

Comments to the Draft Rules Governing the Execution, Review and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Captive Market

Provision	Comment	Proposed Revision
General Comment	In view of certain conflicting provisions between the DOE Department Circular No. DC2018-02-0003 (and its Advisory), and the Proposed Rules, please advise on which Rules will prevail. Is there a way to harmonize contradicting provisions?	
Comment on Form: ARTICLE I. OBJECTIVES ARTICLE II. GOVERNING PRINCIPLES ARTICLE III. SCOPE AND APPLICATION ARTICLE II. DEFINITION OF TERMS ARTICLE IV. PROCUREMENT PROCESS ARTICLE V. REQUIREMENTS AND REVIEW PROCEDURES . . .	We suggest the sequential arrangement of Articles.	ARTICLE I. OBJECTIVES ARTICLE II. GOVERNING PRINCIPLES ARTICLE III. SCOPE AND APPLICATION ARTICLE IV. DEFINITION OF TERMS ARTICLE V. PROCUREMENT PROCESS ARTICLE VI. REQUIREMENTS AND REVIEW PROCEDURES . . .
DEFINITION OF TERMS (Article II)		
(b) "Aggregated Demand"	We seek clarification if this refers to joint procurement by several DUs	
(d) "Bids and Awards Committee" or "BAC" refers to an <i>independent</i> committee established in accordance with these Rules . . .	How is this reconciled with the DOE's rule requiring a Third-Party Bids and Awards Committee?	
(h) "Competitive Selection Process" or "CSP" refers to a process wherein Distribution utilities, on their own or acting as a group or <i>any other entity</i> defined in these Rules, . . .	Please clarify what "any other entities" may undertake CSP.	
(o) "Solicited Proposals" refer to project proposals identified by the DUs, wherein the DU selects	We note that the term Solicited Proposals, even if defined, is not mentioned in the draft rules.	[DELETE]

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private partner/s through competitive bidding and bids are solicited through a published <i>Invitation to Prequalify and Bid (ITPB)</i>		
PROCUREMENT PROCESS (Article IV)		
Section 2 (b). Generation sources (Hydro, Coal, Natural Gas, Diesel, Renewable Energy and others)	Please advise how we may reconcile this with the DOE circular that disallows the specification of a technology in CSP.	
Section 2. The entire CSP process including the award of contract should be completed within six (6) months from the publication of the invitation to bid. Failure to complete the process within this period shall invalidate the CSP.	Please clarify if protests/dispute resolution affect the timeline.	
Section 3 (a). Advertisement or publication in a newspaper of <i>general circulation</i> . . .	Please clarify the geographic scope of the advertisement or publication (nationwide, within the franchise area?).	
Section 3 (b). Pre-bid conference . . . but not earlier than <i>seven (7) days from publication</i> ;	Please specify whether the 7-day period is counted from the first or second publication.	
Section 3 (d). Bid opening shall be conducted <i>immediately</i> after the deadline of the submission of bids . . .	Please quantify the meaning of “immediately”. We propose that since deadline to submit is usually end of business day, it should be acceptable to open the bids the following day.	
Section 3.1. Direct Negotiation . . . (c) No successful negotiation was completed by the DU with the selected bidder.	Please clarify if the “selected bidder” refers to the winning bidder, and if this suggests that the DU and the winning bidder have room for negotiation after awarding of the bid.	
Section 4. Unsolicited Proposals (Swiss Challenge)	Please advise how we can reconcile this section with the DOE rules, considering that this section is a deviation from the DOE Advisory prohibiting unsolicited proposals.	
Section 4.1 (g) The project will be awarded to the original unsolicited proposal proponent, if the	Please clarify if “another proponent” refers to the price challenger under Section 4.1 (e). Further,	

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original unsolicited proposal proponent matches the lowest price under the tender. When <i>another proponent</i> submits a lower price proposal and the original proponent matches that price within thirty (30) working days, then the BAC-TWG will identify which proposal has greater technical merit and submit its recommendations to the BAC for disposition.	please advise if technical merit will only be evaluated in case of price matches.	
Section 5. <i>Emergency Supply Procurement.</i>	Please clarify if this may be harmonized with the requirement of the DOE for a Certificate of Exemption in DOE Circular No. DC2018-0003 regarding Competitive Selection Process, which requires a Certificate of Exemption for Emergency Supply Procurement, and other situations as stated in Article V, Section 15 of the proposed rules.	
Bids and Awards Committee (Article IV)		
Section 7. <i>Bids and Awards Committee (BAC)</i> [in relation to] Section 9. <i>Joint BAC of Aggregated DUs</i>	Please harmonize with DOE's TPBAC requirement. Please clarify why there is no qualification for the fifth member of the BAC. We suggest to remove the requirement for seminar or training on the Government Procurement Reform Act. We believe that it is better if training is for the ERC rules on PSA procurement. Further, please clarify the effect of non-training of one member of the BAC/Joint BAC.	
Section 8. <i>BAC Technical Working Group (TWG) and Secretariat.</i> . . . The BAC-TWG shall submit a	Please clarify if the BAC-TWG findings and recommendation is the same as the BAC	

