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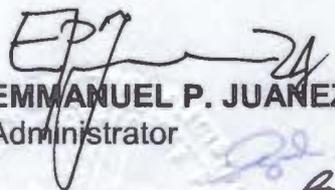
TO : ALL ELECTRIC COOPERATIVES

SUBJECT : DOE's Department Circular No. DC2021-09-0030

In compliance to DOE Department Circular No. DC2021-09-0030, entitled "**Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market**" together with **Annex "A"** as Minimum Requirements for Application of Certificate of Exemption and **Annex "B"** as Standard Template for Terms of Reference (TOR) – (Minimum Terms and Conditions), all ECs are advised to be guided accordingly in the conduct of its CSP in power supply procurement as contained in the Supplemental Provisions for DOE DC2018-02-0003 as contemplated under DOE DC2021-09-0030.

Correspondingly, a revised Guideline will be issued by NEA to this effect.

Thank you for your usual cooperation and compliance.


EMMANUEL P. JUANEZA
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION
Office of the Administrator

NEA-0A268309



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC 2021- 09-0030 #

AMENDING CERTAIN PROVISIONS OF AND SUPPLEMENTING DEPARTMENT CIRCULAR NO. DC2018-02-0003 ON THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT BY THE DISTRIBUTION UTILITIES OF POWER SUPPLY AGREEMENT FOR THE CAPTIVE MARKET

WHEREAS, Republic Act (RA) No. 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA), Section 2 (b) and (c), declares that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market. Furthermore, Section 2 (f) of the EPIRA declares that it is also the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37 (p) of the EPIRA mandates the Department of Energy (DOE) to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA. In view of such mandate, the DOE has issued Department Circular Nos. DC200401-001 and DC2015-06-0008, requiring the conduct of a Competitive Selection Process (CSP) for Distribution Utilities (DUs) in off-grid areas and mandating all DUs to undergo CSP in the procurement of Power Supply Agreements (PSAs) for their captive market, respectively. The mandate of the DOE to issue rules and regulations to implement the EPIRA has recently been reaffirmed by the Supreme Court in its Decision in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission, et al.* (G.R. No. 227670, 3 May 2019);

WHEREAS, Rule 11 or the *Cross Ownership, Market, Abuse and Anti-Competitive Behavior* Section 5 (b) or the *Limits on Bilateral Supply Contracts by a Distribution Utility*, under the Implementing Rules and Regulations (IRR) of the EPIRA states that no DU shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an Affiliate engaged in generation, but such limitation shall not prejudice contracts entered into prior to the effective date of the Act. This limitation shall apply regardless of whether demand is expressed in terms of capacity or energy;

WHEREAS, RA No. 11234 or the *Energy Virtual One-Stop Shop (EVOSS) Act* established an online platform, under the supervision of the DOE, for and among others government bureaus, offices, and entities involved in the permitting process of power generation, transmission, or distribution projects in accordance with their respective processes and procedures within a strict time frame using published standards;

WHEREAS, on 1 February 2018, the DOE issued DC No. DC2018-02-0003 aimed to ensure transparency and competitiveness in the conduct of CSP through wide

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dissemination of bid opportunities to ensure participation of all eligible and qualified generation companies;

WHEREAS, the electric power industry participants have identified and recommended various improvements in the policy, thereby, necessitating amendments of the CSP Policy in order to ensure its efficiency and effectiveness;

WHEREAS, the DOE recognizes that there are other power supply procurement modalities in providing for the requirements of the consumers that will ensure competition and transparency in the procurement of PSA;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues and promulgates the following amendatory and supplementary provisions to DC No. DC201802-0003 in the conduct of CSP.

SECTION 1. Section 2 (*Coverage*) of DC2018-02-0003 shall be revised to read as follows:

SECTION 2. SCOPE, APPLICATION AND EXEMPTION FROM CSP.

2.1. SCOPE AND APPLICATION.

2.1.1. This Circular shall apply to all DUs and Power Suppliers in the procurement of electric power supply.

2.1.2. All PSAs shall be procured through CSP, consistent with the latest and duly reviewed Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP) and consistent with the principles enshrined in Section 1 of DC2018-02-0003 and the observance of the principle of technology neutrality.

2.2. EXEMPTION FROM CSP.

2.2.1 The following instances shall warrant a Certificate of Exemption from the conduct of Competitive Selection Process (COE-CSP) from the DOE:

2.2.1.1. Any generation projects funded by grants or donations, and will become fully-owned, operated, and controlled by the DU within its franchise area, subject to ownership and market-share limitations as provided under relevant laws and issuances. The DU may be allowed to infuse internally generated funds; *Provided*, that the amount shared by the DU shall not exceed thirty percent (30%) of the total project cost excluding taxes to be paid by the DU; *Provided also*, that the generation project or facility shall be structurally and financially unbundled from the DU's business segment such that the generation rate from such project or facility can clearly be distinguished from the distribution rates of the DU; *Provided finally*,



that the generation project shall not be transferred or assigned to an affiliate or subsidiary Power Supplier of the DU.

- 2.2.1.2. Negotiated procurement of emergency power supply wherein the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year, and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC) upon the issuance and within the effectivity of the COE-CSP; *Provided*, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and solicited proposal from at least one (1) power supplier for EPSA to address the emergency situation and to avert and/or mitigate its consequences, and the offer/s from the available Power Supplier/s shall be attached in the request for COE-CSP; *Provided also*, that the procurement of emergency power supply shall be not be entitled to any form of subsidy. *Provided finally*, that the rate shall be equivalent to or lower than the latest ERC-approved generation tariff for same or similar technology in comparable areas.
- 2.2.1.3. Any generating plant to be embedded in the DU, utilizing indigenous energy resources in the franchise area of the DU, subject to ownership and market-share limitations as provided under relevant laws and issuances, unless it intends to sell generated power outside of the embedded area, in which case, it shall undergo CSP with respect to its excess power. The size of the generation plant shall have a maximum capacity of 10 MW per Luzon DU and 5 MW per Visayas and Mindanao DU.
- 2.2.1.4. The provision for power supply by the National Power Corporation (NPC) in off-grid areas prior to and until the entry of New Power Providers (NPP) and in emergency circumstances, in which case, a copy of the PSA between the Electric Cooperative (EC) and the NPC shall be submitted to the DOE and the National Electrification Administration (NEA), in case of ECs.
- 2.2.1.5. The provision for power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation or its successors-in-interest through bilateral contracts for the power produced from the undisposed generating assets and independent Power Producer contracts. Request for exemption must be submitted to the DOE at least three (3) months prior to the expiration of the Contract of Supply of Electric Energy (CSEE) or intended cooperation period. Upon its execution, the DU or EC shall furnish the DOE and NEA, respectively, with a copy of the CSEE between the DU and the PSALM.

