 Outage Allowance	Scheduled outages: 480 hours/year Unscheduled Outages: 240 hours/year	<p>- Can we ask for a different outage allowance per technology?</p>	<p>The Bidder can offer a different outage allowance but it will not exceed on the EC pre-determined timeline:</p> <ul style="list-style-type: none"> • Schedules Outages: 480 Hours • Unscheduled Outages: 240 Hours

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TOR	9.0 Force Majeure		<ul style="list-style-type: none"> - Can we include war and its global impact on the economy, property, lives, and logistics in this provision? This is based on the effects of the Russia - Ukraine war that we have experienced recently. - Can we include technical faults in the grid or distribution system of the NECA member as a force majeure? - Can we also include the condition that if NGCP cannot provide a grid connection to the power plant as a force majeure event? 	<p>1. No, as long as the power plant can generate and can supply the requirement of NECA, war and its global impact cannot be included on the Forced Majeure.</p> <p>2. Can be considered, based on the TOR, Item No. 9, Force Majeure, "NECA MEMBER COOPERATIVE shall not be required to make payments for any of the following:</p> <p>i. Unavailable contract Capacity</p> <p>ii. A capacity that it cannot accept, including transmission line limitation/outages"</p> <p>3. Grid Connections for the newly constructed Power Plants must secure by the bidder before the commercial operations. It is not included in Force Majeure but it is a requirement for the CO of the power plant.</p>
TOR	10.0 Replacement Power	Replacement power shall not exceed (4) years if the plant is not available from the date of delivery, otherwise, the same shall be a ground for termination of the contract.	- In support to the argument towards new power plants, Item No. 10 of the ITB provides that "Replacement power shall not exceed four (4) years if the plant is not available from the date of deliver, otherwise, the same shall be a ground for termination of the Contract". This provision clearly indicates that the NECA accepts replacement power for four (4) years. Thus, any power plants, whether at the beginning of its development phase or currently operating, can participate in the bid and provide the requirement of NECA.	Yes, as long it passes on the Eligibility Requirements for the new plant.
TOR	12.0 Regulatory Approval		<ul style="list-style-type: none"> - To clarify, instead of provisional authority, can we ask ERC For an absolute authority For the PSAs as this ERC decision is valid in the supreme court? - Can the NECA member and power supplier reach an agreement where if the winning rate in the bid is lowered by ERC, the NECA member and power supplier can divide the difference between the winning and approved rate? 	<p>1. No, Ecs is regulated by the ERC and all rates imposed by the Ecs to the MCOs must approve by the ERC.</p> <p>2. Based on the TOR, Item No. 12.0 Regulatory Approvals, "The resultant Power Supply Agreement shall become effective only upon approval of the Energy Regulatory Commission, provisional or otherwise. Power Supplier shall make the necessary adjustments in accordance with the final approval of the ERC. In the event that the ERC approved a rate lower than that agreed by the parties, the adjustment shall not be a ground for the termination of the Contract, but both parties shall meet and endeavor to resolve the same. At any rate, in no case shall the NECA Member Cooperative be made to shoulder any incremental difference resulting from ERC approval."</p>
TOR	18.0 Eligibility Requirements		- Since the TOR accepts a JVC as an eligible bidder, NECA should allow the experience of parties in the JV Company as the experience of the JV Company bidding for this project. Therefore, the reference of one party in the JV company be likewise accepted as a reference project in compliance with the eligibility requirements.	Based on the Instruction to Bidders, Item 8.7. "8.7. In case of JV or Consortium, the qualification of the Bidder may be obtained by pooling the qualification of each member of the JV or Consortium. Provided that the member of the JV or Consortium with the longest track record shall be taken as the track record of the Bidder (i.e., the number of operating years of each member shall not be added)."
TOR	28.0 Assignability	The Parties may not sell, assign, novate or otherwise transfer its right and obligation under the Agreement without prior approval of the other Party.	- Can we add the phrase "which will not be unreasonably withheld by the NECA Member" to the existing description in the TOR?	No.
Instruction to Bidders	8.1 e	Joint Ventures and Consortium with at least 60% of the Interest belongs to citizens of the Philippines	<ul style="list-style-type: none"> - For clarification: Does this mean that the NECA allows foreign partnerships with local companies provided that foreign ownership is limited to 40%? - Pursuant to Section 8.1(e) of the Bidding Documents, it is stipulated that a "Joint Ventures and Consortium duly organized under the laws of the Philippines, and of which at least sixty (60%) of the Interest belongs to citizens of the Philippines" must submit a duly notarized Joint Venture Agreement (JVA) together with a Board Resolution from the party's parent company guaranteeing full support to the Joint Venture (JV) and specifying the level of participation of partners/parties in the event they win the bidding and formalize the JV or a Project Company. <p>On December 13, 2022, the Authority of the Freeport Area of Bataan (AFAB) issued a power procurement through a Terms of Reference (TOR) entitled "Delivery of Generated 10MW Renewable Energy to AFAB from a Solar Rooftop Facility". Notably, the TOR contains significant provisions under the JVA section that can be deemed as a precedent to the NECA bid. Specifically, the JVA section of the AFAB TOR asserts that in the absence of a JVA, a duly notarized statement from all potential joint venture partners stating that they will enter and abide by the provisions of the JVA in the event that the project is awarded.</p> <p>In light of the aforementioned precedent, we propose that the JVA provision in the Bidding Documents be amended accordingly. Instead of requiring bidders to provide a duly notarized JVA, a duly notarized statement from all potential joint venture partners confirming their intention to enter and adhere to the provisions of JVA should be deemed sufficient. The duly notarized JVA must then be submitted on or before the joint application of the Power Supply Agreement (PSA) for Energy Regulatory Commission (ERC) approval.</p>	Based on the Instruction to Bidders, Item 8.1.e. "e) Joint Ventures and Consortium duly organized under the laws of the Philippines, and of which at least sixty (60%) of the interest belongs to citizens of the Philippines provided they have submitted a duly notarized Joint Venture Agreement with a Board Resolution of party's Mother Company guaranteeing its full support to the JV and clearly stating the level of participation of partners/parties in case they win the bidding and formalize the JV or a Project Company."

