



NATIONAL ELECTRIFICATION ADMINISTRATION
"The 1st Performance Governance System-Institutionalized National Government Agency"
57 NIA Road, Government Center, Diliman, Quezon City 1100



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21 November 2023

THE DIRECTOR

Office of the national Administrative Register
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U.P. Law Center, Diliman
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Sir:

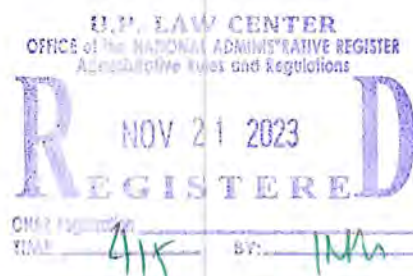
Greetings of peace and good health!

Pursuant to Book VII, Chapter 2, Section 3 of the 1987 Administrative Code of the Philippines, we are respectfully submitting to the U.P. Law Center, for filing, publication and recording the attached certified true copies of the **NEA MEMORANDUM NO. 2023-057 "ADOPTION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION COMPETITIVE SELECTION PROCESS GUIDELINES IMPLEMENTING THE DEPARTMENT OF ENERGY'S DEPARTMENT CIRCULAR NO. DC2023-06-0021 AND THE ENERGY REGULATORY COMMISSION' RESOLUTION NO. 16, SERIES OF 2023"** promulgated by the National Electrification Administration (NEA) in accordance with its authority under Section 5 of P.D. No. 269 as amended.

Thank you very much for the usual and kind assistance of the U.P. Law Center.

Very truly yours,


ATTY. GWEN P. ENCISO-KYAMKO
Acting Corporate Board Secretary V





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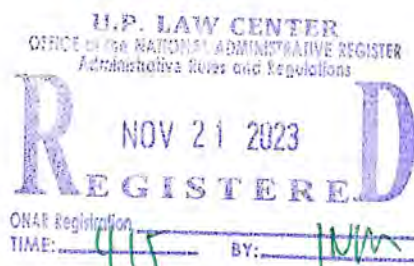


20 November 2023

Memorandum No. **2023-57**

TO : ALL ELECTRIC COOPERATIVES

SUBJECT: **ADOPTION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION COMPETITIVE SELECTION PROCESS GUIDELINES IMPLEMENTING THE DEPARTMENT OF ENERGY'S DEPARTMENT CIRCULAR NO. DC2023-06-0021 AND THE ENERGY REGULATORY COMMISSION' RESOLUTION NO. 16, SERIES OF 2023**



The Department of Energy ("DOE") issued Department Circular ("DC") No. DC2023-06-0021 entitled "*Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market*" (the "DOE 2023 CSP Policy").

Sections 4.6 and 5.1 of the DOE 2023 CSP Policy provides that NEA shall issue guidelines in accordance with and in support of the guidelines of the Energy Regulatory Commission ("ERC"), as applicable to the ECs, in the conduct of the Competitive Selection Process ("CSP").

The ERC issued ERC Resolution No. 16, Series of 2023 (the "ERC 2023 CSP Guidelines") entitled "*Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Their Captive Market*" providing the implementing guidelines in the conduct of CSP and evaluation of PSAs resulting from the CSP of Distribution Utilities, including ECs.

In compliance with the DOE's directive under the DOE 2023 CSP Policy, the NEA prepared its guidelines for the ECs' conduct of CSP entitled, "*The National Electrification Administration Competitive Selection Process Guidelines Implementing the Department of Energy's Department Circular No. DC2023-06-0021 and the Energy Regulatory Commission' Resolution No. 16, Series of 2023,*" (the "NEA 2023 CSP Guidelines") a copy of which is attached to this Memorandum.¹

The NEA 2023 CSP Guidelines shall take effect after fifteen (15) calendar days following its filing with the University of the Philippine Law Center. All ECs are required to abide by the provisions of the NEA 2023 CSP Guidelines upon its effectivity.


ANTONIO MARIANO C. ALMEDA
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION
Office of the Administrator



NEA-0A273129

¹ Approved and adopted by the NEA Board of Administrators through NEA Board Resolution No. 2023-28.

**THE NATIONAL ELECTRIFICATION ADMINISTRATION
COMPETITIVE SELECTION PROCESS GUIDELINES
IMPLEMENTING THE DEPARTMENT OF ENERGY'S
DEPARTMENT CIRCULAR NO. DC2023-06-0021
AND THE ENERGY REGULATORY COMMISSION'S
RESOLUTION NO. 16, SERIES OF 2023**

WHEREAS, Sections 2 (b) and (c) of Republic Act ("RA") No. 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA") declared that it is the policy of the State to ensure the quality, reliability, security, and affordability of the supply of electric power and ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

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;

WHEREAS, the Supreme Court in the case of *Alyansa Para sa Bagong Pilipinas, Inc. vs. Energy Regulatory Commission, et al.*, (G.R. No. 227670, 03 May 2019) has held that rules and regulations issued pursuant to law by administrative agencies, like the DOE, have the force and effect of law. Further, it is the DOE that issues the rules and regulations to implement the EPIRA, including the implementation of the policy objectives stated in Section 2 thereof;

WHEREAS, under Chapter II, Section 4(e), (g), (j), (l), and (m) of Presidential Decree No. 269 (the "PD 269"), as amended by RA No. 10531, the National Electrification Administration ("NEA") is authorized and empowered to (i) supervise the management and operations of all Electric Cooperatives ("ECs"), (ii) provide institutional, financial and technical assistance to ECs upon their request, (iii) ensure the economic and financial viability and operation of all ECs, and (iv) develop, set and enforce institutional and governance standards for the efficient operation of ECs such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding.

WHEREAS, the DOE issued Department Circular ("DC") No. DC2023-06-0021 entitled: *"Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market"* (the "DOE 2023 CSP Policy"). Sections 4.6 and 5.1 of the DOE 2023 CSP Policy provides that NEA shall issue guidelines in accordance with and in support of the guidelines of the Energy Regulatory Commission ("ERC"), as applicable to the ECs, in the conduct of the Competitive Selection Process ("CSP");

WHEREAS, the ERC issued ERC Resolution No. 16, Series of 2023 (the "ERC 2023 CSP Guidelines") entitled: *"Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Their Captive Market"* providing the implementing guidelines in the conduct of CSP and evaluation of PSAs resulting from the CSP of Distribution Utilities, including ECs; and

WHEREFORE, in compliance with the DOE's directive under DOE 2023 CSP Policy, the NEA hereby adopts and promulgates this *Guidelines* (the "NEA 2023 CSP Guidelines" or "Guidelines").

[Signature]

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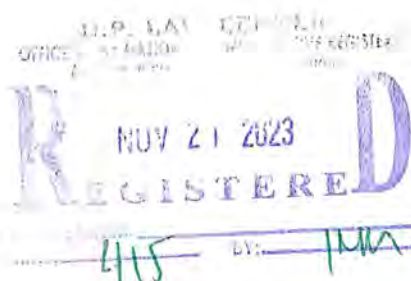
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ARTICLE I RATIONALE

- 1.1 This *Guidelines* is issued to ensure transparency, competitiveness, and the timely procurement of electric power supply by ECs for their Captive Market. Further, this *Guidelines* is issued in accordance with and in support of the guidelines of the ERC 2023 CSP Guidelines in compliance with the DOE 2023 CSP Policy.

ARTICLE II GOVERNING PRINCIPLES

- 2.1. Consistent with the issuances of the DOE and the ERC, the implementation of the NEA 2023 CSP Guidelines shall be governed by the following principles:
- 2.1.1. Procurement of all power supply through a competitive process, consistent with the latest and duly accepted Distribution Development Plan (“DDP”) and posted Power Supply Procurement Plan (“PSPP”) of ECs, shall be undertaken at least two (2) years prior to the expiration of PSA or projected increase in demand;¹
 - 2.1.2. Adopting a transparent, competitive, and timely process for the procurement of electric power supply by ECs for the Captive Market;²
 - 2.1.3. Promoting fair competition by providing equal opportunity to all eligible, existing or new, and qualified suppliers to participate in the power supply procurement process;³
 - 2.1.4. Enforcing the responsibility and accountability of EC Board of Directors (“EC-BOD”), management, officers, employees, and any other persons involved, directly or indirectly, in ensuring quality, affordability, sustainability and reliability of the supply of electric power in the least cost manner;⁴
 - 2.1.5. Promote the country’s energy self-sufficiency and security in accordance with the DOE’s directives; and
 - 2.1.6. Protect the interest of the general public.⁵

ARTICLE III SCOPE

- 3.1. The NEA 2023 CSP Guidelines shall apply to all power supply procurement of ECs, both On-Grid and Off-Grid. *af*

¹ Section 1.2, DOE 2023 CSP Policy.

² In relation to Section 1.1, DOE 2023 CSP Policy and Section 1(c), ERC 2023 CSP Guidelines.

³ Section 1(d), ERC 2023 CSP Guidelines, in relation to Section 1.1, DOE 2023 CSP Policy.

⁴ In relation to Section 1.3, 1.4, DOE 2023 CSP Policy and Section 1(g), ERC 2023 CSP Guidelines.

⁵ Section 1.6, DOE 2023 CSP Policy and Section 1(a), ERC 2023 CSP Guidelines.

ARTICLE IV COVERAGE AND EXCEPTIONS

- 4.1. Procurement of power supply for the Captive Market of ECs must undergo a CSP, consistent with the latest and duly accepted DDP and posted PSPP. The CSP to be conducted by the ECs must be in accordance with the DOE 2023 CSP Policy, ERC 2023 CSP Guidelines, and this *Guidelines*.
- 4.2. All ECs are enjoined to timely prepare their respective CSP activities to avoid delay and consider the different factors that may require extensive preparation, taking into account the timelines provided in this *Guidelines*. All ECs must report and advise NEA at least three (3) years prior to the expiration of their PSAs or projected increase in demand with their action plans to conduct a CSP, which must include a detailed timeline of its CSP activities. ECs must commence their CSP not later than two (2) years before the scheduled date indicated in their respective PSPPs.
- 4.3. As enumerated under Section 2.3 of the DOE 2023 CSP Policy, the conduct of CSP shall not be required in the following instances:
 - 4.3.1. The provision for power supply by the National Power Corporation ("NPC") in Off-Grid areas: (i) prior to and until the entry of New Power Providers ("NPP") or (ii) in emergency circumstances;
 - 4.3.2. The provision for power supply by the Power Sector Assets and Liabilities Management Corporation through bilateral contracts for the power produced from the undisposed generating assets and contracts with Independent Power Producers;
 - 4.3.3. Power supply procured by any EC exercising the Opt-in Mechanism under the Green Energy Auction Program;
 - 4.3.4. Supply to any EC from any generating plant embedded in its franchise area utilizing renewable energy resources, wherein the contracted capacity of the embedded generation plant/s shall not exceed 10 MW per EC, *provided*, that this exception shall only apply to the capacity or volumes sold by the embedded generation facility to the host EC, thus, any capacity sold or intended to be sold to customers outside the franchise area of the EC shall not be exempted from compliance with the CSP requirement; *Provided, further*, that the EC shall adopt the necessary measures to ensure that the operation of the embedded facility/ies shall not compromise the reliability of its network and the grid, and shall provide the documents that may be required by the ERC for the determination of compliance with such condition;
 - 4.3.5. Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement ("EPSA") shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; *Provided, that the*

procurement of Emergency Power supply shall not be entitled to any form of subsidy; and

- 4.3.6. Off-Grid Areas served or to be served by NPPs with less than 1 MW demand with 24-hour electricity service not covered in Section 4.3.1 of this *Guidelines*.
- 4.4. All the above instances are subject to ERC's determination of the EC's compliance with its obligation to supply electricity in the least cost manner to its captive market, taking into consideration the quality, affordability, sustainability, and reliability of the electric power supply.⁶

ARTICLE V DEFINITIONS

- 5.1. **"Bids and Awards Committee (BAC)"** refers to the committee established in accordance with this *Guidelines* to lead and manage an EC's CSP. The "Joint BAC" refers to the BAC constituted by ECs aggregating their demand or energy requirements, solely for the purpose of procuring their supply of electricity through CSP. For purposes of this *Guidelines*, any reference to the BAC includes the Joint BAC, whenever appropriate.
- 5.2. **"Bid Security"** refers to the guarantee that each bidder will comply with its obligation under the bidding procedures during the Bid Validity Period, or any extension thereof, subject to the conditions under Section 8.2.9 (a) hereof.⁷
- 5.3. **"Bid Security Validity Period"** refers to a duration within which the required Bid Security shall be valid for the duration of the bidding process but in no case beyond one hundred eighty (180) calendar days from the deadline for submission and opening of bids.⁸
- 5.4. **"Bid Submission Deadline"** refers to the last day for the submission of the bid offers of the prospective bidders.
- 5.5. **"Bid Validity Period"** refers to a duration within which a Bid must be valid for a period of not less than one hundred eighty (180) calendar days from the deadline for submission and opening of bids. Any Bid with a shorter Bid Validity Period shall be immediately rejected.
- 5.6. **"Bidding Documents"** refers to the documents issued by the procuring EC, as the bases for Bids, furnishing all information necessary for a prospective bidder to prepare a bid for the power supply requirements of the procuring EC.
- 5.7. **"Captive Market"** refers to the electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.⁹

⁶ Section 2.3, DOE 2023 CSP Policy.

⁷ In relation to Section 10, Appendix B, Competitive Selection Process, ERC 2023 CSP Guidelines.

⁸ *Ibid.*

⁹ Section 3 (g), Annex A, ERC 2023 CSP Guidelines.

- 5.8. **“Captive Market Supplier”** refers to either a Genco or IPPA contracted by the EC to supply power to the Captive Market from a single or portfolio of generating plants.¹⁰
- 5.9. **“Certificate of Conformity”** refers to the certificate issued by NEA, certifying the consistency of contract quantity and cooperation period in the latest and posted Power Supply Procurement Plan and Invitation to Bid of ECs. The certificate shall be valid for forty-five (45) calendar years from issuance thereof.¹¹
- 5.10. **“Competitive Selection Process (CSP)”** refers to a process wherein ECs, on their own or acting as a group, undertake a transparent and competitive bidding to secure supply of electricity based on the evaluation criteria adopted by the ECs in accordance with the requirements of the DOE 2023 CSP Policy, ERC 2023 CSP Guidelines, and this *Guidelines* to achieve least-cost supply to the EC’s Captive Market.¹²
- 5.11. **“CSP Observers”** refers to entities or groups that ECs are required to invite to observe the conduct of the CSP.¹³
- 5.12. **“Distribution Development Plan (DDP)”** refers to the program for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity, reliability and affordability of electric service to the consumers, which is prepared by the EC and submitted to NEA for review and consolidation and endorsed to the DOE for integration with the Power Development Plan (“PDP”) and Philippine Energy Plan (“PEP”), in accordance with DOE Circular No. 2021-03-0003.¹⁴
- 5.13. **“DOE CSP E-based Portal”** refers to the DOE’s electronic website where the proponents shall submit its application for a CSP.¹⁵ The portal will also serve as the primary and centralized source of information regarding all CSP activities of all ECs.
- 5.14. **“Electric Cooperatives (EC)”** refers to an electric distribution utility organized and registered pursuant to PD 269, as amended, Republic Act No. 9520, and other related laws.¹⁶
- 5.15. **“Electric Cooperative-Board of Directors (EC-BOD)”** refers to the Board of Directors of the EC or the Board of Directors of the Aggregated ECs, as the case may be.¹⁷
- 5.16. **“Eligibility Requirements”** refers to the executive summary, organizational structure, legal documents, technical capability information and financial information of a bidder and shall be submitted together with the Bid Documents. The Eligibility requirements are further enumerated in ANNEX A hereof.

¹⁰ Section 3 (h), Annex A, ERC 2023 CSP Guidelines.

¹¹ Section 3 (i), Annex A, ERC 2023 CSP Guidelines in relation to Section 4.4, DOE 2023 CSP Policy.

¹² Section 3 (k), Annex A ERC 2023 Guidelines in relation to Section 3.3 DOE 2023 CSP Policy.

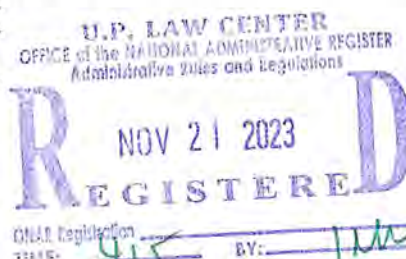
¹³ In relation to Section 9, Annex A, ERC 2023 CSP Guidelines.

¹⁴ Section 3 (o), Annex A, ERC 2023 CSP Guidelines.

¹⁵ Section 3 (q), Annex A, ERC 2023 CSP Guidelines.

¹⁶ Section 3 (u) of PD 269, as amended.

¹⁷ Section 3 (r), Annex A, ERC 2023 CSP Guidelines.



- 5.17. **“Emergency Power”** refers to the power required by the EC in the event that its actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the EC, subject to the final determination by the ERC.¹⁸
- 5.18. **“Emergency Power Supply Agreement (EPSA)”** refers to a PSA for the supply of power to an EC under the conditions provided in this *Guidelines*.
- 5.19. **“Energy Regulatory Commission (ERC)”** refers to the regulatory agency created under Section 38 of the EPIRA.¹⁹
- 5.20. **“Financial PSA”** refers to a power supply agreement with the following characteristics: (i) fixed price effective for the duration of the contract term; (ii) supply is guaranteed for the entire contract term without reference to any physical power plant; and (iii) no provision for outage allowance. Provisions for price adjustment in bid offers and in PSAs shall not be allowed under a Financial PSA unless the TOR allows for such, providing therein a pre-defined criteria for economic price adjustment that may allow for either positive or negative changes in price under specified circumstances.²⁰
- 5.21. **“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 and independent of human will or the EC’s participation, whether by active intervention, neglect or failure to act.
- This further refers to an event or circumstance generally caused: (i) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (ii) 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.
- Work stoppage due to labor strikes, picketing, lockouts or any other labor dispute is not considered as force majeure or fortuitous event.²¹
- 5.22. **“Generation Company (Genco)”** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.²²
- 5.23. **“Grid”** refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities.²³
- 5.24. **“Independent Power Producer Administrator (IPPA)”** refers to qualified independent entities appointed by the Power Sector Assets and Liabilities Management (PSALM) Corporation to administer, conserve and manage the contracted energy output of the National Power Corporation (“NPC”) IPP contracts.²⁴

¹⁸ Section 3.7, DOE 2023 CSP Policy.

¹⁹ Section 3(u), Annex A, ERC 2023 CSP Guidelines.