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- 2.2.1 The COE-CSP shall be issued by the DOE within thirty (30) calendar days, subject to the complete submission of the requirements as provided in Annex "A". Any extension/renewal of the COE-CSP under Sections 2.2.1.4 and 2.2.1.5 shall be subject to the approval of the DOE.
- 2.2.2 For EPSAs contemplated under Section 2.2.1.2, the grant of the COE-CSP authorizes the DU to immediately implement the EPSAs executed by virtue of such certificate, without prejudice to the evaluation and final decision of the ERC on the application for the approval of such EPSAs.
- 2.2.3 The DOE shall furnish the NEA, in the case of ECs, the NPC and the PSALM, as the case may be, with a copy of the COE-CSP issued in favor of the requesting DU.

SECTION 2. Section 3 (*Definition of Terms*) of DC2018-02-0003 shall be amended and supplemented to read as follows:

SECTION 3. DEFINITIONS OF TERMS.

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- 3.8. '**Competitive Selection Process**' or '**CSP**' refers to the process wherein a Power Supplier or, in the case of off-grid areas, a NPP is chosen to supply electric power requirements of a DU through transparent and competitive bidding or alternative mode of procurement undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation criteria adopted by the DUs.
- 3.13. '**Emergency Power**' refers to the power required by the DU in the event that a DU's actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, and such shortfall cannot be addressed through any reasonable means and cannot be supplied by the Wholesale Electricity Spot Market (WESM), subject to the final determination by the DOE.

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- 3.28 '**Certificate of Posting**' or '**COP**' refers to the certificate issued by the DOE which manifests that the relevant bidding documents regarding the specific CSP of a DU is allowed to be posted in the DOE CSP E-based Portal.
- 3.29. '**Energy Virtual One-Stop Shop**' or '**EVOSS**' refers to an online system that allows the coordinated submission and synchronous processing of all required data and information, and provides a single decision-making portal for action on applications for permits and/or certification necessary for, or related to, an

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application of a proponent for a new generation, transmission, or distribution projects.

- 3.30. **'Force Majeure' or 'Fortuitous Event'** refers to any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable on the part of the DU, and is beyond the will, control, participation and influence of the DU.

This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent or threatening actions. It may likewise pertain to any analogous event that may relate to a power system emergency that shall affect the continuity of delivery of power by the DUs.

- 3.31. **'Indigenous Energy Resources'** refer to any kind of extraction of energy products from natural resources within the franchise area of the DU to a usable form.
- 3.32. **'New Technology'** refers to a technology that is novel or a novel use or arrangement of existing technology that has not yet been commercially operating or applied in the country upon effectivity of the Circular. Such technology, whether in whole or in part, is compliant to international test standards in the power generation industry.
- 3.33. **'Power Supplier'** refers to any entity recognized by the ERC to: (a) sell, broker, market or aggregate electricity to DUs, and/or (b) own and operate facilities used in the generation of electricity.
- 3.34. **'Solicited Proposals'** refer to power supply proposals submitted by Power Suppliers to a DU, in response to a solicitation or request issued by the latter based on its final Terms of Reference, to supply electric power for the DU's baseload, mid-merit, and/or peaking requirements.
- 3.35. **'True Cost of Generation Rate' or 'TCGR'** refers to the full efficient cost of generation power in an area.
- 3.36. **'Unsolicited Proposal' or 'USP'** refers to a power supply proposal submitted by a Power Supplier to a DU, which is not in response to a solicitation or request issued by the latter, to undertake a PSA with the DU. To the extent practicable, without fault of the DU, and allowed by the EPIRA and this Circular, such proposal may fully cover the uncontracted requirement of the DU, pursuant to its final and reviewed PSPP.

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SECTION 3. Subsection 4.2 is amended, and additional provisions are included in Section 4 (*DDP and the PSPP*) of DC2018-02-0003:

- 4.1. xxx xxx xxx
- 4.2. The PSPP shall contain the following:
 - 4.2.1. Historical data on peak demand, supply contract, energy sales and energy purchase;
 - 4.2.2. 10-year monthly peak demand forecast; energy sales; existing contracts (expiration);
 - 4.2.3. Committed energy and demand for CSP and its load factor computation;
 - 4.2.4. Currently approved TCGR for Off-Grid DUs;
 - 4.2.5. Projected Load Factor or Load Profile;
 - 4.2.6. Distribution Impact Study/Load Flow Analysis to serve as basis of the prior TOR;
 - 4.2.7. Current supply and demand status of the DU;
 - 4.2.8. Indicative schedule for CSP taking into consideration the required construction period in the case of new generation plants; and
 - 4.2.9. And any other information that the DOE may require.
- 4.3. xxx xxx xxx
- 4.4. The Third Party Bids and Awards Committee (TPBAC), Joint TPBAC or Third Party Auctioneer (TPA), (collectively referred to as "TPBAC/TPA"), or its authorized representative shall submit the PSPP, consistent with the latest and reviewed DDP, which shall be uploaded in the DOE CSP E-based Portal.
- 4.5. The DU shall furnish the ERC with a copy of the DDP as reference for its review and approval of respective PSA applications.

SECTION 4. Section 5 (*Third Party Bids and Awards Committee*) of DC2018-02-0003, is revised to read as follows:

SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE

- 5.1. Third Party Bids and Awards Committee (TPBAC).



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- 5.1.2.3. One lawyer;
 - 5.1.2.4. One finance officer or accountant that has knowledge on electricity pricing; and
 - 5.1.2.5. One Technical person, or a person with knowledge and/or experience with any local or international competitive bidding procedures.
- 5.1.3. One of the representatives mentioned in Sections 5.1.2.3, 5.1.2.4 and 5.1.2.5 shall represent the DU.
- 5.1.4. In case the DU fails to find any qualified members, as specified in Sections 5.1.2.3, 5.1.2.4 and 5.1.2.5, after presenting proof of the unavailability of these professionals, the TPBAC may designate captive customer members with knowledge/experience in the fields of accounting, economics, finance, law, engineering or procurement, as may be necessary to complete the composition of the TPBAC.
- 5.1.5. For all DUs, the selection process of the representatives of the captive customers to the TPBAC shall be submitted to the DOE for approval. A registered customer of a DU as the case maybe, may qualify as a member of the TPBAC; *Provided*, That such person is not directly or indirectly employed by the DU, or has not been engaged by the DU in any capacity within one (1) year from the conduct of the CSP, or is not related, within the fifth degree of consanguinity or affinity, to any director or officer of the DU, or that such person is not in any way engaged, affiliated or related to any power supplier either indirect or directly connected.
- 5.1.6. The Board of Director (BOD) may intervene in the conduct of the CSP upon justifiable and reasonable ground(s).

