



NEGROS ELECTRIC COOPERATIVE ASSOCIATION (NECA) COMPETITIVE POWER SUPPLY PROCUREMENT

REFERENCE : SUPPLEMENTAL BID BULLETIN NO. 07
ISSUE DATE : 19 JULY 2024
FOR : ALL BIDDERS
SUBJECT : AMENDMENTS TO THE DRAFT POWER SUPPLY AGREEMENT (PSA)

Pursuant to the Department of Energy (“DOE”) Circular No. DC2023-06-0021, ERC Resolution No. 16, Series of 2023 and the NEA Memorandum No. 2023-057, the NECA JCPSP Joint Bids and Awards Committee (JBAC), hereby issues the following amendments.

ITEM	DRAFT PSA PROVISION	AMENDMENT
1	SECTION 3.2 EFFECTIVE DATE	The Parties’ rights and obligations under this Agreement shall commence on the Delivery Date , which shall be the date upon which all of the following conditions are satisfied:
2	SECTION 3.3 DELIVERY DATE	The Seller shall commence delivery of Contract Capacity to Buyer on Delivery Date. The Delivery Date shall start on the next immediate 26th day of the month after the issuance of the Provisional Authority/ Interim Relief/ Final Approval , if neither Provisional Authority or Interim Relief was issued, whichever comes later.
3	SECTION 3.4 REPRICING	Throughout the duration of the contract, authorized representatives of the ECs and the winning bidder shall meet not later than the first billing period of the 5th and 10th year of the contract period to discuss any concern (i.e. repricing) arising from the implementation of the contract to ensure that arrangements between Parties proceed on a mutually satisfactory basis. The following will be considered in the discussion:



		<p>a. Changes in Market Conditions:</p> <ul style="list-style-type: none"> • Significant fluctuations in fuel costs (coal, natural gas, etc.) that impact the Power Supplier's production costs. • Changes in government regulations or policies affecting the power industry (e.g., taxes, environmental regulations). • Unexpected changes in demand for electricity that could strain the Power Supplier's capacity or require adjustments to pricing. <p>b. Performance Issues:</p> <ul style="list-style-type: none"> • Consistent and significant deviations from agreed-upon power delivery volumes or reliability standards. • Unforeseen technical issues with the power generation or transmission infrastructure. • Force Majeure events (natural disasters, war, etc.) impacting either party's ability to fulfill their obligations. <p>c. Contractual Adjustments:</p> <ul style="list-style-type: none"> • Renegotiation of specific terms like pricing or delivery schedules to reflect changes in circumstances. • Introduction of new technologies or efficiency improvements that could benefit both parties. • Development of mutually beneficial solutions to address unforeseen challenges. <p>In the event that such discussions not reach a mutually agreeable resolution, the provisions outlined in Section 8 (“DISPUTE RESOLUTION”) of this Agreement shall govern.</p> <p>In the event both parties agree to renegotiate specific terms of this Agreement, the renegotiated terms shall be submitted for approval before</p>
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		<p>the Energy Regulatory Commission (ERC). The existing provisions of this Agreement will remain in effect while the ERC deliberates. A favorable ERC decision will trigger a retroactive application of the renegotiated terms, while an unfavorable decision will prompt a joint request for reconsideration. Following any final ERC determination, both parties will abide by the Commission's final decision.</p>
<p>4</p>	<p>SECTION 4.1 SELLER’S AND BUYER’S OBLIGATIONS</p>	<p>Beginning on the Delivery Date, until the termination or expiration of this Agreement, Seller shall supply and deliver 10 MW or 87,600,000.00 kWh, as detailed in Schedule 2, to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the 10 MW or 87,600,000.00 kWh at the rate of [], resulting from the CSP and subject to the approval of the ERC.</p> <p>In the event that an ERC [Interim Relief, Provisional Approval or Final Approval] shall have the effect of impairing the terms and conditions of this Agreement or requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, then the Parties shall cooperate in good faith to address the required amendment or impairment, and Seller shall be free to file a motion for reconsideration with the ERC. In case Seller decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under this section. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval, or if the motion for reconsideration is not resolved by the ERC within one hundred eighty (180) days after its filing, or any proposed amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then both Parties shall abide by the Commission's final decision.</p>