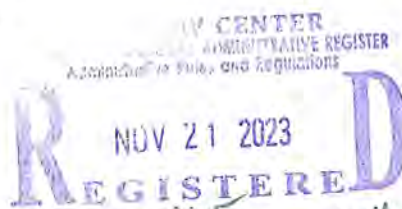
²⁰ Section 3(v), Annex A, ERC 2023 CSP Guidelines.

²¹ Section 3(w), Annex A, ERC 2023 CSP Guidelines.

²² Section 3(x), Annex A, ERC 2023 CSP Guidelines.

²³ Section 3(y), Annex A, ERC 2023 CSP Guidelines.

²⁴ Section 3(z), Annex A, ERC 2023 CSP Guidelines.



- 5.25. **"Instruction to Bidders"** refers to the document wherein the procedures of the public competitive bidding are established.
- 5.26. **"Invitation to Bid"** refers to an invitation to Captive Market Suppliers to participate in the EC's CSP, providing information on the Terms of Reference; the procurement activity schedule, information on the bidding documents, bid submission deadline and such other information deemed relevant by the EC that is pertinent to the conduct of the CSP.²⁵
- 5.27. **"Lowest Calculated Bid (LCB)"** refers to the bid with the lowest price as determined in this *Guidelines*.
- 5.28. **"Lowest Calculated Responsive Bid (LCRB)"** refers to the most responsive Bid that conforms in all material respects to the requirements and criteria set out in the Invitation to Bid and Terms of Reference, and found to have the lowest price after price evaluation and comparison.²⁶
- 5.29. **"National Electrification Administration (NEA)"** refers to the government agency created under Presidential Decree No. 269, as amended by Republic Act No. 10531, otherwise known as the "National Electrification Administration Reform Act of 2013."²⁷
- 5.30. **"Off-Grid"** refers to an area or system that is not connected to the Grid.²⁸
- 5.31. **"On-Grid"** refers to an area or system that is connected to the Grid.
- 5.32. **"Performance Bond"** refers to the bond posted by the Winning Bidder in order to secure the performance of its obligation as such.²⁹
- 5.33. **"Physical PSA"** refers to a PSA wherein the Captive Market Supplier sources its supply from an identified physical power plant/s, subject to allowable outage as determined by the ERC.³⁰
- 5.34. **"Power Supply Agreement (PSA)"** refers to the agreement regardless of nomenclature, between the EC and a Captive Market Supplier for the supply of capacity and/or energy intended for the EC's Captive Market.³¹
- 5.35. **"Power Supply Procurement Plan (PSPP)"** refers to an EC's plan for the acquisition of a variety of supply-side resources to cost-effectively meet the electricity needs of its customers. It shall likewise consider the EC's anticipated effects of Retail Competition and Open Access (RCOA), Green Energy Option Program, Renewable Portfolio Standards, Net Metering programs, and other similar government programs to its demand.³²

²⁵ In relation to Section 2, Appendix B, ERC 2023 CSP Guidelines.

²⁶ Section 3(cc), Annex A, ERC 2023 CSP Guidelines.

²⁷ Section 3(dd), Annex A, ERC 2023 CSP Guidelines.

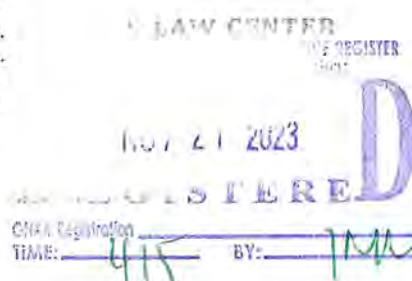
²⁸ Section 3(ff), Annex A, ERC 2023 CSP Guidelines.

²⁹ Section 3(gg), Annex A, ERC 2023 CSP Guidelines.

³⁰ Section 3(hh), Annex A, ERC 2023 CSP Guidelines.

³¹ Section 3(ii), Annex A, ERC 2023 CSP Guidelines.

³² Section 3(ij), Annex A, ERC 2023 CSP Guidelines.



- 5.36. **“Pre-Bid Conference”** refers to meeting/s arranged by the BAC prior to the submission and opening of bids the purpose of which is to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise and subject to Section 8.2.6 of this *Guidelines*.³³
- 5.37. **“Terms of Reference (TOR)”** refers to the document that establishes in detail the particular power supply requirement of the EC, defining the scope and limitations to procure the said power supply, the obligations of the EC and the Captive Market Supplier, and key parameters and specifications of the supply agreement.³⁴
- 5.38. **“Winning Bidder”** refers to the bidder issued with a Notice of Award after the conduct of the CSP.³⁵

ARTICLE VI ACCOUNTABILITY OF EC-BOARD AND BAC

- 6.1. The EC-BOD and BAC shall have the responsibility to maintain and ensure transparency in the conduct of the CSP bearing in mind the interest of the EC’s Member-Consumer-Owners (“MCOs”) and the public in general.
- 6.2. The EC-BOD and BAC shall be accountable for their decisions in the conduct of the CSP.

ARTICLE VII APPLICABILITY OF THE DOE 2023 CSP POLICY AND ERC 2023 CSP GUIDELINES

- 7.I. In the absence of any applicable provision in this *Guidelines*, the pertinent provisions of the DOE 2023 CSP Policy or the ERC 2023 CSP Guidelines shall apply.

ARTICLE VIII COMPETITIVE SELECTION PROCESS PROCEDURE

In the preparation and conduct of their CSP, ECs must observe the procedures herein provided.

8.1. Preparation Prior to the Commencement of the CSP

8.1.1 Distribution Development Plan and Power Supply Procurement Plan

- a. ECs shall prepare and submit the DDP in accordance with DOE DC2021-03-0003, or the applicable and prevailing guidelines and policies of the DOE and applicable NEA issuance.

³³ Subject to the further requirements under provisions of Section 6, Appendix B, ERC 2023 CSP Guidelines.

³⁴ Subject to the further requirements under provisions of Section 3, Appendix B, ERC 2023 CSP Guidelines.

³⁵ Section 3(mm), Annex A., ERC 2023 CSP Guidelines.

- b. All ECs shall annually develop and submit to the NEA its DDP, which contains the PSPP. On or before the twenty-fifth (25th) of January of each year, ECs shall submit to NEA the DDP and PSPP. The DOE shall be furnished copy of the DDP and PSPP.
- c. The DDP and PSPP shall be reviewed and evaluated by the NEA prior to NEA's endorsement to the DOE in accordance with the prevailing regulations.
- d. NEA shall then endorse the National Electric Cooperative Distribution Development Plan to the DOE every fifteenth (15th) of March each year.
- e. On or before the 30th of June of each year, all ECs, through its authorized representative, shall upload their respective PSPPs in the CSP E-based Portal consistent with the NEA-endorsed PSPP of ECs, subject to the review and acceptance of the DOE.

8.1.2 Bids and Awards Committee

- a. The EC, through its EC-BOD, shall prescribe its process for selecting the members of its BAC, which shall consist of at least five (5) members. The EC-BOD shall also provide for the qualification of the members of its BAC, provided that BAC members shall not be related to any of the EC-BOD within the fourth (4th) degree of consanguinity or affinity.³⁶ Neither the EC General Manager nor any member of the EC-BOD can be part of the BAC.
- b. In accordance with its prescribed process, the EC-BOD shall establish the BAC, which shall lead, conduct, and manage the CSP in accordance with the policies and procedures provided in ERC 2023 CSP Guidelines and this *Guidelines*.³⁷
- c. ECs may choose to aggregate their demand or energy requirements, solely for the purpose of procuring their supply of electricity through CSP; provided, however, that individual PSAs shall be entered into between the Winning Bidder and the individual member EC. In such case, the Aggregated ECs shall agree on the process for constituting a Joint BAC, which process must be consistent with Section 8.1.2 (a) of this *Guidelines*. The Aggregated ECs, however, shall not be severally and jointly liable with the other ECs, with respect to their individual PSAs.³⁸
- d. In the case of Aggregated ECs, a Joint BAC and its composition including its corresponding Joint BAC TWG and Secretariat shall be established through a Memorandum of Agreement between/among the participating ECs.

³⁶ Section 7, Article IV of the ERC 2023 CSP Guidelines.

³⁷ *Ibid.*

³⁸ Section 8, Article IV of the ERC 2023 CSP Guidelines.

- e. Preferably, the members of the BAC should be knowledgeable in the fields of accounting, economics, finance, law, engineering, or procurement.
- f. A quorum of the BAC shall be composed of a simple majority of all its members,³⁹ provided that the Chairman or the Vice-Chairman should be present in all meetings and deliberations. The Chairman or, in his absence, the Vice-Chairman shall preside over the meetings (the "Presiding Officer").
- g. A decision of the BAC shall require majority votes of those present in a meeting or proceeding where a quorum is constituted.⁴⁰ The Presiding Officer shall vote only in case of a tie. All BAC decisions should be embodied in a resolution.

8.1.3 Competitive Selection Process Observers

- a. The NEA shall be a member of the CSP Observers in all CSPs conducted by ECs. Further, the National Power Corporation ("NPC") may be a member of the CSP Observers in all CSPs for Off-Grid areas. Where the National Transmission Corporation ("TransCo") is serving as Small Grid System Operator, it may also be a member of the CSP Observers.
- b. Prior to the commencement of the CSP, the BAC shall already identify at least one (1) group from each of the following to be invited as CSP Observers:⁴¹
 - 1. Consumer representatives from the Department of Trade and Industry-accredited consumer groups or from the Securities and Exchange Commission-registered consumer groups;
 - 2. Community representatives, such as the local chamber of commerce, homeowners associations, local pastoral councils, academe, parent-teachers associations, and/or for ECs, representatives from Multi-Sector Electrification Advisory Council and/or Barangay-Member Consumer Electrification Committee; and
 - 3. Interested civil society organizations and consumers.

8.1.4 Bidding Documents

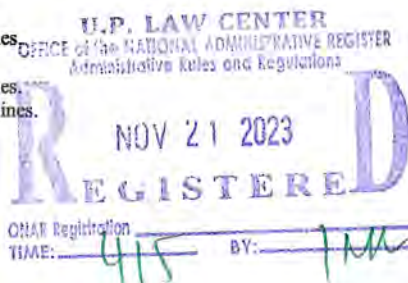
- a. ECs must prepare the Bidding Documents for the conduct of their CSPs, which include the following:⁴²
 - 1. TOR;

³⁹ Section 7, Article IV of the ERC 2023 CSP Guidelines.

⁴⁰ *Ibid.*

⁴¹ Section 9, Article IV of the ERC 2023 CSP Guidelines.

⁴² Section 1, Appendix B of the ERC 2023 CSP Guidelines.



2. Invitation to Bid;
 3. Instruction to Bidders;
 4. Draft PSA; and
 5. Information Memorandum, if deemed necessary by the EC.
- b. In all stages of the preparation of the Bidding Documents, the EC shall ensure equal access to information among all prospective bidders. Prior to their official release, no portion or information on the Bidding Documents shall be divulged or released to any prospective bidder or any person who has a direct or indirect interest in the supply requirement to be procured.⁴³
- c. No unauthorized official or employee of the EC or any bidder shall be entitled to any information regarding the bidding process other than what is contained in the Bidding Documents, the Instruction to Bidders, Supplemental Bid Bulletins, and in the official announcement of the Bid results.⁴⁴
- d. **Terms of Reference (TOR)**

The TOR must be based on the EC's latest PSPP posted on the DOE CSP E-based Portal and must contain, at the minimum, the information as provided in ANNEX B hereof.⁴⁵

e. **Invitation to Bid**

The Invitation to Bid shall provide prospective bidders with the following information, among others:⁴⁶

1. TOR;
2. Procurement activity schedule;
3. Place, time, and website where the Bidding Documents may be secured or downloaded, and, when required, the fees to be paid for the Bidding Documents;
4. Name, address, telephone number, facsimile number, e-mail, and website addresses of the Procuring EC, as well as its designated contact person;
5. Bid Submission Deadline; and
6. Such other necessary information deemed relevant by the EC

⁴³ Section 4, Appendix B of the ERC 2023 CSP Guidelines.

⁴⁴ *Ibid.*

⁴⁵ The TOR must include the minimum provisions required by the ERC under Section 3, Appendix B of the ERC 2023 CSP Guidelines.

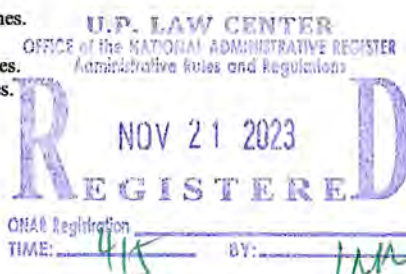
⁴⁶ Section 2, Appendix B of the ERC 2023 CSP Guidelines.

f. Instruction to Bidders

1. The Instruction to Bidders must provide the information necessary for bidders to prepare responsive Bids, in accordance with the requirements of the EC as indicated in its TOR.
2. The Instruction to Bidders must contain the following minimum provisions:⁴⁷
 - i. Eligibility Requirements as listed in ANNEX A hereof;⁴⁸
 - ii. Preparation and Submission of Bid;
 - iii. Bid Evaluation Methodology;
 - iv. Technical and Financial Bid Forms;
 - v. Form of Acceptance of Bidding Procedures;
 - vi. Form and Amount of Bid Security;
 - vii. Form and Amount of Performance Security and Warranty;
 - viii. Required authorities from bidders through a duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary's Certificate, whichever is applicable Certification or Undertaking that the bidder or his duly authorized representative shall:
 - (a) Attest to the responsibilities of the bidder; and
 - (b) Authorize the Bids and Awards Committee (BAC) or its duly authorized representative(s) to verify any information indicated in the documents submitted as part of the bidder's eligibility requirements; and
 - ix. The protest fee.⁴⁹

g. Draft Power Supply Agreement

1. In implementing its PSPP, ECs have the option to procure either a Physical or Financial PSA consistent with the ERC 2023 CSP Guidelines. The TOR must expressly indicate if the PSA to be procured is a Physical or Financial PSA.⁵⁰

⁴⁷ Section 1, Appendix B of the ERC 2023 CSP Guidelines.⁴⁸ *Ibid.*⁴⁹ Section 17, Article VI of the ERC 2023 CSP Guidelines.⁵⁰ Section 11, Article V of the ERC 2023 CSP Guidelines.

2. For PSAs procured for purposes of compliance with the Renewable Portfolio Standards ("RPS") under Republic Act No. 9513, or the Renewable Energy ("RE") Act, and other applicable laws and policies, the supply should come from an RPS-eligible plant, in accordance with the applicable DOE circulars and rules and regulations of the ERC.⁵¹
3. All PSAs are subject to approval of the ERC prior to their implementation in accordance with applicable issuances of the ERC unless immediate implementation is allowed under the DOE 2023 CSP Policy, as in the case of EPSAs.⁵²
4. The draft PSA to be included in the Bidding Documents should clearly define the rights and obligations of the parties and shall include the minimum terms and conditions of a PSA as prescribed in ERC's PSA template for Financial PSAs or PSA template for Physical PSAs, attached as ANNEXES C-1 and C-2 hereto, respectively.⁵³
5. The EC may include additional contractual terms and conditions in their draft PSA provided these are not contrary to the provisions of the TOR, the ERC 2023 CSP Guidelines, and this *Guidelines*.⁵⁴
6. The term of the PSA shall be for a maximum period of ten (10) years in the case of Financial PSAs. For Physical PSAs, the maximum term shall be for a period of fifteen (15) years, except for Physical PSAs where the nominated plants are renewable energy power plants, in which case, it may have a maximum term of twenty (20) years. All of these terms shall be reckoned from commencement of supply.⁵⁵
7. The tariff structure for Financial PSAs shall be fixed (expressed in PhP/kWh) for the duration of the contract term. The tariff structure for Physical PSAs shall be indicated by the EC in its TOR.⁵⁶
8. The Winning Bidder is under the obligation to provide the entire contracted capacity. In the case of Physical PSA, the Winning Bidder shall deliver the contracted capacities from its nominated plants, and where it is unable to deliver from these plants, it shall procure replacement power, subject to the guidelines provided herein.⁵⁷

In providing such replacement power, the EC and the Winning Bidder shall have the obligation to supply electricity in the least cost manner to the captive market. Further, the EC shall optimize its supply mix and sources in a way that this obligation shall be fulfilled.⁵⁸

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Section 12, Article V of the ERC 2023 CSP Guidelines.

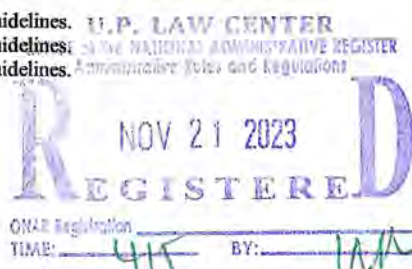
⁵⁴ *Ibid.*

⁵⁵ Section 13, Article V of the ERC 2023 CSP Guidelines.

⁵⁶ Section 14, Article V of the ERC 2023 CSP Guidelines.

⁵⁷ Section 15, Article V of the ERC 2023 CSP Guidelines.

⁵⁸ *Ibid.*



Further, the Winning Bidder is under the obligation to pay for the difference, if any, between the cost of the replacement power incurred by the EC and the provisionally or finally approved generation rate by the ERC.⁵⁹

Likewise, in any of the following cases, the Winning Bidder shall source and provide replacement power:⁶⁰

- i. If the Physical PSA provides that the supply requirement shall be originating from a specific plant type with a provisional or final generation rate granted specifically to such plant, and the Winning Bidder was not able to provide supply from such plant type, the Winning Bidder shall be responsible for the provision of replacement power at the generation rate equivalent to the provisional or final approved generation rate for such plant type, or the actual rate of the replacement power, whichever is lower;
 - ii. If the Winning Bidder was only able to provide partial electricity supply requirement of the EC, contrary to what is provided for under a duly executed Physical PSA, the Winning Bidder shall be responsible for the provision of replacement power for the deficient capacity at the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the replacement power, whichever is lower; or
 - iii. In case of outages that exceeded the authorized outage allowance, the Winning Bidder must provide replacement power at the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the replacement power, whichever is lower.
9. The Winning Bidder shall not be allowed to sell and/or assign the executed PSA resulting from a successful CSP to any other entity, except under the following conditions: (i) assignment to the Winning Bidder's subsidiary project company, provided that the Deed of Assignment shall state that the Winning Bidder and its stockholders shall be jointly and severally liable for any violation of the PSA terms and this *Guidelines* committed by its Assignee project company; and (ii) upon ERC's approval and determination of the assignee or buyer's legal, technical and financial eligibility.⁶¹

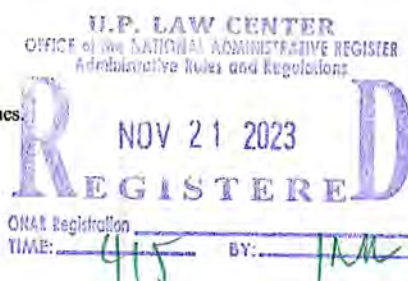
8.1.5 Submission of Bidding Documents to NEA

- a. Ninety (90) calendar days prior to the intended publication of the Invitation to Bid, as provided in the EC's latest PSPP posted on the DOE

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

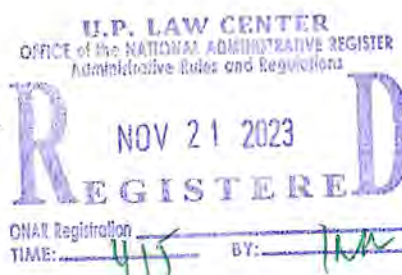
⁶¹ Section 17, Appendix B of the ERC 2023 CSP Guidelines.