The BOD reserves the right to reject any and all bids, to declare a failure of bidding or not to award the contract in the following situations: (1) if there is a *prima facie* evidence of collusion between the TPBAC and any of the bidders, or if the collusion is between or among the bidders themselves, including any act which restricts, suppresses or nullifies or tends to restrict, suppress, or nullify competition; (2) if the TPBAC is found to have failed in following the prescribed bidding procedures; or, (3) any justifiable and reasonable ground where the

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award of the contract will not redound to the benefit of the consumer-members, subject to the approval of the DOE.

5.1.7. The Chair and the Vice Chair shall be selected by the members of the TPBAC/TPA.

5.1.8. A quorum of the TPBAC/TPA shall be composed of a simple majority of all members of the TPBAC/TPA; and

5.1.9. Matters requiring TPBAC/TPA's resolution shall require the majority votes of all the members present in the TPBAC/TPA meeting, there being a quorum.

5.2. TPBAC/TPA Technical Working Group (TWG) and Secretariat

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5.2.6. The Secretariat is required to make and keep a complete record of the proceedings and unedited video recordings of the Pre-Bid Conference and Bid Opening, as part of the DU and TPBAC/TPA records.

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5.5. EVOSS Application of TPBAC/TPA.

The following shall be submitted to the DOE, via EVOSS, as a requisite for the approval of the selection process of the TPBAC/TPA:

5.5.1. Letter of request addressed to the DOE Secretary, attention to the Undersecretary for Power and the Director of Electric Power Industry Management Bureau.

5.5.2. Selection process to be adopted by the DU in nominating the two (2) captive customer representatives to the TPBAC/TPA to include the following:

5.5.2.1. Criteria in selecting the two (2) captive consumer representatives;

5.5.2.2. Qualification for the two (2) captive consumer representatives; and

5.5.2.3. Documentary requirements to be submitted by interested applicant to captive customer representation in the TPBAC (*i.e.*, Template of Letter of Intent of Applicant, Template of



Resumé of Applicant and other documents as required by the DU).

5.5.3. DU Board Resolution, Secretary's Certificate or any equivalent document approving the selection process of the two (2) captive customer representatives to the TPBAC/TPA.

5.5.4. Memorandum of Agreement in case of Aggregated DUs intending to convene a Joint TPBAC.

5.5.5. In any case, if clarification or additional documents is deemed necessary, the DU shall have three (3) calendar days to comply. Otherwise, the DU's application shall be terminated by the EVOSS system. Consequently, the DU shall submit again all relevant and necessary documents for the approval of the selection process being applied for.

SECTION 5. Subsection 6.3, Section 6 (*Third Party Auctioneer*) of DC2018-02-0003 is amended to read as follows:

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6.3. The DOE shall issue the guidelines for the accreditation of TPA within one hundred twenty (120) calendar days upon effectivity of this Circular.

SECTION 6. Subsections 7.3 until 7.7 of Section 7 (*CSP Observers*) of DC2018-02-0003 shall be amended to read as follows:

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7.3. CSP Observers shall not participate in the proceedings and have no right to vote.

7.4. CSP Observers shall be given invitations in writing and transmitted formally through any available modes at least seven (7) working days before the date of the procurement stages.

7.5. The invitations to the CSP Observers shall be extended in all of the following stages of the CSP: Pre-bid Conferences, Submission and Opening of Bids, Bid Evaluation, Post-qualification, Awarding, and Contract Signing.

7.6. CSP Observers shall be allowed unrestricted access to the following documents upon their request: (a) minutes of TPBAC/TPA meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) video recording of CSP proceedings; (e) opened proposals; (f) draft PSA template; (g) Bid Documents and other related documents.

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- 7.7. CSP Observers may submit to the TPBAC/TPA their written comments and recommendations within seven (7) working days from the CSP activity or from receipt of the documentation of the proceedings.
- 7.8. The absence of CSP Observers will not nullify the CSP proceedings.
- 7.9. CSP Observers may request from the DU the result of the bidding and other pertinent documents related to the conduct of the CSP proceedings; *Provided*, That the request shall be made before the approval of the ERC of the PSA.

SECTION 7. Section 8 (*Competitive Selection Process*) of DC2018-02-0003 is revised in the following manner:

SECTION 8. COMPETITIVE SELECTION PROCESS

A PSA shall be awarded to a Power Supplier that will supply the whole or a portion of the electric power requirements of a DU through a transparent (A) **Competitive Public Bidding**; or (B) **Alternative Mode of Procurement**, to be undertaken by a DU or by Aggregated DUs, subject to the conditions and requirements provided for in this Circular.

The DUs shall comply with the standard procedures, documents and forms in the procurement of power supply for their Captive Market as provided in this Circular.

A. COMPETITIVE PUBLIC BIDDING

8.1 Preparation of Bid Documents

The TWG of the TPBAC/TPA shall prepare the Bid Documents, which shall be composed of the following:

- 8.1.1. The TOR based on the recent and reviewed PSPP submission shall, at the minimum, contain the following information as provided in Annex "B";
- 8.1.2. The Invitation to Bid shall, at the minimum, indicate the following:
 - 8.1.2.1. Cooperation Period/Contract Year;
 - 8.1.2.2. Demand and Energy for CSP;
 - 8.1.2.3. Eligibility Requirements;
 - 8.1.2.4. Schedule and Deadlines from the issuance of COP; and

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8.1.2.5. TOR.