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Instruction to Bidders	8.2 Eligible Bidders	The bidder must have a power plant connected to the luzon-visayas grid	- If NECA allows a JV Company with foreign partnership, NECA should also accept as reference the operating power plants located overseas. It will be unfair to disqualify a bidding JV Company with operating power plants overseas yet clasifies a JV Company with ownership as eligible to bid.	No, based on the Instruction to Bidders, Item 8.1.e. "e) Joint Ventures and Consortium duly organized under the laws of the Philippines, and of which at least sixty (60%) of the interest belongs to citizens of the Philippines provided they have submitted a duly notarized Joint Venture Agreement with a Board Resolution of party's Mother Company guaranteeing its full support to the JV and clearly stating the level of participation of partners/parties in case they win the bidding and formalize the JV or a Project Company." Item 8.2. "8.2. The Bidder must have a power plant connected to the Luzon-Visayas Grid which has an available and dependable capacity no lesser than the requirement of NECA. The full contracted capacity required by NECA must be sourced from the said power plant."
Instruction to Bidders	8.4 Eligible Bidders	Bidders must submit copies of COC issued by ERC	- For bidders with foreign partners for their JV Company and with operating power plants overseas, local permits and documents are not relevant. Requesting NECA to allow international documents equivalent to the local requirements as proof of eligibility.	And also, NECA consider power plant coming from Mindanao.
Instruction to Bidders	8.7 Eligible Bidders	the qualification of the bidder may be obtained by pooling the qualification from each member of the JV or consortium	- These requirements imply that operating power plants overseas by a foreign party of the JV Company can be accepted as proof of eligibility.	
Instruction to Bidders	14.2.2 Technical Documents	Matrix of Bidder's Power Plants/Matrix of Bidders Customers	- NECA to allow foreign power plants and foreign customers to be submitted for compliance	
Instruction to Bidders	14.2.2 Technical Documents	Copy of COC from DOE, Service Contracts from DOE	- The definition of "New Power Plants" as spelled out in the Terms of Reference is not consistent with the Bid Documents. In the terms of reference, bidders are allowed to build a power plant to supply the requirements but in the bid documents, the new power plant is defined as an operating power plant with less than 5 years of operation. There should have been clarification from the very beginning prior to the payment of bid documents fee because disqualifying a bidder on account of an inconsistent definition is discriminatory. - We reiterate our comments from item 8 of the Instruction to bidders	1. Existing - for plants that are existing (more than 5 years in operation), and; New - non-existing plants that is for construction or under construction. 2. For Eligibility Requirements for the new plant, please refer to Bid Bulletin No. 04 with Annex A
Instruction to Bidders	17.2 Technical Proposal	Technical documentary requirements	- New plants still to be constructed is allowed to participate, the technical documentary requirements cannot be met. We suggest that NECA develop a separate technical documentary submission for New Power Plants to satisfy and replace the required technical proposal. - The technical requirements are leaning towards existing power plants. We reiterate our proposal to NECA for bidders with new power plants to submit a different technical proposal.	For Eligibility Requirements for the new plant, please refer to Bid Bulletin No. 04 with Annex A
Instruction to Bidders	17.3 Technical Proposal	Generation portfolio	- We reiterate our comments as stated in item 18 of the eligibility requirements	Based on the Instruction to Bidders, Item 8.7. "8.7. In case of JV or Consortium, the qualification of the Bidder may be obtained by pooling the qualification of each member of the JV or Consortium. Provided that the member of the JV or Consortium with the longest track record shall be taken as the track record of the Bidder (i.e., the number of operating years of each member shall not be added)."
Instruction to Bidders	33.2 Performance Security	5% of the winning bid proposal multiplied to 8760 for both Lot 1 and Lot 2	- The performance security should only be multiplied to 1460 hours per year instead on the whole 8760 since Lot 2 will only supply power for 4 hours per day.	Yes

ENGR. ROEL F. SAGLADO
NECA TPBAC Chairman