CSP E-based Portal, the EC must submit the following to the NEA through e-mail at nea.eccsp@gmail.com:

1. Draft Bidding Documents (in PDF and MS Word format);
 2. Board Resolution endorsing the EC's Bidding Documents to NEA for review;
 3. Constitution of the BAC and the EC's process for selecting the members thereof including provisions for per diems/allowances; and
 4. A tentative list of the entities or groups who would be invited as CSP Observers.
- b. Within thirty (30) calendar days from NEA's receipt of the foregoing documents, the NEA shall review (i) the constitution of the BAC and the EC's process for selecting the members thereof to ensure that the selection process adopted by the EC is reasonable and neither whimsical nor arbitrary and (ii) the Bidding Documents submitted by the EC. The NEA may recommend revisions or modifications to the Bidding Documents.
 - c. For CSPs intended for Off-Grid areas, the NEA shall coordinate with the NPC and TransCo, as the Small Grid System Operator in certain areas, to review the TOR.
 - d. Any recommended revisions or modifications by the NEA shall be acted upon by the EC within fifteen (15) calendar days from receipt thereof. The NEA in turn, shall have fifteen (15) calendar days to review such compliance from the EC. If satisfied, the NEA will issue the *Notice to Commence* indicating therein the submitted final schedule of the CSP activities to be conducted by the EC.
 - e. If the NEA has no recommended revisions or modifications, the NEA will issue a *Notice to Commence* indicating therein the submitted final schedule of the CSP activities to be conducted by the EC.
 - f. Fifteen (15) calendar days before the schedule to publish the Invitation to Bid, as stated in the *Notice to Commence*, the EC must request for a Certificate of Conformity from NEA through the Energy Virtual One-Stop Shop ("EVOSS") System. NEA shall issue the *Certificate of Conformity* within three (3) working days from the receipt of complete documents, copy furnished to the DOE and the ERC.
 - g. The BAC shall notify, in writing, the DOE, copy furnish the ERC and NEA, of the conduct of the CSP five (5) calendar days before the first publication of the Invitation to Bid.⁶²

⁶² Section 7, Article IV of the ERC 2023 CSP Guidelines.



8.2. Procedure for the Conduct of the CSP

8.2.1. Duration of Competitive Public Bidding and Costs

- a. The entire process of competitive public bidding, including the award of contract, shall be completed within one hundred eighty (180) calendar days from the first publication of the Invitation to Bid.⁶³
- b. In the event of failed bidding under the circumstances prescribed in this *Guidelines*, ECs are given a fresh period of one hundred eighty (180) calendar days from the publication of the second (2nd) Invitation to Bid within which to conclude the second (2nd) round of competitive public bidding.⁶⁴
- c. All expenses incurred in the conduct of the CSP shall be shouldered by the ECs, which shall not be passed-on to its MCOs. The ECs may, however, recover these expenses from the proceeds of the Bidding Documents fee.

8.2.2. Publication Requirements

- a. The BAC shall cause the publication and posting of the Invitation to Bid for the procurement opportunity in accordance with this *Guidelines* for the period specified herein.⁶⁵
- b. The BAC shall publish the Invitation to Bid, consistent with the *Certificate of Conformity* and *Notice to Commence*, at least once (1x) every week for two (2) consecutive weeks in at least one (1) newspaper of general circulation. The weekly publications must be at least seven (7) calendar days apart.⁶⁶
- c. In addition to the newspaper of general circulation, the BAC may also opt to publish the Invitation to Bid in one (1) local newspaper of local circulation in the region, province, city, or municipality once (1x) weekly for two (2) consecutive weeks. The weekly publications must not be less than seven (7) calendar days apart.⁶⁷
- d. The TOR, once published, can no longer be amended except through the issuance of Bid Bulletins in accordance with the bidding procedures. The TOR shall form part of the PSA entered into by the parties as a result of a CSP. In case of conflict between the TOR and the PSA, the former shall prevail.⁶⁸

⁶³ Section 18, Appendix B of the ERC 2023 CSP Guidelines.

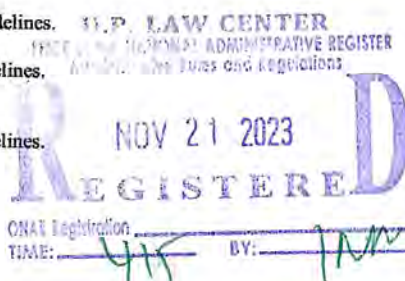
⁶⁴ *Ibid.*

⁶⁵ Section 5, Appendix B of the ERC 2023 CSP Guidelines.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Section 3, Appendix B of the ERC 2023 CSP Guidelines.



8.2.3. Posting Requirements

- a. The BAC shall post the Invitation to Bid, consistent with the *Certificate of Conformity* and *Notice to Commence*, on the DOE CSP e-based Portal, on the NEA website, and on its website, if one is available.
- b. The BAC shall post updates on the progress of and status of the procurement activity through the DOE CSP e-based Portal and on the NEA website. Such progress updates shall be on top of other progress reports that the DOE and NEA may require from the procuring EC, if any.⁶⁹
- c. The BAC shall likewise ensure that all Bid Bulletins and related announcements shall be posted on the DOE CSP E-based Portal, on the NEA website, and on its website, if one is available.⁷⁰
- d. The BAC shall ensure that all Bid Bulletins will be received by the bidders. To this end, the BAC shall ensure that all Bid Bulletins are timely delivered to the Bidders through the most efficient and speedy means available.
- e. The results of the CSP including all bid offers in the conduct of the CSP shall also be posted by the EC on the DOE CSP e-based Portal, on the NEA website, and on its website, if one is available.⁷¹

In cases where the ECs encounter problems in posting the necessary information on the DOE CSP e-based portal or on the NEA website, the ECs shall inform the DOE and NEA accordingly, and seek assistance to ensure compliance with this posting requirement.⁷²

8.2.4. Invitation to CSP Observers

- a. To assure all parties that the CSP is conducted in an open, transparent, efficient, and equitable manner, the BAC shall invite, in writing, whether through physical or electronic means, the CSP Observers it previously identified.⁷³
- b. The NEA shall be invited to act as a CSP Observer in all CSPs conducted by ECs. Further, the NPC and TransCo (where TransCo serves as the Small Grid System Operator) shall also be invited to act as CSP Observers in CSPs for Off-Grid areas.
- c. The CSP Observers shall inform, in writing, whether through physical or electronic means, the BAC, of their interest to participate as observers.

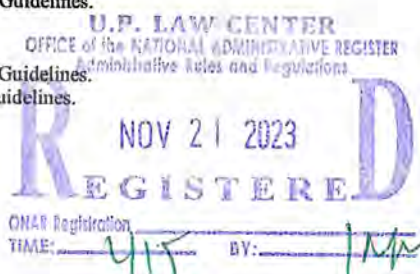
⁶⁹ Section 5, Appendix B of the ERC 2023 CSP Guidelines.

⁷⁰ *Ibid.*

⁷¹ Section 4.5 of the DOE 2023 CSP Policy.

⁷² Section 5, Appendix B of the ERC 2023 CSP Guidelines.

⁷³ Section 9, Article IV of the ERC 2023 CSP Guidelines.



and of their designated primary observer and an alternate for the whole CSP process.⁷⁴

- d. CSP Observers shall execute a sworn undertaking that they will strictly adhere to this *Guidelines* and with the ERC 2023 CSP Guidelines.⁷⁵
- e. The BAC shall prepare the minutes of meeting for every scheduled CSP activities within seven (7) calendar days from the conclusion of the activity. The BAC shall furnish the copy of the minutes to the CSP Observers and the Bidders.
- f. The NEA representative is allowed unrestricted access to all CSP-related documents and data from the BAC.
- g. The EC is required to make and keep, as part of the BAC records, a complete and unedited video record of the proceedings in all cases of CSP and live-stream proceedings in their social media websites.⁷⁶
- h. The absence of CSP Observers will not nullify the CSP proceedings; provided that the CSP Observers have been duly invited in writing, whether through physical or electronic means, at least five (5) calendar days before each of the scheduled procurement stages.⁷⁷

8.2.5. Issuance of Bidding Documents

- a. The BAC shall prescribe reasonable requirements, forms, authorizations, certifications, or other documents to be submitted by interested parties to obtain a copy of the Bidding Documents, such as a verified expression of interest.⁷⁸
- b. Pursuant to the ERC 2023 CSP Guidelines, ECs may charge a reasonable amount of fees for the Bidding Documents corresponding to the volume of power supply that is subject of the CSP; provided, such fees shall in no case be higher than Twenty-five Thousand Pesos (PhP25,000.00) for every 1MW contracted capacity. Such fees shall not be recovered from the consumers.⁷⁹
- c. Interested parties who obtained the Bidding Documents upon compliance with the aforementioned BAC requirements and payment of fees will be considered a prospective Bidder or Bidder under this *Guidelines*.⁸⁰

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Section 1, Appendix B of the ERC 2023 CSP Guidelines.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

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8.2.6. Conduct of Pre-Bid Conference

- a. A Pre-Bid Conference shall be conducted by the concerned EC at least thirty (30) calendar days before the deadline for the submission of bids but after seven (7) calendar days from the last publication. The purpose of the Pre-Bid Conference is to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise. The Pre-Bid Conference may be held sooner should justifiable reasons warrant it.⁸¹ If necessary, ECs may conduct multiple Pre-Bid Conferences.
- b. Only CSP Observers and prospective bidders are allowed to attend the Pre-Bid Conference.⁸²
- c. Nothing stated at the Pre-Bid Conference shall modify any provisions or terms and conditions of the Bidding Documents unless such is made as a written amendment thereto by the concerned EC, through Bid Bulletins. Provided, that no amendment shall be made with respect to the contract quantity and cooperation period as certified by the NEA.⁸³
- d. All bidders shall be duly notified by the EC of any amendment to the Bidding Documents, not later than fifteen (15) calendar days before the deadline for submission of bids, to allow the participants to consider the same in the preparation of their bids. The notice of the amendment in the form of a Bid Bulletin shall be duly acknowledged by each bidder prior to the submission of its bid and shall be so indicated in the bid. A summary of the Pre-Bid Conference proceedings shall also be issued to all prospective bidders by the EC concerned.⁸⁴
- e. Attendance to the Pre-Bid Conference by prospective bidders is not mandatory, but is encouraged.⁸⁵

8.2.7. Submission and Opening of Bids

- a. Bidders shall be required to submit their bids on the deadline stipulated in the Instruction to Bidders as well as in the published Invitation to Bid.⁸⁶
- b. In no case shall the deadline for submission of bids be set earlier than the forty-fifth (45th) day following the last publication of the Invitation to Bid (Bid Submission Deadline).⁸⁷
- c. Bids shall be submitted in two (2) separate sealed envelopes. The first main envelope shall contain the technical bid proposal and the eligibility requirements. The technical bid proposal and eligibility requirements shall

⁸¹ Section 6, Appendix B of the ERC 2023 CSP Guidelines.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Section 8, Appendix B of the ERC 2023 CSP Guidelines.

⁸⁷ *Ibid.*

be placed in separate sealed envelopes inside the first main envelope. The second main envelope shall contain the financial component of the bid and the Bid Security, which shall be placed in separate sealed envelopes inside the second main envelope.⁸⁸

- d. All envelopes shall bear the name of the bidder in capital letters and addressed to the BAC of the concerned EC. They shall be marked "Do Not Open Before (date and time of opening of bids)". The envelopes shall be appropriately labeled as "Eligibility Requirements and Technical Proposal" and "Financial Proposal and Bid Security".⁸⁹
- e. Bids submitted after the Bid Submission Deadline shall be rejected and returned unopened to the bidder. The BAC shall ensure that this circumstance is recorded in the minutes of the bid opening.⁹⁰
- f. The BAC 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 Instruction to Bidders, as well as in the Invitation to Bid. The BAC shall ensure the integrity, security, and confidentiality of all submitted Bids.
- g. Opening of Bids shall take place in the presence of bidders and/or their duly authorized representatives and CSP Observers. Absence of a bidder shall not be a ground for the postponement of the opening of Bids or disqualification of the absent bidder.
- h. The BAC shall prepare an Abstract of Bids which shall be signed by the BAC. The BAC shall furnish a copy of the Abstract of Bids to the bidders and CSP Observers.

8.2.8. Bid Validity Period

A Bid must be valid for a period of not less than one hundred eighty (180) calendar days from the deadline for submission and opening of bids. Any Bid with a shorter Bid Validity Period shall be immediately rejected.⁹¹

8.2.9. Bid Security

- a. Each bidder shall submit, as part of its bid submission, a Bid Security in accordance with the following terms and conditions:⁹²

1. It is an amount expressed in Philippine Pesos in any of the following forms:

- i. Cash or cashier's/manager's check issued by a Universal or Commercial Bank or any other banks certified by the Bangko

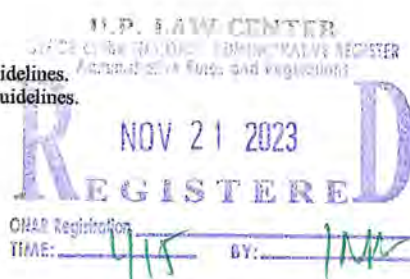
⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Section 9, Appendix B of the ERC 2023 CSP Guidelines.

⁹² Section 10, Appendix B of the ERC 2023 CSP Guidelines.

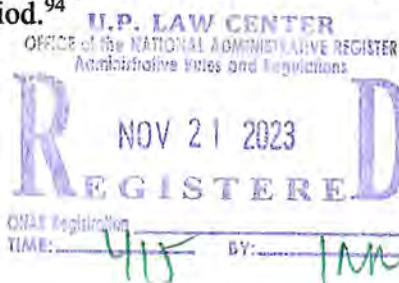


Central ng Pilipinas as authorized to issue such financial instrument;

- ii. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; provided, however, that it shall be confirmed or authenticated by a local Universal or Commercial Bank if issued by a foreign bank; or
 - iii. In case the Bid Security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP. The Bid Security shall be expressed in or converted to Philippine Peso at the exchange rate prevailing on the date of its issuance.
2. The Bid Security shall be issued in favor of the EC/s;
 3. The amount must be equivalent to three (3)-month contract cost of the proposed power supply agreement computed using the bid price offered by the bidder. If forfeited, the Bid Security shall be used by the EC in purchasing power covering the period affected by the delay in the bidding process, which it shall not recover from consumers;
 4. The Bid Security shall guarantee that each bidder complies with its obligation under the bidding procedures during the Bid Validity Period, or any extension thereof. Refusal, inability or failure of the Winning Bidder to accept the award or enter into a contract with the EC shall cause the forfeiture of its Bid Security; however, the Bid Security shall not be forfeited should the failure or inability of the Winning Bidder to accept the award or enter into a contract be caused by force majeure or through no fault of its own;
 5. The Bid Security shall be governed by Philippine Laws; and
 6. The Bid Security shall provide for a contact person and address, telephone number, and facsimile of the issuing bank for notification and demand.
- b. A Bid submitted either (i) without the required Bid Security, (ii) in an amount less than the required amount, (iii) whose effectivity will expire prior to the Bid Validity Period, or (iv) which is materially defective, shall be rejected outright and returned to the bidder.⁹³
 - c. The required Bid Security shall be valid for the duration of the bidding process but in no case beyond one hundred eighty (180) calendar days from the deadline for submission and opening of bids. The execution of the PSA shall be made within the Bid Validity Period and Bid Security Validity Period.⁹⁴

⁹³ Ibid.

⁹⁴ Ibid.



8.2.10. Evaluation of Bids

- a. The evaluation of bids shall be undertaken in three (3) stages in accordance with the procedures described below:

1. Stage 1

- i. The bidders' eligibility shall be evaluated through non-discretionary "pass/fail" criteria in accordance with the requirements set forth in ANNEX A of this *Guidelines*.
- ii. Only those bids that have been determined to have positively passed the first stage of evaluation shall be considered for the second stage of evaluation.
- iii. The sealed envelopes containing the Technical and Financial Proposals of bidders determined to be ineligible shall be returned unopened.⁹⁵

2. Stage 2

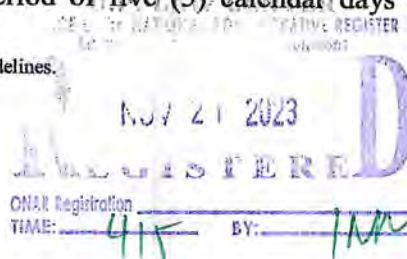
- i. The technical and operational capability of the proposal, vis-à-vis the prescribed requirements and minimum standards prescribed in the bidding documents, shall be evaluated through non-discretionary "pass/fail" criteria.
- ii. Only those bids that have been determined to have positively passed the first and second stages of evaluation shall be considered for the third stage of evaluation.
- iii. In case the eligible bidder fails to pass the second stage of evaluation, the sealed envelope containing its financial proposal shall be returned to it unopened.⁹⁶

3. Stage 3

- i. Evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals of the bidders.
- ii. The BAC must determine the Lowest Calculated Bid ("LCB") through:
 - (a) The detailed evaluation of the financial component of the bids, to establish the correct calculated bid prices.
 - (b) In case there is a tie, each of the bidders will be given a period of five (5) calendar days to submit a better offer.

⁹⁵ Section 11, Appendix B of the ERC 2023 CSP Guidelines.

⁹⁶ *Ibid.*



Subsequent occurrence of tie shall be resolved through the same manner.