8.1.3. The Instruction to Bidders, shall contain, at the least, the following provisions:

8.1.3.1. Corporate Profile of the bidders;

8.1.3.2. Technical Proposal's requirements;

8.1.3.3. Financial Proposal's requirements;

8.1.3.4. Method and Criteria for evaluation;

8.1.3.5. Bidding Procedure;

8.1.3.6. Awarding, Signing of Contract, and Notice of Implementation;

8.1.3.7. Acceptable Form of Bid and Performance Securities;

8.1.3.8. Proposed Timelines or Milestones;

8.1.3.9. PSA Template;

8.1.3.10. Notarized Statement attesting to the information submitted for the bid;

8.1.3.11. Protest Mechanism; and

8.1.3.12. Other documents required and mandated by any government agencies.

8.2. Review of the TOR, draft Instruction to Bidders, Supplemental/Bid Bulletin and other related documents.

The DOE shall review the following prior to the issuance of a COP for the publication of Invitation to Bid. In the case of ECs, this shall be submitted to the DOE through the NEA, which shall conduct the preliminary review and make its recommendations to the DOE:

8.2.1. The TOR, if consistent with the CSP Policy and standards; and

8.2.2. Draft Instruction to Bidders, if consistent with the final TOR.

In the conduct of this review, the DOE shall submit its comments and recommendations to the DU and the TPBAC/TPA through NEA, in case of

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ECs. The DU and/or TPBAC/TPA may accede to the DOE proposals and accordingly revise the TOR and other Bid Documents. In such case, the DOE shall issue the COP and post the revised TOR and bidding documents.

If they opt to retain the original version of the TOR and Bid Documents, the DU and/or the TPBAC/TPA, through NEA, in case of ECs, shall submit to the DOE their justifications for its retention. In this scenario, the DOE shall issue the COP and post the retained TOR and other Bid Documents and the DOE's comments and recommendations.

The criteria and timeline of DOE and NEA, in case of ECs, on the review of the TOR and other Bid Documents shall be specified in a separate issuance.

8.3. Publication and Posting

The TPBAC/TPA shall cause the posting of the Invitation to Bid for the procurement opportunity in accordance with the periods specified in this Circular.

8.3.1. Upon the issuance of the COP, the TOR must be uploaded by the DU in the DOE CSP E-based Portal and the DU's website, if available, the next working day from receipt thereof.

8.3.2. The TPBAC/TPA shall cause the posting of the Invitation to Bid, including the TOR, for at least fifteen (15) calendar days in the DU's website, if there is any, in the DOE CSP E-based Portal, and in conspicuous places at the office/s of the DU.

8.3.3. The TPBAC/TPA shall likewise ensure that all bid bulletins and related announcements shall be uploaded at the DOE CSP E-based Portal.

8.3.4. In cases where the DUs encounter problems in the posting of the necessary information in the said CSP E-based Portal, the DUs shall inform the DOE for assistance in the required posting.

8.3.4.1. Upon uploading of the DU's CSP-TOR in the DOE CSP E-based Portal, the DOE shall verify that the uploaded CSPTOR was given the COP. After the verification, the DOE shall effect the publication of the DU's CSP-TOR.

8.3.5. The TPBAC/TPA shall also cause the publication of the Invitation to Bid, including the TOR, in a newspaper of general circulation once weekly for two (2) consecutive weeks.

8.3.5.1. The TPBAC/TPA may opt to, in addition to the immediately preceding paragraph, publish the Invitation to Bid in one (1)



newspaper of local circulation in the region, province, city or municipality indicating the CSP schedules, among other necessary information for the bidders once every week for two (2) consecutive weeks.

8.3.5.2. In addition to publication, the TPBAC/TPA shall exert its best effort to disseminate its Invitation to Bid to all Power Suppliers.

8.3.5.3. The Bid Documents shall be available the following day after the last day of the publication contemplated under Section 8.3.5.

8.3.6. The TPBAC/TPA shall continuously update the DOE and the NEA, in case of ECs, on the status of the CSP (all stages of the procurement process) through the DOE CSP E-based Portal.

8.3.7. For transparency, all stages and updates on the CSP that coincides with its CSP schedule must be provided to the DOE and NEA in case of ECs, for posting on the DOE E-based portal and NEA website, respectively, including but not limited to the Bid Bulletins relating to the following:

8.3.7.1. Invitation to Bid;

8.3.7.2. Pre-bid Conferences;

8.3.7.3. Submission and Opening of Bids;

8.3.7.4. Bid Evaluation;

8.3.7.5. Post-qualification;

8.3.7.6. Awarding and Contract Signing; and,

8.3.7.7. Joint filing before the ERC.

8.4. Pre-Bid Conference

8.4.1. The TPBAC/TPA shall conduct at least one (1) Pre-Bid Conference to address the queries of the prospective bidders within fourteen (14) calendar days after the publication of Invitation to Bid.

8.4.2. The Pre-Bid Conference shall discuss, among other things, the eligibility requirements, the TOR, and the technical, legal and financial components of the PSA to be bid out.

8.4.3. Requests for clarification to the TPBAC/TPA from prospective bidders shall be made in writing or through e-mail before the conduct of the Pre-bid Conference, or after three (3) days from the scheduled Pre-bid Conference, and through manifestation(s) during the Pre-bid Conference.

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8.4.4. Decisions/clarifications of the TPBAC/TPA, clarifying or amending any provision of the TOR or Bidding Documents, shall be issued through a Supplemental/Bid Bulletin, at least fourteen (14) calendar days before the deadline for the submission and receipt of bids, and shall be posted in the DU's website, if any, and in the DOE CSP E-based Portal. A copy of such decision/clarification shall be furnished to all prospective bidders by fastest possible means (*i.e.*, e-mail) or through their authorized representative.

8.4.5. Supplemental/Bid Bulletins may be issued in the following circumstances.

8.4.5.1. Request of the prospective Power Suppliers for clarification(s) on, or for an interpretation of any part of the Bid Documents; and

8.4.5.2. Upon the initiative of the TPBAC/TPA for purposes of clarifying or modifying any provision of the Bidding Documents.

Any modification or addition to the Bid Documents shall be identified as an amendment or addendum, as the case may be.

8.4.6. If there are matters affecting the TOR and requires its revision, the NEA, in case of ECs, and DOE shall review the Supplemental/Bid Bulletin, revised TOR, and the CSP schedule, if any, prior to the issuance and publication of such Supplemental/Bid Bulletin.

8.4.7. The TPBAC/TPA shall ensure that all clarifications and queries must be clarified by the issuance of Bid Bulletins, and shall avoid any delay in the conduct of the CSP.

8.5. Bid Evaluation Criteria and Process

8.5.1. The TPBAC/TPA and its TWG shall evaluate the Power Supplier's legal, technical, and financial qualifications based on the criteria indicated in the Bid Documents.

8.6. Submission, Receipt and Opening of Bids

8.6.1. The Bidders shall be required to submit their bids on or before the deadline stipulated in the Bid Documents and/or in the Supplemental/Bid Bulletins.

