

COMMENTS AND RECOMMENDATIONS ON RULES GOVERNING THE PROCUREMENT, EXECUTION, AND EVALUATION OF POWER SUPPLY AGREEMENTS ENTERED INTO BY DISTRIBUTION UTILITIES FOR THE SUPPLY OF ELECTRICITY TO THEIR CAPTIVE MARKET

Document	Article / Section	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
PSA Rules	Article VII/Section 8. Bids and Awards Committee (BAC)	<p>It is recommended that instead of a Bids and Awards Committee (BAC) the Commission the Third Party Bids and Awards Committee (TPBAC) established pursuant to Department Circular DCNo.2018-002-0003, which provides to wit:</p> <p><i>The DU, through its Board of Directors (BOD), shall establish an independent TPBAC to spearhead and manage the CSP. The TPBAC shall comply with the policy and procedures in the conduct of CSP as provided for in this Policy. The TPBAC shall be accountable to its decision in the conduct of the CSP; Provided however, that the DU shall bear the expenses for any dispute or litigation arising from the CSP.</i></p> <p><i>The DU, through its Board of Directors (BOD), shall designate five (5) members of the TPBAC where three (3) members will come from the DU and the two (2) members will come from the captive customers that are not directly or indirectly related/affiliated to the DU. As such, the TPBAC shall be composed of the following:</i></p> <p>XXX</p>	<p>Distribution Utilities have been complying with this provision of Department Circular DCNo.2018-002-0003 which is a manifestation that The TPBAC concept is doable and acceptable to the DU's.</p> <p>As of date the following DUs have sought approval for its TPBAC Selection Process from the DOE:</p> <ol style="list-style-type: none"> 1. NEECO I; 2. MARELCO; 3. SOCOTECO II; 4. SORECO II; 5. BATELEC II; 6. BASELCO; 7. OMECO; 8. SIARELCO; 9. CELCO; and 10. SAMELCO II.
	Article IX/Section 28. Requisites for Unsolicited Proposal	Section 28. Requisites for Unsolicited Proposal. – A DU may accept unsolicited proposals for supply of electricity, provided the following conditions are	As the proposed language of this rules can be interpreted as unsolicited proposal can be the primary mode of PSA procurement as long as a PSA, from unsolicited proposal does

		<p>present:</p> <p>(a) Capacity Cap. – The contracted capacity subject of the unsolicited proposal shall not exceed 10% of the DU's total annual peak demand; XXX</p>	<p>not exceed 10% of peak demand. It is instead recommended that PSA's procured through comparative bidding process be limited to 10% of the peak demand as this rule as provided for under Section 31 provides that "XXX The draft contract as agreed upon by the DU and the original proponent XXX" will provide advantage to the original proponent.</p> <p>Corollary, it is likewise recommended that Section 31 be reviewed and that it provides that only the DU prepare the draft contract without the involvement of the original proponent, as procurement of PSA must be demand driven, emanating from the DU and not from any generation company.</p>
	Article IX/Section28. Requisites for Unsolicited Proposal	<p>Section 28. Requisites for Unsolicited Proposal. – A Du may accept unsolicited proposals for supply of electricity, provided the following conditions are present:</p> <p>1.Existence of uncontracted demand / energy requirement over and above PSA/s quantities;</p> <p>2.The unsolicited proposal does not result to stranded PSA capacity and energy quantities on the part of the DU; and</p> <p>3.The unsolicited proposal involves no government subsidy for the resultant Power Supply Agreement. XXX</p>	<p>The proposed additional requisites are intended to ensure economic operations of the DU's and that Item 3 is pursuant to the DOE's current draft policy regarding the omnibus guidelines on electric power services in missionary area, through private sector participation, which includes the rationalization and the conclusion program of the UC-ME.</p>
	Article IX/Section32. Swiss Challenge	<p>Section 32. Swiss Challenge. – The BAC TPBAC shall publish the Invitation for Comparative Proposal after receipt of the notification from the Original Proponent that the latter accepts all terms and conditions in the Letter of Acceptance. The invitation for comparative proposal should be published at</p>	<p>Recommendation on TPBAC is consistent with earlier proposal to have a TPBAC instead of a BAC.</p> <p>Recommendation on CSP Portal is pursuant to Department Circular DCNo.2018-002-0003 which mandated the DOE to develop a CSP Portal. The CSP Portal has been online since April 2018, and is currently</p>

		<p>least once every week for two (2) consecutive weeks in at least one (1) newspaper of general circulation. The weekly publications must not be less than seven (7) days apart. Said invitation should also be posted continuously in the website of the DU concerned, if available, and in the DOE CSP Portal, during the period stated above.</p>	<p>being used as a primary and centralized source of information regarding all CSP activities of all DUs. Using the DOE CSP Portal has and will provide wide dissemination of bid opportunities and participation of all Generation Companies.</p>
	<p>Article IX</p>	<p>Additional Section on Multiple Unsolicited Proposals containing the following procedure:</p> <p>1. In the case where the DU receives at least 3 Unsolicited Proposal involving the same or similar period of demand/energy requirement prior to acceptance of the proposal as the “original proponent”, the DU shall reject all such proposals and instead bid out the requirement as a solicited proposal.</p> <p>2. Using the First-In-Time-Approach, the DU shall acknowledge the submission of other unsolicited proponent/s for the similar proposal, and advise the unsolicited proposal proponent on existence of similar proposal and its rank/position based on date of receipt of unsolicited proposals. If a contract is awarded to a proponent, other proposal shall be return to the respective proponents unopened.</p> <p>3. In the case where TPBAC, Joint TPBAC, or TPA considers multiple Unsolicited Proposal the TPBAC, Joint TPBAC, or TPA shall evaluate the proposals using a First-In-Time-Approach where the first complete</p>	<p>Recommendation is to consider scenarios in which this proposal intends to articulate.</p>

		<p>proposal is evaluated and decided upon. The second complete proposal will only be entertained if the first one is not accepted. Otherwise, the second proposal will be considered only if there is a failure during the invitation for comparative proposals.</p>	
	<p>Article XII/ Section 42. Exemptions</p>	<p>Section 42. Exemptions. – All PSA's shall be procured through CSP; Provided however, that the following instances shall warrant an exemption from the conduct of CSP:</p> <ol style="list-style-type: none"> 1. Any generation project owned by the DU funded through internally generated funds or through loans; 2. Any generation project directly donated to the DU; 3. Any generation project donated to a DU through government agencies, LGUs and other institutions; 4. Small-scale Renewable Energy-based generating facilities, maximum of 1MW, duly recognized by the Department of Energy. <p>XXX</p>	<p>Additional recommendations for CSP exemption.</p>