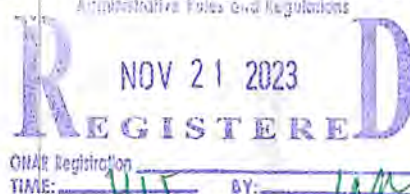
- (c) The total bid prices shall be calculated and ranked from the lowest to the highest. The bid with the lowest price shall be identified as the LCB.
- iii. The BAC shall conduct and complete a post-qualification process to determine the Lowest Calculated Responsive Bid ("LCRB"). The purpose of the post-qualification process is to determine whether the bidder with the LCB complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.
- iv. If, however, the BAC determines that the bidder with the LCB fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.
- v. Immediately after the BAC has notified the first bidder of its post-disqualification, the BAC shall initiate and complete the same post-qualification process on the bidder with the *second* LCB.
- vi. If the second bidder passes the post-qualification the second bidder shall be determined as the bidder with the LCRB.
- vii. The procedure for post-qualification shall be repeated for the bidder with the next LCB, and so on until the bidder with the LCRB is determined.

8.2.11. Award of Contract

- a. Upon the determination of the bidder with the LCRB, the BAC shall recommend to the EC-BOD the award of contract to the bidder with the LCRB. The BAC shall submit the following supporting documents to the EC-BOD:

- 1. Resolution of the BAC recommending the award;
- 2. Abstract of Bids;
- 3. Bid Evaluation Report; and
- 4. Other pertinent documents required by existing laws, rules, and/or by the EC-BOD.

- b. Within ten (10) calendar days from receipt of the recommendation of the BAC, the EC-BOD shall approve or disapprove the said recommendation. Within the same period provided herein, the BAC shall: (i) notify, in

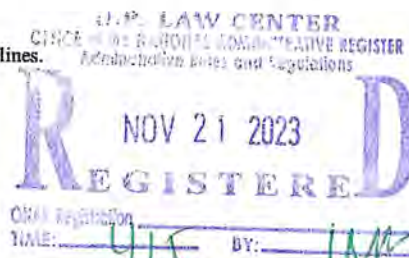


writing, including via electronic mail, the losing bidders of the decision of the EC-BOD, specifying clearly the reason for disapproving the said recommendation; and (ii) return the Bid Security posted by the losing bidders.⁹⁷

- c. If the EC-BOD *disapproves* the BAC's recommendation, such disapproval shall be based only on any of the prohibited acts of the BAC under Section 11.1 or any of the prohibited acts of the bidders under Section 11.2. The EC-BOD's disapproval shall be expressed through a Board Resolution and provided to the BAC and to NEA. The BAC will inform the bidder within reasonable time of the EC-BOD's disapproval of its LCRB.⁹⁸
- d. Upon approval of the BAC's recommendation, the EC-BOD shall have three (3) calendar days to submit to the NEA the Board Resolution (i) adopting the BAC's recommendation and (ii) requesting the NEA's issuance of the *Notice to Issue Award*. The EC-BOD shall also submit the following to the NEA:
 1. A report on the entire CSP, duly signed and sworn to by the General Manager of the EC and the EC-BOD;
 2. Resolution of the BAC recommending the award;
 3. Abstract of Bids;
 4. Bid Evaluation Report;
 5. The Final Bidding Documents, and all Bid Bulletins, letters, or memorandums issued by the BAC for the CSP;
 6. Draft PSA; and
 7. Other pertinent documents or as may be required by the NEA.
- e. Within thirty (30) calendar days from receipt of the Board Resolution referred to item d above, the NEA shall act on the Board Resolution accordingly.
- f. If the NEA finds the CSP conducted by the EC to be in order, it shall release a *Notice to Issue Award* to the EC.

Otherwise, should the NEA find that the CSP conducted by the EC violates the DOE 2023 CSP Policy, ERC 2023 CSP Guidelines, this *Guidelines*, or the general principles of transparency, competitiveness, and accountability, the NEA shall have the authority to nullify the CSP as may be appropriate after the observance of due process.

⁹⁷ Section 12, Appendix B of the ERC 2023 CSP Guidelines.
⁹⁸ *Ibid.*



- g. Within five (5) calendar days from the EC's receipt of the NEA's *Notice to Issue Award*, the BAC shall issue a Notice of Award to the bidder with the LCRB and declare it to be the Winning Bidder. It is incumbent upon the ECs to ensure that the Notice of Award shall be made within the Bid Validity Period as herein provided.

8.3. Execution of the PSA

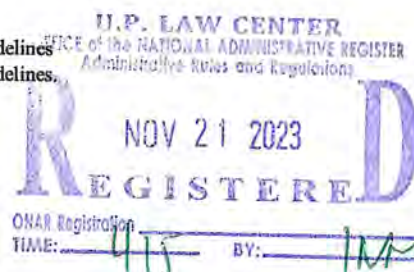
- 8.3.1. Upon the issuance of the Notice of Award, the EC and the Winning Bidder shall have ten (10) calendar days to finalize the draft PSA. The Winning Bidder and the EC may agree on changes to the draft PSA, which changes must clearly result to terms more favorable to the EC's MCOs.⁹⁹
- 8.3.2. Within the same ten (10) day period, the EC-BOD must issue a Board Resolution endorsing the finalized draft of the PSA to the NEA for its final clearance. The Board Resolution should also identify the revisions made to the draft PSA, if there is any, and justifications thereof. If no revisions were made to the draft PSA, the Board Resolution should state this fact.
- 8.3.3. Within seven (7) calendar days from receipt of the finalized PSA from the EC-BOD, the NEA will review whether the finalized PSA conforms with the TOR of the EC. If the NEA finds the finalized PSA to be in order, it shall issue a *Notice to Execute the Agreement*.
- 8.3.4. Within three (3) calendar days from receipt of NEA's *Notice to Execute the Agreement*, the Winning Bidder and the EC shall execute and sign the PSA, as approved by the NEA.
- 8.3.5. In the event that the executed PSA contains terms and conditions which are materially different from the TOR or PSA approved by the NEA, and the difference is solely due to the act or omission of the Winning Bidder, the Bid Security shall be forfeited by the EC and the PSA shall be deemed of no force and effect.¹⁰⁰ This is without prejudice to any administrative action that the NEA may take against the erring party.
- 8.3.6. In case of refusal, inability, or failure to enter into a PSA by the Winning Bidder, the Bid Security shall be forfeited by the EC.¹⁰¹
- 8.3.7. The refusal, inability, or failure to enter into a PSA by the EC shall be considered a violation of this *Guidelines*.¹⁰² The EC-BOD, EC management, officials, employees as well as members of the BAC, if applicable, may be subjected to administrative penalties imposable by NEA.

⁹⁹ Section 14, Appendix B of the ERC 2023 CSP Guidelines

¹⁰⁰ Section 14, Appendix B of the ERC 2023 CSP Guidelines.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*



8.4. Posting of Performance Bond

- 8.4.1. Within ten (10) calendar days from the execution of the contract, the Winning Bidder shall post a Performance Bond equivalent to the three (3)-month contract cost of the proposed PSA computed using the bid price offered by the Winning Bidder.¹⁰³
- 8.4.2. Failure to post the required Performance Bond within the prescribed period will result in the forfeiture of the Bid Security.¹⁰⁴
- 8.4.3. Failure, inability or refusal of the Winning Bidder to join in the timely filing of the application will result in the forfeiture of the Performance Bond.¹⁰⁵
- 8.4.4. If forfeited, the Performance Bond shall be used by the EC in purchasing power covering the period affected by the delay or failure in the filing of the application, in which case, such forfeited amount used in purchasing power shall not be passed-on to its consumers.¹⁰⁶
- 8.4.5. The Winning Bidder's Bid Security shall be returned after the execution of the PSA and posting of the Performance Bond.

8.5. Issuance of Notice to Proceed

Within five (5) calendar days from receipt of the Performance Bond, the EC shall issue a Notice to Proceed stating therein that all conditions stated in the Notice of Award have been complied with.¹⁰⁷

8.6. Filing of PSA with the ERC

With reference to the filing of the PSA, the EC and Winning Bidder shall comply with timelines, deadlines, and requirements under Article VII (i.e., *PSA Application*) of the ERC 2023 CSP Guidelines.

ARTICLE IX PROTEST MECHANISM

- 9.1. Decisions of the BAC regarding the CSP may be questioned by the bidders by filing a written request for reconsideration within ten (10) calendar days upon receipt of written notice of such decision of the BAC. The BAC shall decide on the request for reconsideration within ten (10) calendar days from receipt thereof. If the request for reconsideration is not acted upon within the said period by the BAC, the same is deemed approved.¹⁰⁸

¹⁰³ Section 15, Appendix B of the ERC 2023 CSP Guidelines.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Section 16, Appendix B of the ERC 2023 CSP Guidelines.

¹⁰⁸ Section 16, Article IV of the ERC 2023 CSP Guidelines.

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- 9.2. In the event that the request for reconsideration is denied, decisions of the BAC may be protested, in writing, to the EC-BOD.¹⁰⁹
- 9.3. A protest shall be made by filing a position paper with the EC-BOD, accompanied by the payment of a non-refundable protest fee as may be determined by the concerned BAC and prescribed in the Instruction to Bidders. In no case shall the protest fee be higher than the Bid Security. Such fees shall not be recovered from consumers.¹¹⁰
- 9.4. The position paper shall contain the following information: the name of bidder, address, name of the project, a brief statement of facts, issue to be resolved, and such other matters and information pertinent and relevant to the proper resolution of the protest.¹¹¹
- 9.5. The protest must be filed within ten (10) calendar days from receipt of the resolution denying its request for reconsideration.¹¹²
- 9.6. The position paper shall be accompanied by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct according to his or her personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect, while non-payment of the protest fee will result in the outright dismissal of the protest.¹¹³
- 9.7. Protests shall be resolved within ten (10) calendar days from receipt thereof. The decision of the EC-BOD shall be final. After protests have been resolved with finality, an aggrieved party may file a timely petition to intervene in the application to be filed by the parties before the ERC for approval of the resulting PSA.¹¹⁴
- 9.8. Any protest at any stage of the CSP shall not stay nor delay the bidding process. Likewise, no suit or action shall be filed by the CSP Observers while the CSP is underway.¹¹⁵

ARTICLE X DIRECT NEGOTIATION

- 10.1. Direct Negotiation with an interested Captive Market Supplier for the supply of electricity may be undertaken by the EC, using the ERC's PSA Templates for Financial PSAs or Physical PSAs (i) in the case of EPSAs, in accordance with Section 10.1.1 of this *Guidelines*¹¹⁶; or (ii) after at least two (2) failed competitive public bidding, in accordance with Section 10.1.2 of this *Guidelines*.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Section 18, Article VI of the ERC 2023 CSP Guidelines.

¹¹⁵ Section 19, Article VI of the ERC 2023 CSP Guidelines.

¹¹⁶ Section 10, Article IV of the ERC 2023 CSP Guidelines.

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10.1.1. Negotiated Procurement of an Emergency Power Supply Agreement

- a. The EC may engage in negotiated procurement of an EPSA under the circumstances contemplated in Section 4.3.5 of this *Guidelines*.
- b. In accordance with Section 6, Article IV of the ERC 2023 CSP Guidelines, the EC and the supplier of Emergency Power may immediately execute and implement an EPSA provided the following conditions are present:
 1. The cooperation period of such EPSA shall have a maximum and non-extendible period of one (1) year from its execution;
 2. The interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rates shall apply until the ERC issues its approval of the EPSA;
 3. The EC shall, within five (5) calendar days from the occurrence of the Force Majeure or Fortuitous Event, notify in writing the DOE, ERC, and NEA (as well the NPC in the case Off-Grid areas), of such Force Majeure or Fortuitous Event which will require the Emergency Power supply; and
 4. The EC and the Captive Market Supplier shall jointly file with the ERC the application for approval of the said EPSA in accordance with the timeline prescribed in Section 23 of the ERC 2023 CSP Guidelines.
- c. Procurement of Emergency Power supply shall not be entitled to any form of subsidy.
- d. Notification to the NEA shall be sent through e-mail at nea.eccsp@gmail.com.

10.1.2. Direct Negotiation Resulting from Two Failed Biddings

- a. A bidding is considered to have failed when, during its conduct, any of the circumstances exist:¹¹⁷
 1. All bidders are declared ineligible;
 2. Only one bidder submitted a proposal;
 3. No proposal was received by the BAC on Bid Submission Deadline;

¹¹⁷ *Ibid.*

4. No Captive Market Supplier purchased the Bidding Documents after the deadline set in the published Invitation to Bid;
 5. Offers of bidders failed to meet the requirements prescribed under the TOR, as determined by the BAC; or
 6. In the event of refusal, inability, or failure of a Winning Bidder to enter into a PSA with the EC.
- b. Upon the declaration of the failure of the second (2nd) bidding, the EC-BOD shall issue a Board Resolution requesting the NEA's issuance of the *Notice to Undertake Direct Negotiation* stating therein the reasons and circumstances justifying the conduct of Direct Negotiation and including therein all pertinent BAC and EC-BOD resolutions from the previous failed CSPs.
 - c. The NEA shall review if the conduct of Direct Negotiation is appropriate under the circumstances and consistent with the NEA COC. If found in order, the NEA shall issue the *Notice to Undertake Direct Negotiation*.
 - d. The entire process of Direct Negotiation shall be completed and the PSA signed within ninety (90) calendar days from the issuance of the *Notice to Undertake Direct Negotiation*.¹¹⁸
 - e. The EC may resort to any available and appropriate means to disseminate the Invitation for Negotiation, such as but not limited to posting the Invitation for Negotiation on their website and social media pages, causing the publication of the Invitation for Negotiation, or sending the Invitation for Negotiation to previous bidders or to its existing suppliers, among others. All Invitation for Negotiation shall be posted on the NEA website.
 - f. All bidders must submit a proposal on or before the deadline set in the Invitation for Negotiation.
 - g. The BAC shall evaluate the proposals submitted to it and determine the proponent with the best offer that complies with all of the EC's requirements as stated in the Invitation for Negotiation. The proponent with the best offer shall be declared the Winning Proponent through a BAC resolution.
 - h. After the declaration of the Winning Proponent, the EC and the Winning Proponent shall then prepare and finalize the PSA using the ERC's PSA Templates for Financial PSAs or Physical PSAs. Upon the finalization of the negotiated PSA, the BAC shall issue a resolution endorsing the same to the EC-BOD.

¹¹⁸ In relation to Section 10, Article IV of the ERC 2023 CSP Guidelines.

- i. The EC-BOD shall then issue a Board Resolution (i) adopting the BAC's endorsement and (ii) requesting the NEA's issuance of the *Notice to Execute the Agreement*. The EC-BOD shall attach the following to its request:
 1. A report on the conduct of Direct Negotiation, duly signed and sworn to by the General Manager of the EC and the EC-BOD;
 2. Pertinent BAC resolutions;
 3. Evaluation Report which must contain a comparison of the offers received by the EC along with an explanation on how the BAC evaluated the offers;
 4. The finalized PSA along with a document indicating the changes made to the ERC Financial PSA or Physical PSA template; and
 5. Other pertinent documents or as may be required by the NEA.
- j. Within fifteen (15) calendar days from receipt of the EC-BOD resolution and complete supporting documents, the NEA shall review the Direct Negotiation undertaken by the EC. If the NEA finds the Direct Negotiation conducted by the EC to be in order, it shall issue the *Notice to Execute the Agreement*.

 Otherwise, should the NEA find that the CSP conducted by the EC violates the DOE 2023 CSP Policy, ERC 2023 CSP Guidelines, this *Guidelines*, and the general principles of transparency, competitiveness, and accountability, the NEA shall have the authority to nullify the Direct Negotiation as may be appropriate after the observance of due process.
- k. Within five (5) calendar days from receipt of the NEA *Notice to Execute the Agreement*, the EC and the Winning Proponent must sign the PSA.
- l. The EC shall then proceed with the compliance of Sections 8.4 and 8.5 of this *Guidelines*.
- m. Within thirty (30) calendar days from execution of the PSA resulting from the Direct Negotiation, the resulting PSA must be filed for approval with the ERC.¹¹⁹

ARTICLE XI PROHIBITED ACTS AND AGREEMENTS

- 11.1. The members of the BAC, BAC Secretariat, and the members of the EC-BOD, are prohibited from doing any of the following acts:¹²⁰

¹¹⁹ Section 10, Article IV of the ERC 2023 CSP Guidelines.

¹²⁰ Section 31, Article VIII of the ERC 2023 CSP Guidelines.

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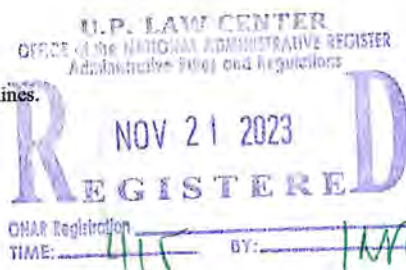
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- 11.1.1. Conducting bid-opening stage in a non-public manner;
 - 11.1.2. Failing to read out or show the bid prices and terms at bid opening;
 - 11.1.3. Changing or discarding parts of bids or deliberately misplacing all or parts of bids;
 - 11.1.4. Changing the announced evaluation criteria during the evaluation process;
 - 11.1.5. Arbitrarily assigning or changing bid scores, or making deliberate mistakes or errors in scoring;
 - 11.1.6. Voiding all bids for alleged errors in specifications and re-bidding the work;
 - 11.1.7. Extending the bid due date to permit late, changed, or altered bids;
 - 11.1.8. Allowing unauthorized persons to participate in and influence the bid evaluation;
 - 11.1.9. Failing to record important information in the bid evaluation report, such as the ranking of bidders or bid prices;
 - 11.1.10. Refusal to accept CSP Observers without valid reason;
 - 11.1.11. Awarding of the contract to an entity other than the Winning Bidder; and
 - 11.1.12. Any act or omission thereof that tends to undermine the objectives of this *Guidelines*.
- 11.2. Bidders are prohibited from doing any of the following acts:¹²¹
- 11.2.1. Submission of eligibility requirements containing false information or falsified documents;
 - 11.2.2. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening, or any other stage of the competitive bidding;
 - 11.2.3. Allowing the use of one's name, or using the name of another for purposes of competitive bidding;
 - 11.2.4. Withdrawal of a bid, or refusal to accept an award, or enter into a contract with the EC without justifiable cause, after receiving the award;
 - 11.2.5. Refusal or failure to post the required Bid Security within the prescribed period;

¹²¹ Section 32, Article VIII of the ERC 2023 CSP Guidelines.



- 11.2.6. Termination of the contract due to the default of the Winning Bidder;
- 11.2.7. Any documented attempt by a bidder to unduly influence the outcome of the bidding in its favor;
- 11.2.8. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late bids, or patently insufficient bids, for at least three (3) times within a year, except for valid reasons; and
- 11.2.9. Any act or omission thereof that tends to undermine the objectives of this *Guidelines*.