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8.6.2. Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the legal and technical components of the bid, including the eligibility requirements, and the second shall contain the financial component of the bid.

8.6.3. The TPBAC/TPA shall open the bids after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents. The bidders or their duly authorized representatives may attend the opening of bids. The TPBAC/TPA shall ensure the integrity, security, and confidentiality of all submitted bids.

In case the bids cannot be opened as scheduled due to justifiable reasons, the TPBAC/TPA shall take custody of the bids submitted and reschedule the Opening of Bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the DU's website, if any, NEA's website for EC and the DOE CSP E-based Portal.

8.6.4. Opening of Bids shall take place in the presence of all qualified bidders and/or their duly authorized representatives and CSP Observers. Absence of a qualified bidder shall not be a ground for the postponement of the Opening of Bids or disqualification of the qualified bidder.

8.6.5. The TPBAC/TPA shall proceed to determine the lowest calculated bid, using the valuation criteria prescribed in the Bid Documents.

8.6.6. The lowest calculated bid shall undergo a post-qualification process to determine its compliance with all the requirements and conditions, as specified in the TOR and other pertinent bidding documents.

8.6.7. The TPBAC/TPA may delegate to the TWG the conduct of the post-qualification and shall subsequently submit its evaluation report to the TPBAC/TPA.

8.6.8. The TPBAC/TPA, through a Resolution, shall recommend the award of the contract to the BOD of the DU within five (5) calendar days from the receipt of the TWG's recommendation.

8.7. Each CSP shall be completed within one hundred eighty (180) calendar days from the time of posting/publication of Invitation to Bid until the award and signing of the PSA. Non-observance of this prescribed period will be subject to penalties to be imposed by the ERC.

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- 8.8. Within thirty (30) calendar days upon signing of the PSA, the DU and the winning bidder shall jointly file the PSA to the ERC, copy furnished the DOE and NEA, in case of ECs.
- 8.9. All expenses incurred in the conduct of the CSP shall be shouldered by the DUs. The DUs may, however, recover these expenses from the proceeds of the bid documents fee.

B. ALTERNATIVE MODE OF PROCUREMENT

As a general rule, the DUs shall adopt the Competitive Public Bidding prescribed in Section 8 (A) of this Circular in the procurement of PSAs. However, alternative methods of procurement may be resorted to exclusively for New Technology as defined in this Circular, and subject to the conditions provided herein.

At any given year, the capacity to be procured through USP shall not exceed twenty-five percent (25%) of the DU's peak demand for the year of the USP's required commercial operations minus any capacity previously procured through USP for commercial operations in the same year. The latest DOE-reviewed DDP and PSPP shall be the reference in the determination of this cap.

8.10. Procedures and Requirements under Alternative Method of Procurement

8.10.1. Conditions for the Conduct of USP:

- a. A Power Supplier shall submit a USP to a DU before any CSP bidding process has started, which is reckoned from the posting/publication of the TOR and Invitation to Bid, and must be consistent with the DU's latest and reviewed PSPP.

The DU shall inform the DOE and NEA, in case of EC, of the confirmation of the Board of DU on the eligibility of the USP proponent.

- b. The proposal is in accordance with the DU's latest and reviewed PSPP.
- c. There is no on-going CSP, for the same demand requirement of a DU, commencing with the publication of the TOR/Invitation to Bid.

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- d. The resulting PSA will not result in over-contracting on the part of the DU in terms of both capacity and energy requirements as indicated in the latest and duly reviewed DDP, with due consideration to its existing PSAs, PSAs for approval at the ERC, and the ensuing PSA from its on-going CSP activity, if any.
- e. The USP shall exclude any subsidy in the resultant PSA.

8.10.2. Requirements for the Conduct of USP

A complete proposal shall contain the following:

8.10.2.1 Cover Letter indicating the basic information of the USP:

- a. Company Profile;
- b. General Description of the Proposal;
- c. Cooperation Period;
- d. Rate offered (PhP/kWh);
- e. Capacity;
- f. Baseload/ Mid-merit/ Peaking; and
- g. Other relevant information.

8.10.2.2 Attachment of relevant company information to include Securities and Exchange Commission registration or the equivalent document from the country of incorporation, which includes the Articles of Incorporation and the By-Laws, Latest General Information Sheet and Latest Income Tax Returns;

8.10.2.3 Business Case or Concept Plan and Feasibility/Pre-feasibility study, when applicable especially for greenfield power plants;

8.10.2.4 General Description of the New Technology (GDNT). A copy of the GDNT shall be submitted to the DOE for advance evaluation; and

8.10.2.5 Proposed TOR or draft PSA, if available.

8.10.3 Evaluation Process

8.10.3.1 The DU, through its TPBAC/TPA, within seven (7) days upon receipt of the USP shall conduct review of the documents based on its completeness pursuant to Section 8.10.2.

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If the documents are incomplete, the TPBAC/TPA, within three (3) calendar days from such determination, shall return the submission to the USP proponent.

While if the documents are complete, the TPBAC/TPA, within two (2) calendar days from the conclusion of the eligibility review, shall recommend to the Board of the DU the eligibility of the USP proponent.

- 8.10.3.2. The Board of the DU will confirm the recommendation of the TPBAC/TPA on the eligibility of the USP proponent, and direct the TPBAC to notify the USP proponent of its eligibility and to commence the detailed evaluation of the USP.

The DU shall inform the DOE and NEA, in case of EC, of the confirmation of the Board of DU through a Resolution of the eligibility of the USP proponent.

However, if the Board of the DU denies the recommendation of the TPBAC/TPA, it shall direct the latter to inform the USP proponent of the said denial stating the grounds thereof. If the USP proponent refiles its proposal, this will be treated as a new filing.

- 8.10.3.3. The TPBAC/TPA, upon receipt of the confirmation by Board of DU, will now commence the evaluation/detailed negotiation of the USP within thirty (30) calendar days therefrom.

The TPBAC/TPA shall review the qualification (*i.e.*, legal, technical and financial components, including whether or not it is a new technology) of the proponent, evaluate the TOR, and conduct negotiations, if necessary.

- 8.10.3.4. Within fifteen (15) days after the TPBAC's evaluation, if the proposal is acceptable, the TPBAC/TPA will recommend to the Board of the DU the declaration of the USP proponent as the Original Proponent (OP) and its conformity that the proposal be subjected to competitive challenge, including its discussion why it is a new technology.