<p>5</p>	<p>SECTION 4.3 REDUCTION OF CONTRACT CAPACITY</p>	<p>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.</p> <p>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.</p> <p>4.3.1 NOCECO shall be entitled to a reduction in its Contracted Capacity as a result of the transfer of any of the NOCECO’s customer to another SELLER, in compliance to the Retail Competition and Open Access (RCOA) and any other issuances by the Philippine government in which NOCECO is obliged to comply. This shall be imposed upon written application by the NOCECO to the SELLER at least thirty (30) days prior to such reduction. Contracted capacity will be adjusted in proportion to all contracted volume and capacity from all SELLERs. Revision of monthly minimum energy off-take shall be undertaken by both</p>
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		<p>parties. NOCECO shall be entitled to a reduction in the Contract Capacity to the extent described below:</p> <p>(a) The NOCECO’s customer procures electricity from SELLER, in which case NOCECO shall be entitled to a reduction in the Contract Capacity equivalent to the average hourly coincidental peak demand of such the NOCECO’s customer for the last twelve (12) calendar months prior to such disconnection; and</p> <p>(b) The NOCECO’s customer procures electricity from any supplier who does not supply electricity to NOCECO, in which case NOCECO shall be entitled to a reduction in the Contract Capacity equivalent to the average hourly coincidental peak demand of such NOCECO’s customer for the last twelve (12) calendar months prior to such disconnection multiplied by the proportion of the Contract Capacity to the total capacity contracted by the NOCECO with all of its Suppliers of electric power (including the SELLER).</p> <p>4.3.2 For the avoidance of doubt, NOCECO shall not be entitled to any reduction in the Contract Capacity in the event that the NOCECO’s contestable customer procures electricity from any of NOCECO’s suppliers of electricity other than SELLER, including NOCECO’s or NOCECO’s affiliate suppliers other than SELLER.</p> <p>4.3.3 NOCECO should furnish the SELLER the following documents prior to any implementation of Reduction of Capacity due to RCOA or RPS:</p>
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		<p>(a) Contestable Customers' new supplier; (b) The average electricity consumption for the last twelve (12) months of each contestable customer; and (c) Computation on the carve-out of BUYER's concurrent suppliers as a consequence of the migration of contestable customers.</p> <p>Buyer may only exercise this right in the event that, Buyer, after exercising best efforts and in good faith, is unable to transfer or assign, the Contract Capacity in accordance with this Agreement to its affiliates or third parties. Any reduction under this Section shall require the approval of the ERC.</p>
6	SECTION 4.4.1 SCHEDULED OUTAGES	<p>At least seven (7) Days prior to the Delivery Date, the Seller shall submit to Buyer NGCP-approved 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 NGCP-approved 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.</p>
7	SECTION 4.4.2 SCHEDULED OUTAGES	<p>At least seven (7) Days prior to the Delivery Date and two (2) 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</p>



		Buyer as aforesaid. The outage periods shall be subject to the approval requirements under DOE guidelines and ERC rules and regulations
8	SECTION 4.4.6 SCHEDULED OUTAGES	For the plants that are not physically available on the date of delivery, it shall supply Replacement Power for a period not to exceed four (4) years, the Buyer should pay such Replacement Power at the lower of (a) the actual price of Replacement Power or (b) the approved charge for the PSA.
9	4.6.3 REPLACEMENT POWER	For the plants that are not physically available on the date of delivery, the replacement power shall not exceed four (4) years, otherwise, the same shall be a ground for termination of the Contract and payment by the Seller of Liquidated Damage and Penalty. The Buyer shall pay for such Replacement Power at a) the actual price of the Replacement Power; or b) the approved charge for the PSA, whichever is lower.
10	SECTION 4.7.1 PENALTY	<p>The Party in default shall bear the Liquidated Damages. The following penalties, among others, shall be imposed for non-adherence to provisions of the PSA such as:</p> <ul style="list-style-type: none"> (a) Forfeiture of Performance Bond; (b) Payment of Cost of foregone revenue and surcharges; (c) Unilateral termination of Contract; (d) Payment of Legal/ Litigation fees; and (e) Power Supplier shall be blocklisted. <p>All other breach of contract will result to the forfeiture of the Performance Bond. Liquidated damages for failure of delivery of power shall be the cost of actual replacement power and any other costs incurred to secure power and shall be paid within twenty (20) Calendar Days after written demand for payment.</p>
11	SECTION 4.7.2 PENALTY	If the Seller fails to deliver 10 MW Baseload upon delivery of the Contract, the Seller must secure a Replacement Power ensure continuity of supply in compliance with the cooperation period.
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13	SECTION 6.1.4 FORCE MAJEURE	Any material change in the terms and conditions of the Agreement (as determined by the affected Party), as ordered by the ERC in the Final Authority.
14	SECTION 6.1.5 FORCE MAJEURE	Any amendment, modification or change in applicable law or ERC rules and regulations after the date of this Agreement, or any decision or order by any court or governmental authority which provides for a new or change in the interpretation of applicable law or ERC rules and regulations by virtue of which Seller becomes liable to pay any new charges or any increased charges and adversely affects the ability of Seller to perform or materially increases the operating costs or capital expenditures associated with the Facility.
15	SECTION 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) six (6) consecutive months prior to the Delivery Date or (b) six (6) consecutive months after the Delivery Date .
16	SECTION 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