ARTICLE XII DUTIES OF NEA

- 12.1. The NEA may review, modify, or nullify any CSP conducted by ECs that violates the DOE 2023 CSP Policy, the ERC 2023 CSP Guidelines, this *Guidelines*, and the general principles of transparency, competitiveness, and accountability.

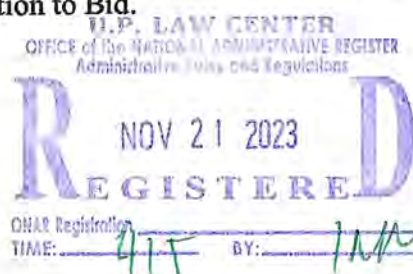
A CSP nullified by the NEA shall not be considered or counted as failed bid for the purposes of conducting *Direct Negotiation*.

- 12.2. ECs with limited capability to undertake CSP may request the NEA to provide the necessary assistance and resources to conduct the same, including, but not limited to, the mobilization of competent manpower of the NEA and other ECs, and if necessary, the involvement of NPC and TransCo in Off-Grid Areas, which shall be at no expense to the EC.
- 12.3. The NEA shall advise all ECs to conduct their CSP not later than two (2) years before the scheduled date indicated in their respective PSPPs.

ARTICLE XIII CSP TO BE CONDUCTED BY NEA

- 13.1. In case an EC (or Aggregated ECs) requests NEA assistance under Section 12.2 or is unable to complete the CSP one (1) year before the scheduled date as indicated in the PSPP, the NEA shall undertake or continue the CSP on behalf of the EC. For this purpose, the NEA can mobilize its own manpower complement and structure, the manpower of the EC itself, as well as those of other ECs to undertake the CSP process, as necessary.
- 13.2. The NEA BAC shall conduct the CSP on behalf of the EC or Aggregated ECs. The CSP to be conducted by the NEA BAC shall follow the rules and procedures under the DOE 2023 CSP Policy, ERC 2023 CSP Guidelines, and this *Guidelines*.
- 13.3. In preparing the Bidding Documents and conducting the procurement activities, the NEA BAC will create a NEA Technical Working Group ("TWG").

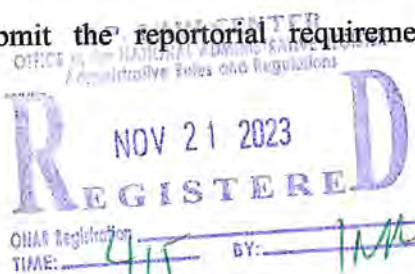
- 13.4. The NEA will issue an order directing the NEA BAC to conduct the CSP on behalf of an EC or Aggregated ECs. The subject EC or ECs will also receive a copy of the said order, informing them that the NEA BAC will conduct the CSP on its or their behalf, as the case may be.
- 13.5. Within fifteen (15) calendar days from receipt of the order from the NEA, the subject EC or ECs must issue and furnish to the NEA a duly issued Board Resolution containing the following minimum terms:
 - 13.5.1. Authorizing the NEA to perform on the EC's behalf all acts necessary and appropriate to conduct the CSP, such as, but not limited to, preparing Bidding Documents, holding of pre-bid conference/s, answering queries of bidders, evaluating bid submissions, subjecting the bids to a post-qualification process, and issuing of a notice of award;
 - 13.5.2. Appointing a representative/s (i) to represent the EC in the CSP process to be conducted by NEA and (ii) to assist the NEA in the conduct of the CSP as may be required by NEA from time to time;
 - 13.5.3. Authorizing the NEA and the EC's representative/s to conduct post-award changes to the PSA, which changes must clearly result to terms more favorable to the EC's MCOs; and
 - 13.5.4. Authorizing the EC's General Manager, Officers-in-Charge, Acting General Managers (as the case may be) and/or the EC Board President to execute the PSA resulting from the conduct of the said CSP.
- 13.6. Upon receipt of the Board Resolution from the EC or ECs, the NEA BAC shall direct the NEA TWG to prepare the Bidding Documents. The subject EC or ECs must promptly comply with all documentary requirements and data requests by the NEA TWG.
- 13.7. The NEA TWG will prepare and endorse the Bidding Documents to the NEA BAC for final approval. The NEA TWG shall also identify the CSP Observers to be invited during the bidding process and submit the same to NEA BAC.
- 13.8. Once the NEA BAC approves the Bidding Documents, the NEA BAC shall cause the publication of the Invitation to Bid to commence the CSP for the EC or ECs involved.
- 13.9. The NEA may charge a reasonable amount of fees for the Bidding Documents corresponding to the volume of power supply that is subject of the CSP; provided, such fees shall in no case be higher than Twenty-five Thousand Pesos (PhP25,000.00) for every 1MW contracted capacity.
- 13.10. The NEA shall complete the entire process of competitive public bidding, including the award of contract, within one hundred eighty (180) calendar days from the first publication of the Invitation to Bid.



- 13.11. Upon the determination of the bidder with the LCRB, the NEA BAC shall endorse the said bidder to the Office of the NEA Administrator for the declaration of the Winning Bidder and the corresponding issuance of a Notice of Award.
- 13.12. After the issuance of the Notice of Award, the EC representative and the Winning Bidder may agree on changes to the draft PSA, which changes must clearly result to terms more favorable to the EC's MCOs.
- 13.13. The NEA BAC shall have the final say and make changes or revisions on the PSA. The PSA shall be finalized in accordance with the NEA BAC's revisions and in consideration that it will result to more favorable terms for the EC's MCOs. Thereafter, the same shall be endorsed to the EC/s for signing.
- 13.14. The Winning Bidder and the EC's General Manager, Officers-in-Charge, Acting General Managers (as the case may be) and/or the EC Board President shall then execute the finalized PSA.
- 13.15. After the execution of the PSA, the NEA-BAC shall provide the EC-BOD with the following:
 - 13.15.1. A report on the entire CSP signed by the NEA BAC and NEA TWG;
 - 13.15.2. Resolution of the NEA BAC recommending the award;
 - 13.15.3. Notice of Award;
 - 13.15.4. Abstract of Bids;
 - 13.15.5. Bid Evaluation Report; and
 - 13.15.6. The Final Bidding Documents, and all Bid Bulletins, letters, or memorandums issued by the BAC for the CSP.
- 13.16. The EC-BOD shall then direct the filing of the PSA for approval of the ERC.

ARTICLE XIV PENALTIES

- 14.1. The EC-BOD, EC management, officials, employees as well as members of the BAC, if applicable, may be subjected to administrative penalties imposable by NEA under existing laws, rules, and regulations for committing the following:
 - 14.1.1. Failure by the EC to conduct a timely CSP pursuant to its latest and posted PSPP, despite due notice from NEA;
 - 14.1.2. Failure to adhere to the procedure and timelines set in this *Guidelines*;
 - 14.1.3. Failure to submit the reportorial requirements as prescribed by this *Guidelines*;



14.1.4. Soliciting or accepting, directly or indirectly, any gift, gratuity, favor, or any *monetary* value from prospective CSP participants; or

14.1.5. Any act or omission in violation to this *Guidelines*.

The foregoing shall be without prejudice to other civil or criminal liabilities that may be filed against the erring person.

14.2. If the evidence so warrants, the NEA may file with, endorse, or refer before the Department of Justice or the National Bureau of Investigation for violations of the EPIRA or other relevant laws, for investigation and/or prosecution before the proper courts of law.

14.3. The EC's failure to timely conduct its CSP pursuant to its latest and posted PSPP shall be considered in determining the EC's categorization, rating, and benefits pursuant to NEA's existing policies.

14.4. Bidders, interested parties, individuals, and entities who participate in conspiracy as co-principals, accomplices, or accessories with the EC-BOD, EC management, officials, employees as well as members of the BAC to violate this *Guidelines* shall be jointly charged with them. The penalty of disqualification from joining any CSP of the ECs shall be imposed on any bidders, interested parties, individuals and entities after observance of due process.

ARTICLE XV TRANSITORY PROVISIONS

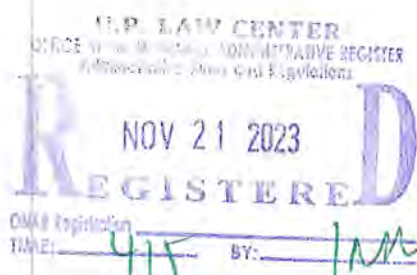
15.1. The transitory provisions provided under Section 7 of the DOE 2023 CSP Policy, Article XI of the ERC 2023 CSP Policy, the DOE Advisory dated 31 August 2023, or other issuances that the DOE or ERC may issue from time to time, shall govern.

ARTICLE XVI MISCELLANEOUS PROVISIONS

16.1. If any provision in this *Guidelines* is found to be inconsistent with its Annexes, the provision in this *Guidelines* shall prevail.

16.2. Where good cause appears, the NEA may allow an exception from any provisions of this *Guidelines* if such exception is found to be for the interest of the public and is not contrary to law or any other related rules and regulations.

16.3. If for any reason, any part or section of this *Guidelines* is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

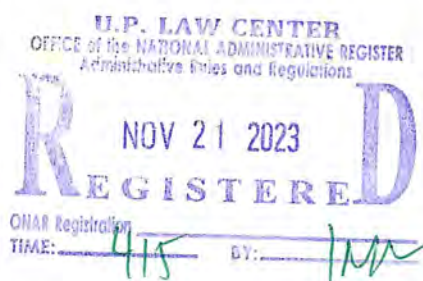


**ARTICLE XVII
EFFECTIVITY**

- 17.1. This *Guidelines* shall take effect after fifteen (15) calendar days following its filing with the University of the Philippine Law Center.

as

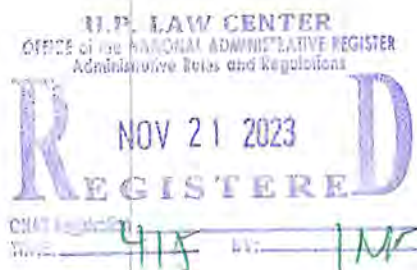
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ELIGIBILITY REQUIREMENTS

The following eligibility requirements for prospective bidders shall be submitted, together with the Bid Documents:

- a) Executive Summary - Brief description of the bidder's company history and structure, including relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity to the DUs, ECs, or contestable customers
- b) Organizational Structure - Basic information of the bidder's legal status and organizational chart;
- c) Legal Documents - The bidder shall submit the following:
 - (i) Registration Certificate issued by the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for a sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives;
 - (ii) In case a special purpose company is formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws;
 - (iii) Latest General Information Sheet (GIS), if available;
 - (iv) Power of Attorney and other documents - Each bidder must submit the following documents:
 - i. Board Resolution or Secretary's Certificate evidencing the grant of authority to the individual submitting the Bid and making representation on behalf of the bidder;
 - ii. Certification by the bidder to the effect that it is not prohibited or restricted in any manner under applicable law or any agreement or license from participating in the Bidding Process;
 - iii. Sworn Undertaking that the bidder, if applicable, as well as their affiliates, assigns and successors in-interest, shall abide by the decisions of the EC-BAC, shall hold the EC, its Board Members, Officers and Management, and BAC free and harmless from any claim or cause of action arising from the conduct and award of the Project, and shall undertake not to institute or file any case or claim before any court of competent jurisdiction and administrative agency in relation to the conduct and award of the Project, except as provided for under Article VI (Protest Mechanism) and Article X (Enforcement) of the ERC Resolution No. 16, Series of 2023 (ERC 2023 CSP Guidelines).
 - iv. Sworn Attestation against Corruption; and



- v. Sworn Attestation of No Conflict of Interest – The bidder must disclose detailed information regarding any existing, potential, or future conflict of interest that a bidder may have with the BAC.
- d) Technical Capability Information - To demonstrate compliance with the technical criteria established in the TOR, the bidder shall submit the following:
 - (i) List of projects undertaken over the last ten (10) years;
 - (ii) List of electricity generation plants that the bidder has operated for the last five (5) years; and
 - (iii) Proof of/Documentation on track record for the last five (5) years of power plants operated by it.

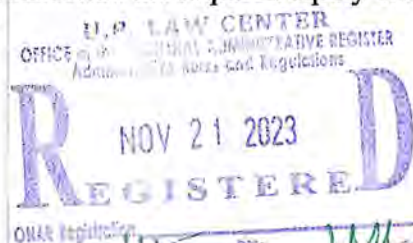
In lieu of the foregoing requirements, the bidder may submit the following:

- (i) Key Personnel Experience – curriculum vitae of key personnel of the prospective bidder showing they have sufficient experience in the electric power industry, particularly in the generation sector; and
- (ii) Other relevant information showing proof of the technical capabilities of the bidder that would be helpful to the BAC.

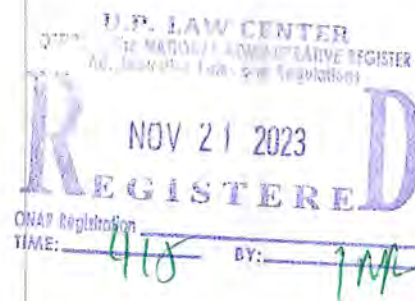
The bidder shall submit, as part of its technical proposal, the names of the power plants¹ from which it shall source the electricity, as well as the mechanism or protocol on how the manner of supply will be implemented.

- e) Financial Information - The bidder shall submit the following:
 - (i) Latest Audited Financial Statement available, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "received" by the Bureau of Internal Revenue (BIR) for the preceding calendar year from the date of bid submission;
 - (ii) Details of financial and operating background for the two (2) recent full financial years demonstrating the bidder's financial viability;
 - (iii) Details of equity and financing plan indicating the capital structure and source of funds with supporting documents;
 - (iv) Proof of commitment to the required equity contribution, as specified by the EC:
 - i. in the case where the Winning Bidder is a corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the Winning Bidder and the Winning Bidder itself covering said equity contribution, or shareholders agreement between and among two (2) or more shareholders of the Winning Bidder undertaking to contribute/subscribe the required equity contribution; or

¹ For Physical Contracts



- ii. in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.
- (v) Letter of Credit, Bank Guaranty or Committed Line of Credit, or any proof of firm commitments from a reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project for prospective generation facilities;
- (vi) In the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Project Proponent under the contract; and
- (vii) Any other relevant information regarding the financial track record and capabilities of the bidder that it believes would be helpful to the BAC.



(Note: For PSAs procured for purposes of compliance with the Renewable Portfolio Standards (RPS) under Republic Act No. 9513, or the Renewable Energy (RE) Act, and other applicable laws and policies, the supply should come from an RPS-eligible plant, in accordance with the applicable DOE Circulars and rules and regulations of the ERC.)

TERMS OF REFERENCE		REQUIREMENT									
Area/s to be Service		☐ On-Grid ☐ Off-Grid ☐ Both On and Off Grid Note: Indicate specific areas to be served for off-grid									
Demand Requirement (Multiple choices allowed)		☐ Baseload ☐ Intermediate ☐ Peaking									
Type of Contract		☐ Physical PSA	☐ Financial PSA								
Pricing Structure		☐ Capacity-based PSA	☐ Energy-based PSA								
Contract Term	(The term of the PSA shall be for a maximum period of ten (10) years in the case of Financial PSAs. For Physical PSAs, the maximum term shall be for a period of fifteen (15) years, except for Physical PSAs where the nominated plants are renewable energy power plants, in which case, it may have a maximum term of twenty (20) years. All of these terms shall be reckoned from commencement of supply.)	Specify Term									
Target Delivery Date		(MM/DD/YYYY)									
Bid price in Philippine Peso per kilowatt-hour (PhP/kWh) (the "ceiling price" - inclusive of fuel cost but excluding any penalties and/or discounts to be implemented for the duration of the contract period)											
For Capacity-based PSA (CSPs with multiple demand requirements, please indicate whether for Baseload, Intermediate, or Peaking)		<table border="1"> <thead> <tr> <th>Year</th> <th>Capacity Requirement</th> </tr> </thead> <tbody> <tr> <td>Year 1</td> <td>_____ MWs</td> </tr> <tr> <td>Year 2</td> <td>_____ MWs</td> </tr> <tr> <td>Etc.</td> <td>Etc.</td> </tr> </tbody> </table>		Year	Capacity Requirement	Year 1	_____ MWs	Year 2	_____ MWs	Etc.	Etc.
Year	Capacity Requirement										
Year 1	_____ MWs										
Year 2	_____ MWs										
Etc.	Etc.										

For Energy-based PSA <i>(CSPs with multiple demand requirements, please indicate whether for Baseload, Intermediate, or Peaking)</i>	<table border="1"> <tr> <th>Year</th> <th>Energy Requirement</th> </tr> <tr> <td>Year 1</td> <td>_____ kWh, annually and _____ kWh, monthly</td> </tr> <tr> <td>Year 2</td> <td>_____ kWh, annually and _____ kWh, monthly</td> </tr> <tr> <td>Etc.</td> <td>Etc.</td> </tr> </table> ☐ Not Applicable	Year	Energy Requirement	Year 1	_____ kWh, annually and _____ kWh, monthly	Year 2	_____ kWh, annually and _____ kWh, monthly	Etc.	Etc.		
Year	Energy Requirement										
Year 1	_____ kWh, annually and _____ kWh, monthly										
Year 2	_____ kWh, annually and _____ kWh, monthly										
Etc.	Etc.										
Preferred Plant Location, if applicable	Not applicable for Financial PSA.										
Tariff Structure	<i>Parameters:</i> EC must prepare a formula to compute the total fee per billing period. Bidders must submit sample bills for the process of evaluation. For Physical PSAs: The tariff structure shall be unbundled into components as follows: <table border="1"> <tr> <th>Component</th> <th>Unit</th> </tr> <tr> <td>CRF</td> <td></td> </tr> <tr> <td>FOM</td> <td></td> </tr> <tr> <td>VOM</td> <td></td> </tr> <tr> <td>Fuel</td> <td></td> </tr> </table> <i>Responsibility of the Bidder:</i> Each of the unbundled tariff components shall be accompanied by a derivation, computation, or simulated value for every year of the PSA, as applicable. For Financial PSAs: The Generation Rate applicable for the Billing Period, as defined in the Bid Documents set at PhP ____/kWh Provisions for price adjustments in bid offers and in PSAs shall not be allowed under a Financial PSA unless the TOR allows for such, providing therein a pre-defined criteria for economic price adjustment that may allow for either positive or negative changes in price under specified circumstances.	Component	Unit	CRF		FOM		VOM		Fuel	
Component	Unit										
CRF											
FOM											
VOM											
Fuel											
Outage Allowances per plant	For Physical PSAs: To be determined by both contracting parties, as applicable, but not to exceed the Planned and Unplanned Outages as required by prevailing ERC regulations. All Planned Outages must be scheduled and declared twelve (12) months in advance.										