If the proposal is rejected, the TPBAC/TPA shall recommend the disapproval to the Board of the DU. If rejection is due to non-compliance as a new technology, this finding must be submitted to the DOE for validation. DOE may affirm the finding but if DOE declares it compliant as new technology, the USP evaluation should push through as a matter of course. The Board of the DU may accept a new USP proponent, or end the USP process and conduct the CSP under Section 8(A) of this Circular.

8.10.3.5. The DU, through a Board Resolution, shall submit to the DOE the draft TOR for review within five (5) calendar days of the conformity of the OP, including its discussion why it is a new technology.

8.10.3.6 The DOE shall expeditiously review the draft TOR including the finding on whether or not it is a new technology.

8.10.4 **Competitive Challenge**

A competitive challenge is a process wherein the other power suppliers may tender an offer; *Provided, That:* 1) it should be responsive to the agreed TOR between the DU and the OP; and 2) the offered price is lower than that of the OP.

The competitive challenge offer shall be submitted to the TPBAC/TPA within thirty (30) calendar days after publication prescribed herein.

8.10.4.1 After the DOE's review, it shall advise the DU to proceed with the preparation of Bid Documents for the conduct of the Competitive Challenge.

8.10.4.2 The TPBAC/TPA shall prepare, in fourteen (14) calendar days, the bid documents, referred herein as Comparative Bid Document (CBD), in accordance with the provisions set forth in Section 8.1 of this Circular.

8.10.4.3 The TPBAC/TPA shall comply with the publication and posting requirements, as provided in Section 8.3 of this Circular. The DU shall cause the publication within

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seven (7) calendar days after the consolidation of the CBD. Bidders must submit comparative proposals within the period prescribed in the Instruction to Bidders.

8.10.4.4 The TPBAC/TPA shall conduct the Pre-Bid Conference in the manner prescribed in Section 8.4 of this Circular, and shall be held within seven (7) calendar days after the complete publication.

8.10.4.5 The TPBAC/TPA, not earlier than twelve (12) calendar days from the conduct of the Pre-Bid Conference, shall schedule the submission and opening of the comparative proposal.

8.10.4.6 Receipt and Opening of Comparative Proposals

8.10.4.6.1 The Bidders shall be required to submit their comparative proposals on or before the deadline stipulated in the Bid Documents and/or in the Supplemental/Bid Bulletins which shall not be earlier than thirty (30) calendar days from the conduct of the Pre-Bid Conference. Comparative proposals submitted after the deadline shall no longer be accepted.

8.10.4.6.2 The Opening of comparative proposals shall take place in the presence of the TPBAC/TPA, the OP and the Bidders.

8.10.4.7 Evaluation Criteria and Process – After the Opening of the Comparative Proposals, the TPBAC/TPA shall undergo a qualification and evaluation process of the legal, technical, and financial requirements submitted by proponents using the criteria indicated in the CBD.

The TPBAC/TPA shall declare the lowest calculated comparative proposal as the lowest calculated bid. The TPBAC/TPA shall notify the OP of the declaration of the lowest calculated bidder.

8.10.4.8 The OP shall have the right to match the lowest calculated bid within fifteen (15) calendar days from receipt of the notification from the TPBAC/TPA of the result of the comparative bid.

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8.10.4.9 In case, the OP fails to match the price proposal of the lowest calculated bid, the PSA shall be awarded to the lowest calculated bidder.

On the other hand, if the OP matches the price proposal of the lowest calculated bid, the PSA shall immediately be awarded to the OP.

8.10.4.10 Thirty (30) days after the award, the DU and the winning proponent shall then sign a PSA and jointly submit the same to the ERC, furnishing a copy to the DOE and NEA, in case of ECs.

8.10.4.11 All costs incurred in the preparation of the requirements to participate in the USP shall be on the personal account of the bidder and shall not form part of the pass-on rate to the consumers.

8.10.4.12 All other rules on competitive public bidding in DC2018-02-0003 shall suppletorily apply.

SECTION 8. Section 9 (*Direct Negotiation in Failed CSPs*) of DC2018-02-003 is amended to read as follows:

SECTION 9. DIRECT NEGOTIATION IN FAILED CSPs

xxx xxx xxx

9.3. In the case of Alternative Method of Procurement, direct negotiation may be made by the DU to the OP after two (2) failed comparative biddings and there are no outstanding disputes, as provided in Section 13, on the conducted bidding of the comparative proposal.

9.4. A comparative bidding is considered failed only when, during its conduct, any of the following circumstances exists;

9.4.1. No comparative bid was received by the TPBAC/TPA; or

9.4.2. Comparative bids failed to meet the requirements prescribed in the bid documents.

SECTION 9. Section 10 (*Compliance to Renewable Energy Law*) of DC2018-02-0003 is amended to read as follows:

SECTION 10. COMPLIANCE TO RENEWABLE ENERGY LAW

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Pursuant to RA No. 9513 or the 'Renewable Energy (RE) Act of 2008', DUs, Power Suppliers and Retail Electricity Suppliers shall comply with the RE Act and all other relevant rules and regulations including the Rules on the Green Energy Auction Program (GEAP), which is pending issuance.

SECTION 10. Section 12 (*Regulatory Support*) of DC2018-02-0003 is revised to read as follows:

SECTION 12. REGULATORY SUPPORT

- 12.1. The ERC, in the exercise of its powers and functions under the EPIRA, shall formulate a penalty mechanism and impose appropriate fines and penalties for non-compliance of the provisions of the CSP Guidelines, as amended hereof, by electric power industry participants.
- 12.2. The ERC shall have the power to review and determine whether the parties have complied with the requirements of CSP, as provided for in existing laws, this Circular and DC2018-02-0003, and shall issue appropriate regulations, as may be necessary.
- 12.3. Within one hundred twenty (120) calendar days upon the effectivity of this Policy, the ERC shall develop rules and procedures to:
 - a. Address disputes arising from the conduct of the CSP.
 - b. Review and approve DU's pass-on generation charge based on the PSAs from the outcome of COE-CSP granted by the DOE.
 - c. Provide the PSA Template to be used by electric power industry participants
- 12.4. The ERC shall ensure that generation facilities owned, operated, and controlled by DU that were funded by grants and donations should not form part of the electricity rate applications by the DUs.
- 12.5. In the case of ECs, the NEA shall develop rules and procedure to support this Circular within sixty (60) calendar days upon its effectivity.