		<p>or assets of the Seller, in each of subsections (a) through (c) with 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. Buyer must be informed of the transfer of the assignment before the filing to ERC. 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.</p> <p>Notwithstanding anything to the contrary contained in this agreement, and in the event of the nonrenewal of Buyer's franchise or the transfer of rights to a new franchise holder, both parties agree to cooperate and exert reasonable efforts to ensure the uninterrupted and seamless transition of power supply services. The non-renewal of the franchise shall not, in itself, constitute grounds for automatic termination of this agreement. NOCECO shall use best efforts to notify the SELLER in advance of any impending changes in franchise ownership or any circumstances that may affect the continued provision of power supply services. SELLER agrees to work collaboratively with NOCECO and any new franchise holder to facilitate a smooth transition, and both parties shall avoid taking any actions that may lead to the discontinuance of power supply during the transition period. This provision on assignability will be enforceable and will confer benefits upon the involved parties and their respective successors and assigns.</p>
17	SCHEDULE 1	<p>“Contract Energy” - The energy, expressed in kWh to be consumed or purchased by the Buyer from the Seller during each Billing Period indicated in Schedule 2 (Contract Capacity and Contract Energy (Regular Year) and (Leap Year) at one hundred percent (100%) capacity utilization factor (CUF) with respect to the Contract Capacity.</p>



18	SCHEDULE 1	“Contract Year” - a twelve-month period beginning on the date power delivery commences under this Agreement and recurring on each anniversary thereafter.																														
19	SCHEDULE 1	“ERC Approval” - shall pertain to either the Interim Relief, Provisional Authority, or Final Authority issued by the ERC for this Agreement.																														
20	SCHEDULE 1	“Final Authority” - shall mean the final decision of the ERC on the application for approval of the Agreement that is not a Provisional Authority or Interim Relief.																														
21	SCHEDULE 5	<p>The Seller will be allowed maximum number of hours of Allowed Scheduled and Unscheduled Outages per year shall be based on ERC Resolution No. 010, Series of 2020 as follows::</p> <table border="1" data-bbox="1583 708 2260 1117"> <caption>Allowed Scheduled and Unscheduled Outages per Plant Type</caption> <thead> <tr> <th>Plant Type</th> <th>Scheduled (Hours)</th> <th>Unscheduled (Hours)</th> </tr> </thead> <tbody> <tr> <td>Coal (Pulverized)</td> <td>669</td> <td>403</td> </tr> <tr> <td>Coal (Circulating Fluidized Bed)</td> <td>369</td> <td>405</td> </tr> <tr> <td>Gas (Combined Cycle)</td> <td>300</td> <td>184</td> </tr> <tr> <td>Gas (Turbine)</td> <td>156</td> <td>544</td> </tr> <tr> <td>Diesel</td> <td>120</td> <td>336</td> </tr> <tr> <td>Oil Fired Thermal</td> <td>739</td> <td>667</td> </tr> <tr> <td>Geothermal</td> <td>144</td> <td>328</td> </tr> <tr> <td>Hydroelectric</td> <td>554</td> <td>163</td> </tr> <tr> <td>Biomass</td> <td>784</td> <td>168</td> </tr> </tbody> </table> <ol style="list-style-type: none"> 1. Scheduled outages shall be provided by the Supplier as determined by the grid System Operator. 2. No carry-over of Outage allowance (OA) to any subsequent contract year. 3. No crediting of Outage allowance (OA) from scheduled to unscheduled and vice versa. 4. The penalty clause will be determined based on the EC-approved timeline of the scheduled outage. 	Plant Type	Scheduled (Hours)	Unscheduled (Hours)	Coal (Pulverized)	669	403	Coal (Circulating Fluidized Bed)	369	405	Gas (Combined Cycle)	300	184	Gas (Turbine)	156	544	Diesel	120	336	Oil Fired Thermal	739	667	Geothermal	144	328	Hydroelectric	554	163	Biomass	784	168
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		<p>5. Power provider must provide replacement power for the delay on the return to service per predetermined timeline by the EC during unscheduled outages.</p> <p>6. All planned outages must be scheduled and declared twelve (12) months in advance.</p>
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Approved By : NECA JCSP JBAC


ROEL F. SALGADO, REE
NECA JCSP JBAC, CHAIRMAN
19 JULY 2024