	There will be no carry-over of any unutilized outage allowances. For Financial PSAs: No provision for outage allowance.
Force Majeure (Should be in accordance with prevailing DOE and ERC issuances)	
Replacement Power	For Physical PSAs: Must comply with Section 15, Article V of 2023 ERC Guidelines For Financial PSAs: No provision for outage allowance.
Form of Payment (Form of Payment to be determined by the EC)	
Penalty provisions in cases of delay in construction of the power plant or commencement of commercial operations (Ideally, the penalties should be at levels that is reasonably low so as not to discourage interested parties, at the same time reasonably high so as to discourage parties who may otherwise be willing to risk not meeting the delivery timetable or supply obligations in order to obtain the contract. At the same time, the penalty provisions should reasonably accommodate delays due to force majeure or circumstances outside of the control of the parties.)	
Reduction of Contract Capacity and/or Contract Energy (EC to prepare protocol for the reduction in the contract or capacity or energy with observance with existing rules and regulations)	
Plant Capacity (for Off-grid ECs)	• Total Installed Capacity ◦ Must consider baseload, peaking and reserve capacities for contingency • Number of generating units and installed capacity of each unit • Dependable capacity • Other parameters as may be applicable
Prompt Payment Discount	EC to include a provision for Prompt Payment Discount for either Physical or Financial PSAs.
Other Terms and Conditions	

PSA TEMPLATE FOR FINANCIAL PSA

[NAME OF BUYER]

- and -

[NAME OF SELLER]

POWER SUPPLY AGREEMENT

DATED AS OF [DATE OF SIGNING]

THIS POWER SUPPLY AGREEMENT (this “Agreement”) is made at [LOCATION] on [DATE]

BETWEEN:

- (1) [NAME OF BUYER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Buyer] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Buyer”); and
- (2) [NAME OF SELLER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Seller] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Seller”).

Each of Buyer and Seller are hereafter individually referred to as “Party” and together, as the “Parties”.

WHEREAS:

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the energy and/or capacity pursuant to the terms and conditions set forth herein, consistent with the Terms of Reference of the relevant Competitive Selection Process (TOR-CSP) conducted by Buyer or the rules governing exemptions from the CSP, as the case may be.

NOW, THEREFORE, under the above premises, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties, for themselves and their respective successors and assigns, have mutually agreed as follows:

1. DEFINITION OF TERMS AND RULES OF INTERPRETATION

- 1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.
- 1.2. The following rules of interpretation shall govern this Agreement:
 - 1.1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
 - 1.1.2 the headings and paragraph numbering are for convenience of Parties and to avoid any insertion, but will not prevail in construing this Agreement;
 - 1.1.3 terms not herein defined shall have the meanings as provided for in pertinent Energy Regulatory Commission (ERC) rules and regulations and Department of Energy (DOE) circulars;
 - 1.1.4 references to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;

- 1.1.5 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.1.6 all references herein to time are in relation to Philippine time;
- 1.1.7 words importing any gender include the other gender;
- 1.1.8 the words “include,” “includes,” and “including” are not limiting;
- 1.1.9 the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- 1.1.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the DOE or ERC, as the case may be.

2. SALE AND PURCHASE OF ENERGY/CAPACITY

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from Seller for the consideration described in Section 5, the energy and/or capacity from and after the Delivery Date until the expiry of the Term.

3. TERM

3.1 Contract Term

This Agreement shall take effect immediately from Effective Date and from such date, shall remain in force and effect for [number of years or billing months], unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

3.2 Effective Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- a) Corporate Approvals. The receipt of Seller of a certificate executed by the corporate or partnership secretary, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of Buyer; and
- b) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the

execution, delivery and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within [number of days] Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions and indicating the Effective Date.

3.3 Delivery Date

Seller shall commence delivery of Contract Capacity and/or Contract Energy to Buyer on Delivery Date. The Delivery Date shall be a date, after Effective Date, reckoned from the [specific date] or date of issuance by the ERC of a Provisional Authority or Interim Relief, as applicable, or Final Authority, if neither Provisional Authority or Interim Relief was issued, whichever comes later.

4. SUPPLY OF ENERGY

4.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date until the termination or expiration of this Agreement, Seller shall supply and deliver [Contract Capacity and/or Contract Energy] (whether from the capacity of the plants owned or operated by Seller or any of its Affiliates, Wholesale Electricity Spot Market (WESM), if any, or any other supplier) to Buyer at the Delivery Point, and Buyer shall purchase and pay Seller the [Contract Capacity and/or Contract Energy] at the rate of PhP[]/kwh, resulting from the CSP and subject to the approval of the ERC.

4.2 WESM Operations

Buyer shall furnish Seller with its hourly nomination of demand on a daily, weekly, and monthly basis in accordance with the procedure set out as follows:

4.2.1 For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.

4.2.2 Such nominations shall reflect Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the month-ahead nominations, and the week-ahead nominations.

4.3 Reduction of Contract Capacity and/or Contract Energy

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice

specifying the reduction in Contract Capacity and/or Contract Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place. Any such reduction shall be limited to an amount that will allow Buyer to comply with its obligation to supply electricity in the least cost manner to its captive market. Except for such reduction of amount of Contract Capacity and/or Contract Energy to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC.

The Parties shall agree on and prepare the protocol to implement the reduction in the amount of Contract Capacity and/or Contract Energy, with observance of existing rules and regulations, as a result of the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs. The Parties shall submit a copy of the protocol to the ERC.

4.4 Availability of Contract Capacity and/or Contract Energy.

Seller shall guarantee availability of the Contract Capacity/Energy during the term of this Agreement, except when caused by a Force Majeure event allowed under Section 7 in this Agreement. For clarity, this means that notwithstanding the outage of the plants to be utilized by Seller in order to supply the Contract Capacity/Energy, Seller shall still be responsible in ensuring that the Contract Capacity and/or Contract Energy is delivered to Buyer.

5. COMPENSATION, PAYMENT AND BILLING

5.1 Payment of Fees

Buyer shall pay to Seller each Month, on the [_____] Business Day of each Month, an amount equal to the Monthly Payment in accordance with Schedule 3.

Unless otherwise provided by law, Buyer shall bear all costs of such transmission service, from the Delivery Point up to the Receiving Point including the cost of any electric losses incurred in such transmission.

Provided further that, 1) there should be no offsetting of payment between Buyer and Seller; 2) withholding of disputed amounts, except for the inadvertent mistake in the amount; 3) if an invoice is not disputed within [_____] Days after payment, it is deemed to be accepted, final, and binding to Buyer and Seller.

5.2 Taxes

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to Seller, the Project and Seller's other assets shall be paid by Seller in a timely manner. All present and future national,

local or other lawful taxes, duties, levies, or other impositions applicable to Buyer arising from or in connection with its rights and obligations under this Agreement shall be paid by Buyer in a timely manner.

5.3 Prompt Payment Discount

Seller shall extend [] percent (__%) discount based on the total fee to Buyer as prompt payment if 1) payment is made within [] Days from receipt of Seller's billing, and 2) buyer is up to date with all its payment obligations under this Agreement.

5.4 Liquidated Damages

Liquidated damages in case of default shall be in the amount of [] per MW per day that the defaulting Party continues with the default and any fraction thereof, to be paid within [] Days after written demand for payment.

6. FORCE MAJEURE

6.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the Party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

6.1.1 Acts of God –

Acts of God, should only be considered as force majeure sufficient to terminate the contract if –

- (a) The event or calamity is of the degree or intensity that the continued operation of the Parties would lead to death or injury of the Parties' employees or agents;
- (b) The event or calamity is of the degree or intensity that the continued operation of the Parties would be of great hazard to the security and safety of the public.

6.1.2 Epidemic –

An epidemic officially declared by the national or local government, should only be considered as force majeure and a ground for termination of contract, if the epidemic causes:

- (a) Impossibility to deliver the contracted goods or services; or
- (b) When there is no remedy or protocol placed/issued by the government or the regulatory agencies to assist the Parties in fulfilling their obligations.

6.1.3 Other Events of Force Majeure (Force Majeure – Acts of Man)

Force Majeure events occurring in or directly affecting the Philippines include:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) nationwide strikes, works to rule or go-slows that extend beyond the plants to be utilized by Seller or are widespread or nationwide, or that are of a political nature;
- (c) radioactive contamination or ionizing radiation originating from a source outside or inside the Philippines.

6.2 Notification and Obligation to Remedy

In the event of the occurrence of a Force Majeure that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall: (a) notify within five (5) Days the other Party in writing of such Force Majeure; (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (d) perform acts to avoid further loss or wastage; (e) keep such other Party apprised of such efforts on a continuous basis; and (f) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

6.3 Consequences of Force Majeure

Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-by-day basis for so long as one or more Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section to the extent that such failure or delay would have nevertheless

been experienced by that Party had such Force Majeure not occurred; and provided further, that the Parties may file the proper motion for termination when the Force Majeure delays a Party's performance for a period greater than (a) consecutive months prior to the Effective Date or (b) consecutive months after the Effective Date.

7. DEFAULTS AND TERMINATION

7.1 Events of Default

Each of the events described below shall constitute an Event of Default, provided that such events result to, in the case of Seller, an actual failure to deliver to Buyer of the required [Contract Capacity and/or Contract Energy]; or, in the case of Buyer, an actual failure to accept the required [Contract Capacity and/or Contract Energy] from, or pay the [Monthly Payments] to, Seller. An "Event of Default" shall mean, with respect to the relevant Party (such Party being, with respect to the Event of Default, a "Defaulting Party" and the other Party being the "Non-Defaulting Party"):

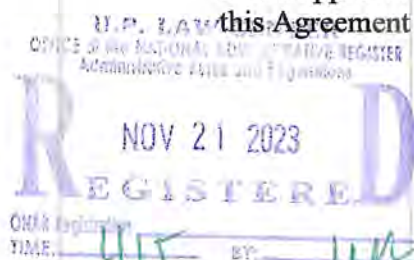
- 7.1.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;
- 7.1.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and
- 7.1.3 A Party becomes bankrupt or there occurs a default, event of default or other similar condition or event with respect to Buyer under one or more agreements or instruments to which it is a party.

Within a [number of days] from knowledge of the occurrence of an Event of Default and for Events of Default capable of being remedied or cured, the Non-Defaulting Party shall issue a written notice to the Defaulting Party specifying in detail the relevant Event of Default (the "Notice of Default"). The Defaulting Party shall have the opportunity to cure the default within the following periods from receipt of the Notice of Default (each a "Cure Period"):

- (a) [number of days] Days, for Events of Default under Section 7.1.1,
- (b) [number of days] Days, for Events of Default under Section 7.1.2, and
- (c) [number of days] Days, for Events of Default under Section 7.1.3.

7.2 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied, the Non- Defaulting Party may terminate this Agreement in accordance with Section 7.4, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.



7.3 Suspension upon Event of Default

In case an Event of Default is awaiting to be cured during the Cure Period, the Non-Defaulting Party may suspend this Agreement, subject to the approval of the ERC, until such time the Event of Default is cured, or the applicable Cure Period lapsed.

7.4 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

7.4.1 The Non-Defaulting Party shall issue a notice (a “Termination Notice”) to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.

7.4.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall negotiate as to what steps shall be taken with a view to mitigating or remedying the consequences of the relevant event having regard to all the circumstances.

7.4.3 If the Party receiving the Termination Notice intends to raise a Dispute regarding the right to give effect to the Termination Notice (the “Termination Notice Dispute”), such Party shall follow the procedure prescribed in Section 8; and

7.4.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 7.4.3 above, if:

- (i) at any time after the expiry of the period referred to in Section 7.4.1, the event giving rise to the Termination Notice has not been remedied; and
- (ii) the Termination Notice Dispute has been determined in favor of the Party who has issued the Termination Notice,

the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.]

7.5 Termination as a Result of Events Other than Event of Default

7.5.1 Non-fulfillment of Conditions Precedent to Effectivity. If any condition to the Effective Date has not been fulfilled on or before [date], then either Party has the option to terminate this Agreement by

giving written notice of such termination to the other Party, provided that the fulfilment of such condition is not within the control of the Party seeking to give such notice, subject to the prior notification to and approval of ERC, pursuant to its rules and regulations. Upon the giving of notice of termination, this Agreement shall terminate on the date specified for termination in such notice, which date shall not be earlier than [number of days] Days from the date of such notice, subject to the approval of the ERC.

- 7.5.2 Termination in Certain Events of Force Majeure. If an event of Force Majeure occurs under the circumstances described in Section 6, then this Agreement may be terminated, subject to prior notification to and approval by the ERC, by notice of either Party delivered to the other Party within [number of days] Days after the end of such [number of days]-day period. If any Force Majeure is expected by the Claiming Party to exceed [number of days] Days then the Claiming Party may give notice to the other Party at any time of the Claiming Party's desire to terminate this Agreement. The Non-Claiming Party shall notify the Claiming Party, within [number of days] Days of the receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice, subject to the prior notification and approval of the ERC, pursuant to its rules and regulations; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Section 8.

8. DISPUTE RESOLUTION

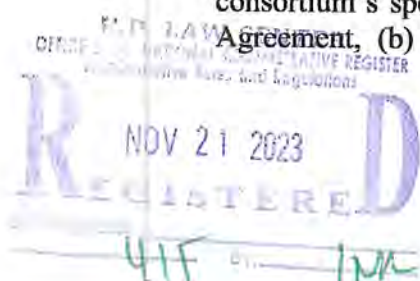
If any dispute or disagreement ("Dispute") shall arise between the Parties in connection with this Agreement, either Party may request in writing that the respective chief executive officers of Seller and Buyer meet within [number of days] Days and attempt to resolve the Dispute. The Parties shall exert every effort to first resolve the Dispute amicably by mutual consultation.

Should Parties fail to reach an amicable settlement after mutual consultation, any Dispute arising from this Agreement shall then be settled through arbitration, at a venue within the Philippines, with the rules of Republic Act No. 876 and Republic Act No. 9285 deemed incorporated by reference in this clause.

In the event such officers are unable to resolve such Dispute through the above arbitration clause, the ERC has the jurisdiction to hear and decide the Dispute between Parties arising from this Agreement, in the exercise of its powers and functions under the EPIRA.

9. ASSIGNMENT OF RIGHTS

Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the movable property and intellectual property of Seller, or the



revenues or any of the rights or assets of Seller, in each of subsections (a) through (c) without the prior written consent of Buyer, provided, however, that any such assignee of Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement.

10. NOTICES

10.1 Address for Notices

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in the English or Filipino language (it being understood that any such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, or (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; to the following addresses:

If to Buyer:

Address: _____

E-mail Add.: _____

Attention: _____

If to Seller:

Address: _____

E-mail Add.: _____

Attention: _____

or such other address and/or telephone number as either Party may previously have notified to the other Party in accordance with this Section.

"Recipient" shall mean the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, or signatory to this Agreement of the Party, or in their absence or unavailability, on their secretaries.

10.2 Effectiveness of Service

Notices shall be effective: (a) in the case of personal delivery, when received by the recipient; or (b) in the case of transmission by electronic mail, if receipt of the transmission occurs before [time] recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the electronic mail occurs after [time] recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day.

11. MISCELLANEOUS PROVISIONS

11.1 Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

11.2 Entire Agreement

This Agreement and all Schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties (whether oral or written).

11.3 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

11.4 Waivers

11.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (a) operate or be construed as a waiver of any other or further default whether of a like or different character, and (b) be effective unless in writing duly executed by an authorized representative of such Party.

11.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

11.4.3 The parties shall not, through mutual agreement, or consent or acquiescence of the other, waive any rights or obligations under this contract that may prejudice the rights of consumers.

11.5 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns, subject to the provision in Section 9.

11.6 No Liability for Review

No review or approval by Buyer of any agreement, document, instrument, drawing, specifications or design proposed by Seller shall relieve Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable laws of the Philippines with respect thereto, nor shall Buyer be liable to Seller or any other person by reason of its review or approval of an

agreement, document, instrument, drawing, specification, or design.

11.7 Consequential Damages

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

11.8 Affirmation

Seller and Buyer declare and affirm that neither Party has paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick-backs or unlawful commission and that it has not in any other way or manner paid any sums, whether in Local Currency or Foreign Currency and whether in the Philippines or abroad, or in any other manner given or offered to give any gifts and presents in the Philippines or abroad to any person or Seller to procure this Agreement, and Seller and Buyer undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

11.9 Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to applicable laws, rules and regulations of the Philippines.

11.10 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

11.11 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in previous sections.

11.12 Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be English or Filipino.

11.13 Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an obligation of good faith.

IN WITNESS whereof the Parties have entered into this Agreement the date first above written.

[NAME OF BUYER]

By: _____
Name: _____
Title: _____

WITNESSED BY:

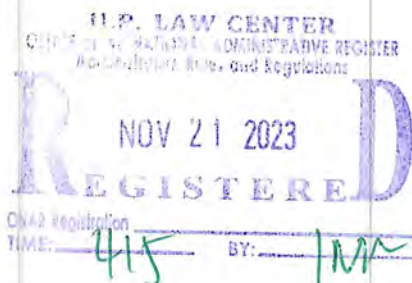
By: _____
Name: _____

[NAME OF SELLER]

By: _____
Name: _____
Title: _____

WITNESSED BY:

By: _____
Name: _____



SECRETARY's CERTIFICATE

I, _____, Filipino, of legal age and with office address at _____, after having duly sworn in accordance with law, hereby depose and state that:

1. I am the Corporate Secretary of _____, a _____ duly organized and existing under and by virtue of the laws of the Philippines with principal office address at _____.

2. At the special meeting of the Board of Directors held on _____, during which meeting a quorum was present and acting throughout, the following resolution was unanimously passed and approved:

RESOLVED, that the Board of Directors of _____ authorize, as it hereby authorizes _____ to sign the Agreement with _____, on behalf of the [Corporation].

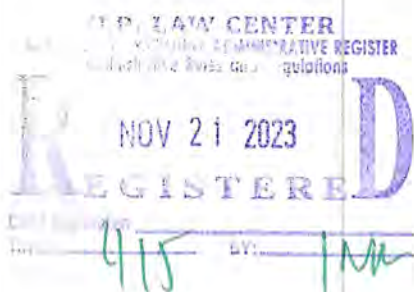
3. This board resolution has not been revoked, amended or modified, and remains valid and binding on the [Corporation] as of the date hereof.