SECTION 11. Section 13 (*Protest Mechanism and Dispute Resolution*) of DC2018-02-0003 is revised to read as follows:

SECTION 13. PROTEST MECHANISM

- 13.1. Decisions of the TPBAC/TPA at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The TPBAC/TPA shall decide on the request for reconsideration within seven (7) calendar

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days from receipt thereof, providing the concerned bidder and the DOE and NEA, in case of ECs, a copy of the decision.

- 13.2. In the event that the request for reconsideration is denied, decisions of the TPBAC/TPA may be protested in writing to the BOD or its duly authorized officer/s. The protest must be filed within seven (7) calendar days from receipt of the resolution denying its request for reconsideration. A protest shall be made by filing a verified position paper with the BOD or its duly authorized officer/s, and serving a copy of the position paper to the DOE and NEA, in case of ECs. The verified position paper must be accompanied by the payment of a non-refundable protest fee which shall be determined by the concerned TPBAC/TPA.
- 13.3. The verified position paper shall contain the following information: name of the bidder, address, name of project, brief statement of facts, issue to be resolved and such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect and non-payment of protest fee will result to the outright dismissal of the protest.

- 13.4. Protests shall be resolved within seven (7) calendar days from receipt thereof. Decision of the BOD or its duly authorized officer/s shall be final. An entity with jurisdiction on the matter shall decide or resolve the issue upon initiation of the concerned parties.

In no case shall any protest taken from any decision treated in this Circular stay or delay the CSP process: *Provided*, However, that protests must first be resolved before any award is made. Court action may be resorted to only after the protests contemplated in this Circular shall have been completed, *i.e.*, resolved by the BOD with finality. Cases assailing or questioning the final decisions of the BOD regarding the protest may be initiated by an aggrieved party in a court of law, pursuant to Rule 65 of the 2019 Amendments to the 1997 Rules of Civil Procedure. This provision is without prejudice to any law conferring to a cognizant court of law the jurisdiction to issue temporary restraining orders and injunctions.

SECTION 12. TRANSITORY PROVISION

Upon the effectivity of this Policy, all prospective PSAs shall hereafter be procured in accordance with DC2018-02-0003 and this Circular.



All PSAs that have been procured and executed, including those to be filed and pending before the ERC, prior to this Circular and in line with DC2018-02-0003 shall be honored and recognized. All DUs with on-going CSP activities prior to the effectivity of this Circular shall continue to observe the 2018 CSP Policy.

SECTION 13. REPEALING CLAUSE

All rules and regulations, or any portion thereof, that are inconsistent with this Circular are hereby repealed or modified accordingly.

Provisions of DC2018-02-0003 not affected by this Policy shall remain in effect.

SECTION 14. SEPARABILITY CLAUSE

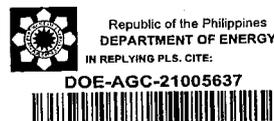
If for any reason that any section of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 15. EFFECTIVITY

This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on SEP 24 2021 at Energy Center, Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary



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ANNEX "A"

MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION

A. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION

1. Letter of Distribution Utility (DU) to the Department of Energy (DOE), requesting for Certificate of Exemption (COE) from the conduct of Competitive Selection Process (CSP);
2. Resolution from the Board of Directors (BOD) of the DU requesting for COE-CSP. At a minimum, the Resolution should indicate the following:
 - (a) Capacity to be procured; and
 - (b) Duration of the Emergency Power Supply Agreement (EPSA).
3. Justification for the request of COE-CSP;
4. One (1) year projection of supply-demand profile indicating power shortage in the next twelve (12) months;
5. Distribution or System Impact Study for the existing capacity;
6. Rate Impact of the Emergency Power; and
7. Draft PSA or Terms of Reference (TOR) for the procurement of emergency power supply.

B. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION – POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION

1. Letter of DU to DOE, requesting for COE-CSP;
2. Resolution from the BOD of the DU requesting for COE-CSP. At a minimum, the Resolution should indicate the following:
 - (a) Capacity to be procured; and
 - (b) Duration of the Contract for the Supply of Electric Energy (CSEE);
3. Letter of DU to PSALM Corporation, requesting provision of power supply; and
4. Letter of PSALM Corporation to DU, granting/approving the request of the DU for the provision of power supply.

ANNEX "B"

STANDARD TEMPLATE FOR TERMS OF REFERENCE (TOR) (Minimum Terms and Conditions)

A. GENERAL INFORMATION

<p>1 NAME OF UTILITY: _____</p> <p>2 AREA TO BE SERVED:</p> <p><input type="checkbox"/> Grid <input type="checkbox"/> Both Grid and Off-Grid</p> <p><input type="checkbox"/> Off-Grid</p> <p>3 CURRENT YEAR OF FILING: _____</p>	<p>4. PRE-REQUISITE FOR TOR SUBMISSION</p> <p>DOE Approval of TPBAC Selection _____</p> <p>NEA-Endorsed DDP to DOE (Current Year) _____</p> <p>NEA-Endorsed PSPP to DOE (Current Year) _____</p> <p>NEA issuance of Notice to Proceed (for ECs) _____</p> <p>5. TARGET DATE OF PUBLICATION: _____</p>	<p>Date</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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B. REQUIREMENTS

1. GENERAL SUPPLY DESCRIPTION

Note: Proposed technology must be consistent with the supply requirements.

1.1 Purpose of Procurement

As scheduled in the PSPP

Emergency Power

For RPS Compliance

1.2 Supply Type

Firm

Non-firm

1.3 Supply Side

Baseload

Mid-Merit

Peaking

Load Following (Non-firm only)

Escalating Capacity (Non-firm only)

2. TERMS OF SUPPLY SERVICES

Note: Terms of supply must be in accordance to the load profiles described in the PSPP.

2.1 Contract Capacity: _____

Minimum Energy Off-take (if applicable): _____

MW/year

With Breakdown by Period?

Yes (attach details as Annex "A") No

_____ % of Contract capacity per interval based on minimum loading requirements.

2.2 Contract Energy: _____

MWh/year

With Breakdown by Period?