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<p>report to the ERC regarding their <i>findings and recommendations</i> as part of the pre-filing requirements</p> <p>[in relation to] Section 10. <i>Joint BAC Technical Working Group (TWG) and Secretariat</i></p>	<p>Evaluation Report required in APPENDIX “C” (PSA Checklist).</p>	
<p>Section 9. <i>Joint BAC of Aggregated DUs.</i> – Distribution Utilities may chose to aggregate . . .</p>	<p>We suggest correcting the typographical error.</p>	<p>Section 9. <i>Joint BAC of Aggregated DUs.</i> – Distribution Utilities may <u>cho</u>se to aggregate . . .</p>
<p>Section 11. <i>Third Party Auctioneer.</i> . . .</p> <p>Provided, that the TPA is <i>not in any way</i> connected to any electric power industry players.</p>	<p>Please clarify what “not in any way connected” means.</p> <p>What are the responsibilities and accountabilities of the TPA?</p> <p>Will ERC promulgate guidelines on the accreditation of TPAs?</p> <p>Is the cost associated with services of a TPA part of the pass-through charges?</p>	
<p>Section 12. <i>CSP Observers.</i> . . .</p> <p>For Grid Areas, an invitation to become Observers shall be extended to the DOE, NEA, in case of ECs, and Non-Government Organizations (NGOs) and members of the local Chamber of Commerce.</p>	<p>Please explain why the ERC is not considered an Observer.</p> <p>Moreover, please elucidate on who are these NGOs? NGOs may be too broad and unnecessary. Is this an indispensable requirement for a valid CSP?</p>	
<p>. . .</p> <p>Observers shall be allowed access to x x x:</p> <p>. . .</p>	<p>We suggest that this apply only to opened proposals, i.e., proposals that pre-qualified.</p>	

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(e) proposals; and		
<p>Section 14. Protest Mechanism and Dispute Resolution.</p> <p>....</p> <p>Protests shall be resolved within ten (10) working days from receipt thereof. Decision of the governing board of the DU, . . .</p>	<p>Please clarify if protests and time to resolve them stalls the 6-month CSP period.</p> <p>Further, please reconcile with the DOE requirement that the protest to the governing board of the DU must be resolved in seven (7) working days.</p>	
REQUIREMENT AND REVIEW PROCEDURES (Article V)		
<p>Section 2. Filing of the PSA. . . . Following the execution of the PSA, the parties thereto shall file with the ERC, within <i>thirty (30) days therefrom</i>, . . .</p>	<p>We believe that the thirty-day period may not be a reasonable period to comply with all documentary requirements because:</p> <ul style="list-style-type: none"> • Certain LGUs will require at least 15 days for service and certification • Publication dates are limited for certain provinces, especially since there are limited newspapers • ERC pre-filing is only done on Thursdays and Fridays. 	<p>[We recommend the extension of the period (at least 60 days), and the documentary requirements be streamlined.]</p>
<p>Section 3. Review of the ERC. . . .</p> <p>(a) That the PSA was awarded in accordance with the prescribed procurement process prescribed under Appendix “A” . . .</p>	<p>Please clarify if DUs may deviate from the Procurement Process (Appendix “A”) and the PSA Framework (Appendix “B”).</p>	
<p>Section 5. Other Documentary Requirements . . .</p> <p>Provided, that if any of the required documents has been previously submitted to the ERC, a <i>Certification of prior submission</i> shall be issued in lieu thereof,</p>	<p>Please clarify if the <i>Certification of prior submission</i> may be issued when a document was submitted in a separate ERC case?</p>	
<p>Section 7. ERC Action on the Application. Any PSA</p>	<p>We note that nothing in this section guarantees</p>	

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submitted to the ERC shall be reviewed as to its “ <i>reasonableness</i> ” in terms of costs, risk allocation and other contractual terms.	the speedy approval of PSAs. Please clarify how “ <i>reasonableness</i> ” will be determined.	
FINAL PROVISIONS (Article VI)		
Section 1. <i>Transitory Clause</i> – All pending PSA Applications with the ERC shall not be affected by any new requirement imposed under these Rules.	We recommend that the Rules should only affect future CSPs, especially if a DU has already published its Invitation to Bid/Terms of Reference for CSP.	Section 1. <i>Transitory Clause</i> – All PENDING CSPs, CONDUCTED IN ACCORDANCE WITH APPLICABLE LAWS, RULES, AND REGULATIONS, AS WELL AS pending PSA Applications with the ERC, shall not be affected by any new requirements imposed under these Rules.
APPENDIX “C” GENERAL INFORMATION AND REQUIREMENTS FOR THE PRE-FILING OF APPLICATIONS FOR APPROVAL OF POWER SUPPLY AGREEMENT (PSA)		
Annex V Justification for the PSA including analysis	We noted certain redundancies in the requirements: Annex V-1 and V-2 already duplicates the Rate Impact required in Annex “W” Please clarify Annex V-3, V-4, and V-5. Annex V-7 and V-8 seem to refer to the same document.	