4. The foregoing statements are in accordance with the records of the [Corporation].

IN WITNESS WHEREOF, I have hereunto set my hand this _____ at _____, Philippines.

Corporate Secretary

SUBSCRIBED AND SWORN to before me this _____ in _____.
Affiant, who is personally known to me, exhibited to me his/her identification _____ issued in _____ on _____.



SCHEDULE 1

DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the content otherwise requires:

“Affiliate” - means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

“Agreement” - This Power Supply Agreement, including all Schedules thereto, as amended or supplemented from time to time.

“Billing Period” - the period of one (1) month commencing at 0001H of the twenty- sixth (26th) day of each calendar month to 2400H of the twenty-fifth (25th) day of the calendar month.

“Business Day” - A Day on which business by and between banks may be carried on in [Location] in the Philippines.

“Contract Capacity” - The capacity, expressed in kW allocated to Buyer during the Billing Period.

“Contract Energy” - The energy, expressed in kWh allocated to Buyer during the Billing Period.

“Contract Term” - shall have the meaning ascribed to it in Section 3.1.

“Day” - The 24-hour period beginning and ending at 12:00 midnight in [Philippine Time]. For clarity, “Day” means calendar day, or any day including Saturday, Sunday, and any day which is a legal holiday in the Philippines.

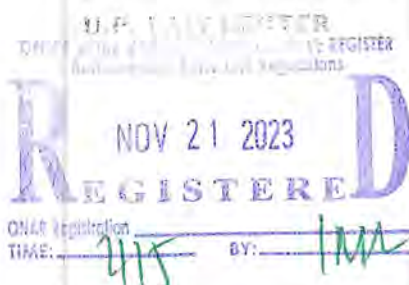
“Delivery Date” - shall have the meaning ascribed to it in Section 3.3.

“Delivery Point” - The Trading Node or NGCP/Metering Service providers’ metering point/s of Seller.

“Dispute” - shall have the meaning ascribed to it in Section 8.

“Effective Date” - means the date following the completion of the conditions referred to in Section 3.2.

“EPIRA” - The Republic Act No. 9136 of the Electric Power Industry Reform Act of 2001.



“ERC” - The Energy Regulatory Commission of the Philippines, the independent and quasi-judicial regulatory agency created under Section 38 of the EPIRA.

“Force Majeure” - An event or occurrence specified in Section 6.

“Foreign Currency” or - The lawful currency of [].

“kW” - Kilowatts.

“kWh” - Kilowatt-hours.

“Law” - Any law, act, ordinance, code, decree, order, rule, policy, resolution or regulation of any governmental authority or agency (national, provincial, municipal, local) that is at any time applicable to the Parties, contract, project, site or any part thereof.

“Liquidated Damages” - The meaning ascribed thereto in Section 5.4.

“Local Currency” - The lawful currency of the Philippines.

“Month” - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

“MW” - Megawatts.

“NGCP” - National Grid Corporation of the Philippines, the corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the EPIRA and Republic Act No. 9511.

“Notice of Default” - The meaning ascribed thereto in Section 7.1.

“Outage Allowance” - refers to the allowable outage per plant type as determined by the ERC.

“Parties” - Both Buyer and Seller.

“Party” - Either Buyer or Seller.

“RCOA” - The Retail Competition and Open Access.

“Week” - Each period of seven (7) consecutive Days beginning at 12:00 midnight Philippine Standard time falling between a Saturday and a Sunday.

“WESM” - Wholesale Electricity Spot Market.

“Year” - Each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the term of this Agreement.



SCHEDULE 2**CONTRACT CAPACITY AND/OR CONTRACT ENERGY**

Billing Month	Hours	Contract Capacity (kW)	Contract Energy (kWh)	Minimum Contract Energy (kWh), if any
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

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R NOV 21 2023 **D**
REGISTERED

ONAR Registration
TIME: 4:15 BY: [Signature]

SCHEDULE 3
MONTHLY PAYMENT

Buyer shall pay Seller for the Energy/Capacity at the following Fees pursuant to the following formula:

$$\text{TGC} = \text{DE} * (\text{GR})$$

Where:

TGC = Total Generation Cost in PhP for the Billing Period

DE = Delivered Energy in kWh for the Billing Period

GR = The Generation Rate applicable for the Billing Period, as defined in the Bid Documents set at PhP ____/kWh

PSA TEMPLATE FOR PHYSICAL PSA

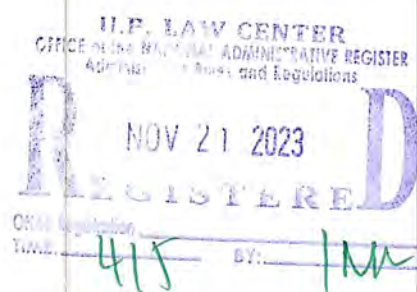
[NAME OF BUYER]

- and -

[NAME OF SELLER]

POWER SUPPLY AGREEMENT

DATED AS OF [DATE OF SIGNING]



THIS POWER SUPPLY AGREEMENT (this “Agreement”) is made at [LOCATION] on [DATE]

BETWEEN:

- (1) [NAME OF BUYER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Buyer] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Buyer”); and
- (2) [NAME OF SELLER], an entity duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at [Address of the Seller] represented herein by its [Designation of Representative], [Name of Representative] (hereinafter referred to as “Seller”).

Each of the Buyer and the Seller are hereafter individually referred to as “Party” and together, as the “Parties”.

WHEREAS:

Seller owns and operates, or plans to design, finance, construct, own, operate and maintain, whichever is applicable, a [gross capacity of the Facility] megawatts (MW) [Description of the Facility] located at [Location of the Facility]; and

Seller desires to sell to Buyer, and Buyer desires to purchase from the Seller, the energy and/or capacity pursuant to the terms and conditions set forth herein, consistent with the Terms of Reference of the relevant Competitive Selection Process (TOR-CSP) conducted by Buyer or the rules governing exemptions from the CSP, as the case may be.

NOW, THEREFORE, under the above premises and for and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties, for themselves and their respective successors and assigns, have mutually agreed as follows:

1. DEFINITION OF TERMS AND RULES OF INTERPRETATION

1.1. In this Agreement, capitalized terms shall have the meaning prescribed in Schedule 1 hereof. Capitalized terms not therein defined shall have the meanings as provided for in the TOR-CSP or by the applicable laws.

1.2. The following rules of interpretation shall govern this Agreement:

1.1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;

1.1.2 the headings and paragraph numbering are for convenience of parties and to avoid any insertion, but will not prevail in construing this

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- 1.1.3 terms not herein defined shall have the meanings as provided for in pertinent ERC rules and regulations and Department of Energy (DOE) circulars;
- 1.1.4 references to Sections and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules to, this Agreement;
- 1.1.5 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.1.6 all references herein to time are in relation to Philippine time;
- 1.1.7 words importing any gender include the other gender;
- 1.1.8 the words “include,” “includes,” and “including” are not limiting;
- 1.1.9 the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- 1.1.10 Any ambiguity in the contract is to be construed in favor of the objectives of the Republic Act No. 9136 or its implementing rules, regulations or circulars issued by the Department of Energy (DOE) or Energy Regulatory Commission (ERC), as the case may be.

2. SALE AND PURCHASE OF ENERGY/CAPACITY

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 5, the energy and/or capacity from and after the Delivery Date until the expiry of the Term.

3. TERM

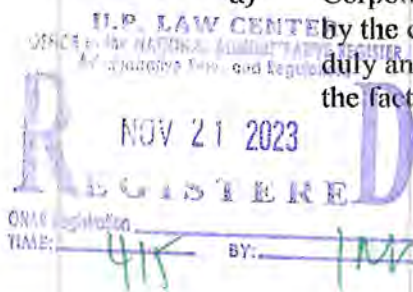
3.1 Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect for [number of years or billing months], unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

3.2 Effective Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- a) Corporate Approvals. The receipt of the Seller of a certificate executed by the corporate or partnership secretary, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i)



authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of the Buyer; and

- b) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within [number of days] Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions and indicating the Effective Date.

3.3 Delivery Date

The Seller shall commence delivery of Contract Capacity to Buyer on Delivery Date. The Delivery Date shall be a date, after Effective Date, reckoned from [specific date] or date of issuance by the ERC of a Provisional Authority or Interim Relief, as applicable, or Final Authority, if neither Provisional Authority or Interim Relief was issued, whichever comes later.

4. SUPPLY OF ENERGY

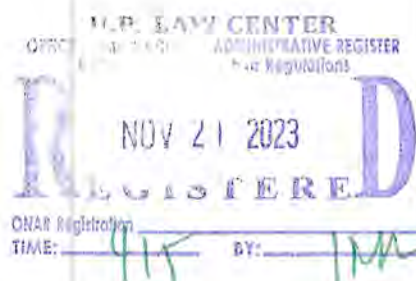
4.1 Seller's and Buyer's Obligations

Beginning on the Delivery Date, until the termination or expiration of this Agreement, Seller shall supply and deliver [Contract Capacity and/or Contract Energy as detailed in Schedule] to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the [Contract Capacity and/or Contract Energy] at the rate of [], resulting from the CSP and subject to the approval of the ERC.

4.2 WESM Operations

Buyer shall furnish Seller with its hourly nomination of demand on a daily, weekly, and monthly basis in accordance with the procedure set out as follows:

- 4.2.1 For administrative and planning purposes only, Buyer shall furnish Seller with non-binding year-ahead, month-ahead and week-ahead nominations of Contract Capacity in accordance with the WESM Rules and the Operating Procedures.
- 4.2.2 Such nominations shall reflect Buyer's good faith estimate of its projected capacity requirements for such period. Buyer shall furnish Seller with the year-ahead nominations, the month-ahead nominations, and the week-ahead nominations.



4.3 Reduction of Contract Capacity

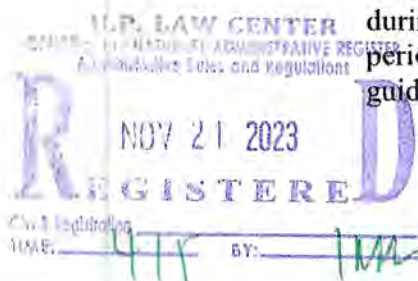
From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity and/or Contract Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs, indicating when such reductions shall take place. Any such reduction shall be limited to an amount that will allow the Buyer to comply with its obligation to supply electricity in the least cost manner to its captive market. Except for such reduction of amount of Contract Capacity and/or Contract Energy to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC.

The Parties shall agree on and prepare the protocol to implement the reduction in the amount of Contract Capacity, with observance of existing rules and regulations, as a result of the implementation of RCOA, GEOP, RPS, Net Metering programs, and other similar government programs. The Parties shall submit a copy of the protocol to the ERC.

4.4 Scheduled Outages

4.4.1 At least [] Days prior to the Scheduled Commercial Operations Date, the Seller shall submit to Buyer its desired Scheduled Outage periods for the remainder of the Year in which the Scheduled Commercial Operations Date occurs. Thereafter, by [DATE] of each Year after the Year in which the Scheduled Commercial Operation Date occurs, the Seller shall submit to Buyer its desired schedule of Scheduled Outage periods for the following Year. The outage periods shall be subject to the requirements under DOE guidelines and ERC rules and regulations.

4.4.2 At least [] Days prior to the Scheduled Commercial Operations Date and [] Months prior to the commencement of each Year after the Year in which the Scheduled Commercial Operation Date occurs, Buyer shall notify the Seller in writing whether the requested Scheduled Outage periods are acceptable. If Buyer cannot accept any of the requested Scheduled Outage periods, Buyer shall advise the Seller of a period when Buyer determines such unacceptable Scheduled Outage period can be rescheduled. Such rescheduled period shall be as close as reasonably practicable to the requested period, shall comply with the Minimum Functional Specifications indicated in Schedule 3, and shall be of equal duration as the requested period. The Seller shall conduct Scheduled Outages only during periods agreed to in writing by Buyer as aforesaid. The outage periods shall be subject to the approval requirements under DOE guidelines and ERC rules and regulations.



- 4.4.3 The Seller is allowed Scheduled Outages not to exceed the number of days for each Contract Year as set forth in Schedule [●], during which times reduced or no deliveries will be available to the Buyer, subject to ERC rules and regulations on Reliability Performance Indices.
- 4.4.4 Buyer may, upon [] Days prior written notice, require the Seller to reschedule a Scheduled Outage; provided, however, that Buyer shall not request that such Scheduled Outage be rescheduled in a manner or time outside the Minimum Functional Specifications.
- 4.4.5 Buyer shall use its reasonable endeavors to coordinate its maintenance program for the Interconnection Facilities with the approved Scheduled Outages so as to minimize any disruption to the operation of the Facility.

4.5 Unscheduled Outages

- 4.5.1 The Seller is allowed Unscheduled Outages not to exceed the number of days for each Contract Year as set forth in Schedule [●], during which times reduced or no deliveries will be available to the Buyer, subject to ERC rules and regulations on Reliability Performance Indices.

4.6 Replacement Power

- 4.6.1 Within the Allowed Outage. The procurement of any Replacement Power within the Allowed Outage shall be the responsibility of the Buyer. During such outage, Buyer shall source Replacement Power from other suppliers or from the WESM, at its own expense.
- 4.6.2 Beyond the Allowed Outage. The procurement of any Replacement Power beyond the Allowed Outage shall be the responsibility of the Seller. In the event of failure by the Seller to provide the Contract Capacity and/or Contract Energy, the Buyer shall be allowed to source the Replacement Power at the expense of the Seller. Provided further, that the rates to be charged for the procurement of Replacement Power shall be a) the actual price of the Replacement Power; or b) the approved charge for the PSA, whichever is lower.

4.7 Transmission and Interconnection

- 4.7.1 If applicable, Seller [shall enter/ has entered/ is in the process of entering] into a Connection Agreement and Transmission Service Agreement with the NGCP to connect the Facility to the Grid.
- 4.7.2 At all times from and after the Effective Date, all interconnection, transmission and other agreements necessary for Seller to perform its obligations hereunder (including the Connection Agreement and

Transmission Service Agreement) shall be in full force and effect.

5. **COMPENSATION, PAYMENT AND BILLING**

5.1 **Payment of Fees**

Buyer shall pay to the Seller each Month, on the [] Business Day of each Month, an amount equal to the Monthly Payment in accordance with Schedule 4.

Further, Buyer shall bear all costs of such transmission service, from the Delivery Point up to the Receiving Point including the cost of any electric losses incurred in such transmission.

Provided further that, 1) there should be no offsetting of payment between the Buyer and Seller; 2) withholding of disputed amounts, except for the inadvertent mistake in the amount; 3) If an invoice is not disputed within [] Days after payment, it is deemed to be accepted, final, and binding to the Buyer and Seller.

5.2 **Taxes**

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to the Seller, the Facility and the Seller's other assets shall be paid by the Seller in a timely manner. All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to Buyer arising from or in connection with its rights and obligations under this Agreement shall be paid by Buyer in a timely manner.

5.3 **Prompt Payment Discount**

The Seller shall extend [] percent (___%) discount based on the non- fuel fee (sum of Capital Recovery Fee, Fixed O&M Fee and Variable O&M Fee, if applicable) to Buyer as prompt payment if 1) payment is made within [] Days from receipt of Seller's billing, and 2) buyer is up to date with all its payment obligations under this Agreement.

5.4 **Liquidated Damages**

Liquidated damages in case of default shall be in the amount of [] per MW per day that the defaulting Party continues with the default and any fraction thereof, to be paid within [] Days after written demand for payment.

6. **FORCE MAJEURE**

6.1 **Meaning of Force Majeure**

In this Agreement, "Force Majeure" refers to any of the following that is beyond the reasonable control of the Party/Parties claiming force majeure which, through the exercise of due foresight and good industry practice, the



Party/Parties could not have avoided, did not contribute to or participate in, and which, even by exercise of due diligence, the Party/Parties is unable to overcome, thus preventing the party from carrying out its obligations or from enjoying its rights under this Agreement due to the impossibility of delivering the goods and services, or the imminent harm that such events, in the absence of safeguards and protocols, may bring upon its employees, agents or the general public in the performance of its obligations under this Agreement.

6.1.1 Acts of God –

Acts of God, should only be considered as force majeure sufficient to terminate the contract if –

- (a) The event or calamity is of the degree or intensity that the continued operation of the parties would lead to death or injury of the parties' employees or agents;
- (b) The event or calamity is of the degree or intensity that the continued operation of the parties would be of great hazard to the security and safety of the public.

6.1.2 Epidemic –

An epidemic officially declared by the national or local government, should only be considered as force majeure and a ground for termination of contract, if the epidemic causes:

- (a) Impossibility to deliver the contracted goods or services; or
- (b) When there is no remedy or protocol placed/issued by the government or the regulatory agencies to assist the parties in fulfilling their obligations.

6.1.3 Other Events of Force Majeure (Force Majeure-Acts of Man)

Force Majeure events occurring in or directly affecting the Philippines include:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) nationwide strikes, works to rule or go-slows that extend beyond the Facility or are widespread or nationwide, or that are of a political nature;
- (c) radioactive contamination or ionizing radiation originating from a source outside or inside the Philippines.

6.2 Notification and Obligation to Remedy

In the event of the occurrence of a Force Majeure that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall: (a) notify within five (5) Days the other Party in writing of such Force Majeure; (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (d) perform acts to avoid further loss or wastage; (e) keep such other Party apprised of such efforts on a continuous basis; and (f) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

6.3 Consequences of Force Majeure

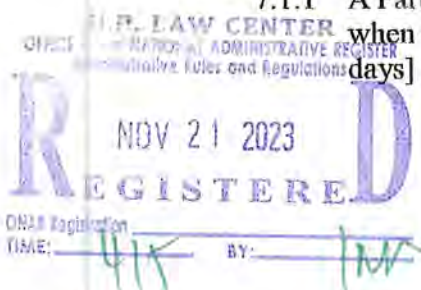
Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-by-day basis for so long as one or more Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided further, that the Parties may file the proper motion for termination, when the Force Majeure delays a Party's performance for a period greater than (a) [] consecutive months prior to the Effective Date or (b) [] consecutive months after the Effective Date.

7. DEFAULTS AND TERMINATION

7.1 Events of Default

Each of the events described below shall constitute an Event of Default, provided that such events result to, in the case of the Seller, an actual failure to deliver to the Buyer of the required [Contract Capacity and/or Contract Energy]; or, in the case of the Buyer, an actual failure to accept from, or pay to, the Seller the [Monthly Payments]. An "Event of Default" shall mean, with respect to the relevant Party (such Party being, with respect to the Event of Default, a "Defaulting Party" and the other Party being the "Non-Defaulting Party"):

7.1.1 A Party fails to make any payment required pursuant to this Agreement when due and payable and such payment is not made within [number of days] Days after the due date;



- 7.1.2 A Party breaches any of its material representations, warranties, covenants or obligations under this Agreement; and
- 7.1.3 A Party becomes bankrupt or there occurs a default, event of default or other similar condition or event with respect to the Buyer under one or more agreements or instruments to which it is a party.