Yes (attach details as Annex "B") No

2.3 Delivery Period: _____ years

Inclusive Dates From _____ To _____

(mm/dd/yyyy) (mm/dd/yyyy)

2.4. Conditions Precedent to Start of Supply:

- a. ERC approval of the PSA

- b. Security Deposit (please state the amount and form of payment), if applicable : _____
- c. Other conditions (please specify if any). : _____

3. COST AND TARIFF STRUCTURE *Note: Must be consistent with ERC regulations.*

- 3.1 For Capacity-based contract, the bidder shall specify both its levelized **Capacity Payment Offer in PhP/kW/month** and **Energy Payment Offer in PhP/kWh** in its bid proposal. For Energy-based contract, the bidder shall specify its levelized **Energy Payment Offer in PhP/kWh** only.
- 3.2 The Bidder shall provide the detailed calculation of its payment offers including formula and references. All cost items such as capital cost, fuel, and other operation and maintenance costs shall be itemized and classified into Fixed Cost and Variable Cost as may be applicable.
- o Fixed Cost
 - Capital Cost
 - Others (please specify) _____
 - o Variable Cost
 - Operation and Maintenance
 - Fuel Cost
 - Others (please specify) _____
- 3.3 Bidder shall also specify all other applicable charges incorporated in its payment offers such as, but not limited to, connection facilities, wheeling charges, metering, communication equipment, and government taxes or levies.
- o Applicable Charges
 - Connection Facilities
 - Wheeling Charges
 - Metering
 - Communication Equipment
 - Government Taxes/Levies
- 3.4 Bidder shall specify its **Total Landed Generation Cost in PhP/kWh** covering items 3.2 to 3.3 and shall serve as Financial Bid Price.
- 3.5 Capacity payment shall only be paid when the capacity is available on the particular billing period.

4. PAYMENT MODALITIES

- 4.1 Mode of Payment (check as applicable): Cash Manager's Check Others. Please specify. _____
- 4.2 Currency of Payment: Philippine Pesos
- 4.3 Billing Period: Monthly Quarterly Others. Please specify.
- 4.4 Bidder shall specify its offer of prompt payment discount and other incentives to the DU in its bid proposal.

5. OUTAGE ALLOWANCE

- 5.1 **Maximum Allowed Scheduled Outage:** _____ days per year. Bidder to specify its plant scheduled outage in its bid proposal.
- 5.2 **Maximum Allowed Forced Outage:** _____ days per year. Bidder to specify its plant forced outage in its bid proposal.
- 5.3 Total maximum allowed scheduled and unscheduled outages **must not exceed** _____ hours (full load equivalent).
- 5.4 All Scheduled Outages must be scheduled and declared twelve (12) months in advance.
- 5.5 There will be no carry-over of any unutilized outage allowances from a calendar year on the succeeding years.

6. REPLACEMENT POWER

- 6.1 In case of delay in the COD or any outage beyond the maximum allowance, the Power Supplier shall provide the Replacement Power up to the contracted capacity during the period. If the Power Supplier fails to nominate its replacement power ahead of time, the DU shall procure Replacement Power from other sources at the expense of the Power Supplier.
- 6.2 For on-grid area, if the outage is within the maximum allowance, the DU to cast around for its Replacement Power at its best effort, the cost of Replacement Power at the relevant period shall be paid by the DU based on the actual price. In case that DU failed to secure the Replacement Power, the Power Supplier, in coordination with the DU may provide the Replacement Power, the cost of the Replacement Power shall be paid by the DU based on the ERC approved rates.
- 6.3 During any period of Allowable Outage, the Power Provider shall be responsible in providing the DU with replacement power in the following event:
- 6.3.1. For on-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, the cost of Replacement Power provided by the Power Supplier shall be paid by the DU during the relevant period equal to WESM price or the ERC-approved rate under the PSA, whichever is lower.
- 6.3.2. For off-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, cost of the Replacement Power shall be paid by the DU during the relevant period equal to the ERC-approved rate under the PSA.
- 6.4 If the Power Supplier cannot deliver Replacement Power, the DU shall charge the Power Supplier during the relevant period using the following formula (please specify):

7. FORCE MAJEURE

- 7.1 The events that shall be deemed as Forced Majeure and analogous circumstances shall be in accordance to DOE CSP Policies.
- 7.2 Arrangements in case of any force majeure shall be agreed upon by parties and shall form part of the PSA.
- 7.3 There will be no payment of any capacity fee in case of outage during any force majeure.

8. GROUNDS FOR CONTRACT TERMINATION

Note: Must be consistent with the PSA.

- 8.1 Valid grounds for terminations are:
- | | |
|-------------------------------------|--|
| a. Event of Default | e. Extended Force Majeure as agreed under the PSA. |
| b. Expiration of cooperation period | f. Changes in the circumstances as agreed under the PSA. |
| c. Failure to achieve COD | g. Others, please specify. _____ |
| d. Mutual agreement by both parties | |
- 8.2 Rate deductions made by the ERC shall not be a valid ground for the termination of the contract. DU shall not pay for the said rate reduction or adjustments.

9. LIQUIDATED DAMAGES

Note: Must be consistent with the PSA.

- 9.1 Liquidated damages in case of default shall be equal to the present value of the Capacity Payment computed on a 365-day basis for the remaining term of the PSA.
- 9.2 The discount rate to be used shall be (please specify): _____

10. REDUCTION OF CONTRACT CAPACITY

Note: Must be consistent with the PSA.

- 10.1 The reduction of contract capacity shall be allowed in case of (please check if applicable):
- Loss of captive customers due to Retail competition and Open Access (for on-grid areas only)
 - Reduction of demand of the DU due to special circumstances beyond the control of the DU.
- 10.2 Customer may assign, transfer, designate or allocate its rights and obligations to purchase a portion of Contract it no longer requires to:
- a) Any of its business segments without the prior consent of Power Supplier; or
 - b) Any affiliate or third party subject to the consent of Power Supplier
- 10.3 The consent by the Power Supplier shall not be unreasonably delayed or conditioned at the disadvantage of the DU.
- 10.4 Any reduction shall require approval of the ERC and must comply with applicable rules of competition set by the Government.

11. OBLIGATIONS OF THE DU

Note: Must be consistent with the PSA.

- 11.1 The DU shall provide assistance to the successful bidder in the processing of permits and similar requirements from all national agencies and local government units especially if the resulting PSA involves the construction of a new power plant.

13. BIDDER'S QUALIFICATIONS

- 13.1 All forms of business organizations including Joint Ventures are encouraged to participate in the bidding process subject to applicable government licenses and permits.
- 13.2 For bidders using indigenous and RE power plants, the bidder must comply with the constitutional requirement for ownership.
- 13.3 The capacity offer of the bidder must be compliant with all the ownership limitations prescribed under EPIRA.
- 13.4 For new power suppliers, the qualification shall be based on: (i) the experience and competence of its personnel to manage and operate the plant; and, (ii) acceptability of its operational management plan during technical bid evaluation.