Within a [number of days] from knowledge of the occurrence of an Event of Default and for Events of Default capable of being remedied or cured, the Non-Defaulting Party shall issue a written notice to the Defaulting Party specifying in detail the relevant Event of Default (the "Notice of Default"). The Defaulting Party shall have the opportunity to cure the default within the following periods from receipt of the Notice of Default (each a "Cure Period"):

- (a) [number of days] Days, for Events of Default under Section 7.1.1,
- (b) [number of days] Days, for Events of Default under Section 7.1.2, and
- (c) [number of days] Days, for Events of Default under Section 7.1.3.

7.2 Notice of Default and Termination or Upon Event of Default

In case an Event of Default is not cured within the applicable Cure Period or if the Event of Default is not capable of being remedied the Non-Defaulting Party may terminate this Agreement in accordance with Section 7.4, subject to the approval of the ERC, and may pursue any remedy available to it under this Agreement or at law.

7.3 Suspension upon Event of Default

In case an Event of Default is awaiting to be cured during the Cure Period under Section 7.2, the Non-Defaulting Party may suspend this Agreement, subject to the approval of the ERC, until such time the Event of Default is cured, or the applicable Cure Period lapses.

7.4 Termination upon Event of Default

The following procedure shall apply in terminating this Agreement:

- 7.4.1 The Non-Defaulting Party shall issue a notice (a "Termination Notice") to the other Party, specifying in detail the Event of Default giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, subject to the approval of the ERC.
- 7.4.2 During the period of [number of days] Days (or such longer period set out in the Termination Notice or as the Parties may agree) following the giving of such Termination Notice, the Parties shall negotiate as to what steps shall be taken with a view to mitigating

or remedying the consequences of the relevant event having regard to all the circumstances.

7.4.3 If the Party receiving the Termination Notice intends to raise a Dispute regarding the right to give effect to the Termination Notice (the “Termination Notice Dispute”), such Party shall follow the procedure prescribed in Section 8; and

7.4.4 In circumstances where the Party in receipt of the Termination Notice has referred a Termination Notice Dispute for resolution in accordance with Section 7.4.3 above, if:

- (i) at any time after the expiry of the period referred to in Section 7.4.1, the event giving rise to the Termination Notice has not been remedied; and
- (ii) the Termination Notice Dispute has been determined in favor of the Party who has issued the Termination Notice,

the Agreement may be terminated only upon prior notification to and approval by ERC pursuant to its rules, regulations, and applicable guidelines, by giving a written notice of termination pursuant to the order of the ERC.

7.5 Termination as a Result of Events Other than Event of Default

7.4.5 Nonfulfillment of Conditions Precedent to Effectivity. If any condition to the Effective Date has not been fulfilled on or before [date], then either Party has the option to terminate this Agreement by giving written notice of such termination to the other Party, provided that the fulfilment of such condition is not within the control of the Party seeking to give such notice, subject to the prior notification to and approval of ERC, pursuant to its rules and regulations. Upon the giving of notice of termination, this Agreement shall terminate on the date specified for termination in such notice, which date shall not be earlier than [number of days] Days from the date of such notice, subject to the approval of the ERC.

7.4.6 Termination in Certain Events of Force Majeure. If an event of Force Majeure occurs under the circumstances and having the consequences described in Section 6, then this Agreement may be terminated, subject to prior notification to and approval by the ERC, by notice of either Party delivered to the other Party within [number of days] Days after the end of such [number of days]-day period. If any Force Majeure is expected by the Claiming Party to exceed [number of days] Days then the Claiming Party may give notice to the other Party at any time of the Claiming Party's desire to terminate this Agreement. The Non-Claiming Party shall notify the Claiming Party, within [number of days] Days of the receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice, subject to the prior notification and

approval of the ERC, pursuant to its rules and regulations; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Section 8.

8. DISPUTE RESOLUTION

If any dispute or disagreement ("Dispute") shall arise between the Parties in connection with this Agreement, either Party may request in writing that the respective chief executive officers of Seller and Buyer meet within [number of days] Days and attempt to resolve the Dispute. The Parties shall exert every effort to first resolve the Dispute amicably by mutual consultation.

Should parties fail to reach an amicable settlement after mutual consultation, any Dispute arising from this Agreement shall then be settled through arbitration, at a venue within the Philippines, with the rules of Republic Act No. 876 and Republic Act No. 9285 deemed incorporated by reference in this clause.

In the event such officers are unable to resolve such Dispute through the above arbitration clause, the ERC has the jurisdiction to hear and decide the Dispute between parties arising from this Agreement, in the exercise of its powers and functions under the EPIRA.

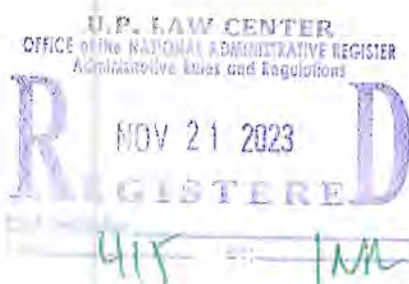
9. ASSIGNMENT OF RIGHTS

The Seller may only assign or transfer its rights or obligations to its Affiliates or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the Facility, (c) the movable property and intellectual property of the Seller, or (d) the revenues or any of the rights or assets of the Seller, in each of subsections (a) through (c) without the prior written consent of the Buyer, provided, however, that any such assignee of Seller shall have the ability to perform all of Seller's obligations and duties under this Agreement. Such transfer of rights and obligations under this provision shall require prior notification and approval of the ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement.

10. NOTICES

10.1 Address for Notices

Any notice, communication, request or correspondence (each a "notice") required or permitted under the terms and conditions of this Agreement shall be in writing, in the English or Filipino language (it being understood that any such communication or paper in a language other than the same shall be of no force or effect), and shall be (a) delivered personally, or (b) transmitted by electronic mail and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; to the following addresses:



If to Buyer:

Address: _____

E-mail Add.: _____

Attention: _____

If to Seller:

Address: _____

E-mail Add.: _____

Attention: _____

or such other address and/or telephone number as either Party may previously have notified to the other Party in accordance with this Section.

“Recipient” shall mean the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, or signatory to this Agreement of the Party, or in their absence or unavailability, on their secretaries.

10.2 Effectiveness of Service

Notices shall be effective: (a) in the case of personal delivery, when received by the recipient; or (b) in the case of transmission by electronic mail, if receipt of the transmission occurs before [time] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the electronic mail occurs after [time] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day.

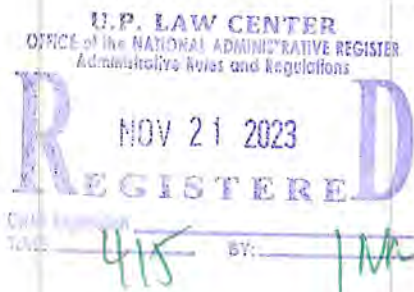
11. MISCELLANEOUS PROVISIONS

11.1 Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties, and with prior approval of the ERC.

11.2 Entire Agreement

This Agreement and all Schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties in respect of the Facility (whether oral or written).



11.3 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

11.4 Waivers

11.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (a) operate or be construed as a waiver of any other or further default whether of a like or different character, and (b) be effective unless in writing duly executed by an authorized representative of such Party.

11.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

11.4.3 The Parties shall not, through mutual agreement, or consent or acquiescence of the other, waive any rights or obligations under this contract that may prejudice the rights of consumers.

11.5 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns, subject to the provision in Section 9.

11.6 No Liability for Review

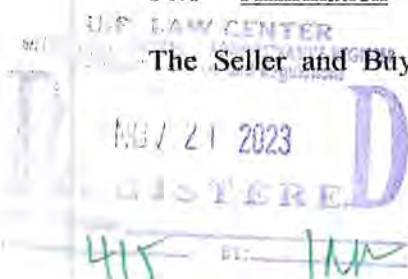
No review or approval by Buyer of any agreement, document, instrument, drawing, specifications or design proposed by the Seller shall relieve the Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable laws of the Republic of the Philippines with respect thereto, nor shall Buyer be liable to Seller or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

11.7 Consequential Damages

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

11.8 Affirmation

The Seller and Buyer declare and affirm that neither Party has paid nor has it



undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick- backs or unlawful commission and that it has not in any other way or manner paid any sums, whether in Local Currency or Foreign Currency and whether in the Philippines or abroad, or in any other manner given or offered to give any gifts and presents in the Philippines or abroad to any person or Seller to procure this Agreement, and the Seller and Buyer undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

11.9 Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to applicable laws, rules and regulations of the Philippines.

11.10 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

11.11 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in previous sections.

11.12 Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be English or Filipino.

11.13 Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an obligation of good faith.

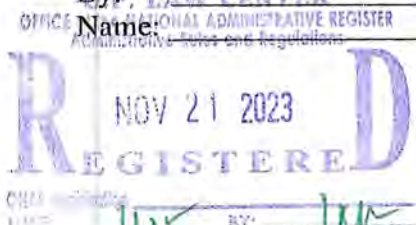
IN WITNESS whereof the Parties have entered into this Agreement the date first above written.

[NAME OF BUYER]

By: _____
Name: _____
Title: _____

WITNESSED BY:

By: LAW CENTER _____
Name: _____



[NAME OF SELLER]

By: _____

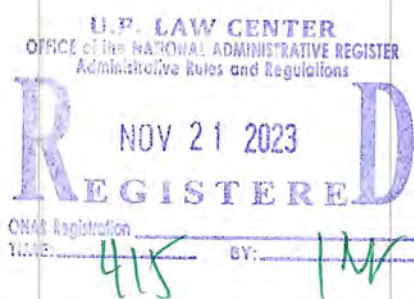
Name: _____

Title: _____

WITNESSED BY:

By: _____

Name: _____



SECRETARY'S CERTIFICATE

I, _____, Filipino, of legal age and with office address at _____, after having duly sworn in accordance with law, hereby depose and state that:

1. I am the Corporate Secretary of _____, a _____ duly organized and existing under and by virtue of the laws of the Philippines with principal office address at _____.

2. At the special meeting of the Board of Directors held on _____, during which meeting a quorum was present and acting throughout, the following resolution was unanimously passed and approved:

RESOLVED, that the Board of Directors of _____ authorize, as it hereby authorizes _____ to sign the Agreement with _____, on behalf of the [Corporation].

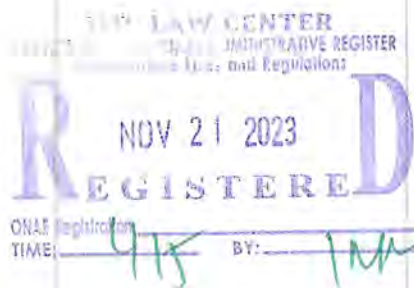
3. This board resolution has not been revoked, amended or modified, and remains valid and binding on the [Corporation] as of the date hereof.

4. The foregoing statements are in accordance with the records of the [Corporation].

IN WITNESS WHEREOF, I have hereunto set my hand this _____ at _____, Philippines.

Corporate Secretary

SUBSCRIBED AND SWORN to before me this _____ in _____, Affiant, who is personally known to me, exhibited to me his/her identification _____ issued in _____ on _____.



SCHEDULE 1

DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the content otherwise requires:

“Affiliate” - means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

“Agreement” - This Power Supply Agreement, including all Schedules thereto, as amended or supplemented from time to time.

“Allowed Outage” - The allowed number of hours for every contract year that a Unit and/or Component of a power plant is not available to perform its intended function due to some event directly associated with that Unit and/or Component based on the Rules and Regulations of ERC.

“Billing Period” - the period of one (1) month commencing at 0001H of the twenty- sixth (26th) day of each calendar month to 2400H of the twenty-fifth (25th) day of the calendar month.

“Business Day” - A Day on which business by and between banks may be carried on in [Location] in the Philippines.

“Buyer Grid System” - The Interconnection Facilities and any other transmission or distribution facilities on Buyer's side of the Interconnection Point(s) through which the Contract Capacity/Contract Energy of the Facility will be distributed by Buyer to users of electricity.

“Contract Capacity” - The capacity, expressed in kW allocated to the Buyer during the Billing Period.

“Contract Energy” - The energy, expressed in kWh allocated to the Buyer during the Billing Period.

“Contract Term” - shall have the meaning ascribed to it in Section 3.1.

“Day” - The 24-hour period beginning and ending at 12:00 midnight in [Philippine Time]. For clarity, “Day” means calendar day, or any day including Saturday, Sunday, and any day which is a legal holiday in the Philippines.

“Delivery Date” - shall have the meaning ascribed to it in Section 3.3.

“Delivery Point” - The Trading Node or NGCP/Metering Service providers' metering point/s of the Seller.

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“Dispute” - shall have the meaning ascribed thereto in Section 8.

“Effective Date” - means the date following the completion of the conditions referred to in Section 3.2.

“EPIRA” - The Republic Act No. 9136 of the Electric Power Industry Reform Act of 2001.

“ERC” - The Energy Regulatory Commission of the Philippines, the independent and quasi-judicial regulatory agency created under Section 38 of the EPIRA.

“Facility” - [Provide brief description of generating facility, including fuel source, capacity and location, if applicable]

“Force Majeure” - An event or occurrence specified in Section 6.

“Foreign Currency” or – The lawful currency of [_____].

“Fuel” – [Describe type of fuel used by the Facility, if applicable].

“Grid” - The high voltage backbone system of interconnected transmission lines, substations, and related facilities for the purpose of conveyance of bulk power.

“Interconnection Facilities” - All the facilities on the high side of the step-up transformer described in Schedule 3 to be constructed by or for Buyer to enable it to receive and deliver capacity and energy in accordance with this Agreement plus the Metering System.

“Interconnection Point” - The physical point(s) where the Facility and the Buyer Grid System are connected as specified in Schedule 3.

“kW” - Kilowatts.

“kWh” - Kilowatt-hours.

“Law” - Any law, act, ordinance, code, decree, order, rule, policy, resolution or regulation of any governmental authority or agency (national, provincial, municipal, local) that is at any time applicable to the parties, contract, project, site or any part thereof.

“Liquidated Damages” - The meaning ascribed thereto in Section 5.4.

“Local Currency” - The lawful currency of the Philippines.

“Metering System” - All meters and metering devices owned by Buyer and used to measure the delivery and receipt of Energy/Capacity.

“Minimum Functional Specifications” - The minimum functional specifications (including the technical limits of the Facility) for the construction and operation of the Facility as set forth in Schedule 3 hereof.

“Month” - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

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“MW” - Megawatts.

“NGCP” - National Grid Corporation of the Philippines, the corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the EPIRA and Republic Act No. 9511.

“Notice of Default” - The meaning ascribed thereto in Section 7.1.

“Parties” - Both Buyer and the Seller.

“Party” - Either Buyer or the Seller

“Outage Allowance” - refers to the allowable outage per plant type as determined by the ERC.

“Replacement Power” - The energy from an alternative source responsible to be delivered by the Seller to Buyer at a price lower than the price set forth in the Agreement.

“RCOA” - The Retail Competition and Open Access.

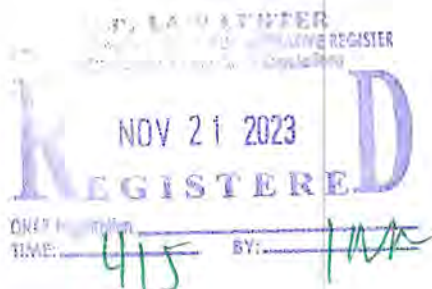
“Scheduled Outage” - A planned partial or complete interruption of the Facility's generating capability that (a) is not an Unscheduled Outage; (b) has been scheduled and allowed by Buyer in accordance with Section 4.4; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

“Unscheduled Outage” - An interruption or reduction of a Unit's or the Facility's generating capability that is not a Scheduled Outage.

“Week” - Each period of seven (7) consecutive Days beginning at 12:00 midnight Philippine Standard Time falling between a Saturday and a Sunday.

“WESM” – Wholesale Electricity Spot Market.

“Year” - Each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the term of this Agreement.



SCHEDULE 2CONTRACT CAPACITY AND/OR CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Contract Energy (kWh)	Minimum Contract Energy (kWh), if any
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

U.P. LAW CENTER
OFFICE of the NATIONAL ADMINISTRATIVE REGISTER
Administrative Rules and Regulations

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REGISTERED

ONLINE Registration
TIME: 4:15 BY: IMR

SCHEDULE 3**MINIMUM FUNCTIONAL SPECIFICATIONS****Technical Limits of the Facility**

Particulars	[Name of Plant/Facility]	[Name of Plant/Facility]
Location		
Type of Technology		
Mode of Operation (baseload, intermediate, peaking, etc.)		
Commissioning Date		
Date of Completion		
Economic Life, years		
Installed Capacity, MW		
Dependable Capacity, MW		
Auxiliary Load, MW		
Scheduled Outage, days		
Unscheduled Outage, days		
Voltage Limits (kV)		

Delivery Point/s

Location	Delivery Voltage

Interconnection Facilities

Illustration of the Site Location

Illustration of the Site Layout Area

Detailed Single Line Diagram

SCHEDULE 4**MONTHLY PAYMENT, INDEXATION AND ADJUSTMENT**

The Buyer shall pay the Seller for the Energy/Capacity at the following Fees and as adjusted on a monthly basis pursuant to the following formula:

$$\text{TGC} = \text{CRF} + \text{FOM} + \text{VOM} + \text{FF}_{\text{Adj}}$$

Where:

TGC = Total Generation Charge in PhP for the Billing Period

CRF = Capital Recovery Fee as defined in the Bid Documents at _____

FOM = Fixed Operation and Maintenance Fee as defined in the Bid Documents at _____

VOM = Variable Operation and Maintenance Fee as defined in the Bid Documents at _____

FF_{Adj} = Current Fuel Fee (if applicable) for the Billing Period calculated as follows:

$$\text{FF}_{\text{Adj}} = \text{FF}_{\text{base}} * (\text{FO}_{\text{current}} / \text{FO}_{\text{base}})$$

Where:

FF_{base} = Base Fuel Fee as defined in the Bid Documents set at _____

FO_{current} = Current cost of fuel at _____/(unit)

FO_{base} = Base cost of fuel set at _____/(unit)

