



RULES GOVERNING THE EXECUTION, REVIEW, 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	Art. II	Formatting: There are two (2) Article IIs (i.e., Governing Principles and Definition of Terms)	
	Art. IV, Sec.3 (a) in relation to Sec. 13	Is the advertisement/publication in a newspaper of general circulation a minimum requirement? How shall posting in websites under Sec. 13 be treated – permissive or mandatory?	If the posting requirement in Sec. 13 is mandatory, there must be a reference thereto in Sec. 3.
	Art. IV, Sec. 3 (b) and (c)	Clarification: Pre-bid Conference (done prior to deadline of bid submission) precedes Pre-qualification (completed after deadline of bid submission). However in Appendix A (1-03), Pre-qualification precedes Pre-bid conference.	
	Art. IV, Sec. 4		The ERC must have or set parameters when Swiss Challenge can be used as a form of CSP. Since DUs forecast their demand on a regular basis, they are expected to initiate competitive bidding at a determined period. Thus, Competitive Public Bidding under Sec. 3 should be the rule, while Swiss Challenge should be considered an exception, to be resorted to only when parameters to be set by the ERC are availing.
	Art. IV, Sec. 4 (2 nd paragraph)	Clarification: If DU receives more than one unsolicited proposal, it shall evaluate them using <i>first in time</i> approach. Is this exercise done for the purpose of choosing the “original proponent”?	
	Art. IV, Sec, 4.1 (a)	Should DU’s evaluation of qualification and appropriateness of the original proposal consider minimum terms of reference under Art. IV, Sec. 2 used for Competitive Public Bidding?	Include as parameter for evaluating appropriateness DU’s demand requirements to prevent over-contracting.

	Art. IV, Sec, 4.1 (b)	Is the posting requirement under Sec. 13 applicable to Swiss Challenge, or would the 2x publication in newspaper circulation under this section suffice?	
	Art. IV, Sec, 4.1	There is no period within which counter-offers may be submitted.	<p>Determine a period that is not too short for counter-proponents to prepare their offers. This will prevent instances where a DU directly negotiates with a Generation Company, then simply resorts to Swiss Challenge if only to comply with the CSP requirement, but provides a very short period to receive counter-offers to ensure award of contract to the Generation Company as “original proponent”.</p> <p>Also, Swiss Challenge is generally characterized by bidding asymmetry due to time given to bidders to prepare counter-offers vis-à-vis the time taken by original proponent to prepare. In any case, a longer period to receive counter-offers will not be prejudicial to the DU in terms of securing immediate supply. If there is a genuine need for immediate supply, given the DU’s forecasting methodologies, they are expected to know when to initiate Competitive Public Bidding, instead of resorting to Swiss Challenge.</p>
	Art. IV, Sec. 5	Can any event, matter or thing that is not within the reasonable control of the party affected thereby be considered an “analogous circumstance” to qualify for emergency supply procurement?	DU to evaluate if effect of Force Majeure or Fortuitous Event to its supply will exceed one year. If so, it should conduct CSP prior to expiration of the 1-year emergency PSA.
	Art. IV, Sec. 6	<ul style="list-style-type: none"> • Re: Annual review of model inputs to be used in calculating benchmark rate. When will the new input (as reviewed) be used in evaluating a cost component? For example, an IRR for year X was fixed by the ERC. This was used by GenCo A in deriving its generation rate in year X. The ERC evaluates the PSA of GenCo A in year Y, what will be used in evaluating GenCo’s rate – IRR for year X or year Y? • Under what instances should the benchmark rate apply when the proponent is able to justify actual/true costs? If actual cost is higher than benchmark rate, does it mean it is unreasonable? In the same manner, if actual cost is lower than benchmark rate, does it mean it is reasonable? 	Consider including under Art. V on Review Process

		<ul style="list-style-type: none"> The financial model to be used in calculating the benchmark rate “will take into account relevant factors such as type of contract (financial or physical)....” What are <i>physical</i> contracts? 	
	Art. IV, Sec. 11	Are fees paid in engaging a Third Party Auctioneer a valid cost that can be passed on to consumers?	
	Art. IV, Sec. 14	Who has personality to file Protest? Can an Observer or a member-consumer file a Protest?	
	Art. IV, Sec. 14 (7 th paragraph)	<p>“Any conflict or dispute of any kind between the parties in connection with the <i>implementation of the contract</i>, the parties shall make every effort to first resolve amicably by mutual consultation or shall be submitted to arbitration according to Arbitration Law and Alternative Dispute Resolution Act....”</p> <p>Does the phrase “<i>implementation of the contract</i>” refer to implementation of the PSA? If so, is arbitration a prerequisite to filing an action before the ERC under Sec. 43 (u) of the EPIRA involving disputes between and among participants or players in the energy sector, where the ERC has original and exclusive jurisdiction?</p>	
	Art. IV, Sec. 15		Include as exemption Art. IV, Sec. 5 on Emergency Supply Procurement
	Art.V, Sec. 2	What amendments to the PSA, after Competitive Bidding or Swiss Challenge, are acceptable?	<p>Any amendment to the PSA that results in an increase in winning bid rate, or increase in contracted capacity bid out, should be considered as a new agreement and must not be accepted for filing with ERC, for want of procurement process.</p> <p>In the same manner, an amendment to the PSA that will increase the original bid rate or contracted capacity during the implementation of the PSA, even if already pending approval with ERC, must require a new CSP.</p>
	Art. V, Sec. 3 & 4	One of the objectives of the Rules is to streamline the review and approval process of PSAs. However, the review process and PSA pricing structure, including benchmarking, under the proposed Rules appear to be similar to what is already being done now. What innovations are introduced in the proposed Rules that will simplify and make more efficient the review and approval process?	
	OTHERS	<p>Can the winning bidder in the CSP assign its PSA, with the assignee to assume all obligations and rights?</p> <p>Will the ERC dismiss the PSA application on the ground that its terms and conditions are different from the results of the CSP?</p>	

Appendix A	1-03. Timetable for CSP	In the timetable, Pre-qualification precedes Pre-bid conference, whereas under the proposed Rules, Pre-bid Conference precedes Pre-qualification	
Appendix B	Item 3. Term of Contract Period	The 10-year limit to PSA's term may be prohibitive for some Generation Companies in terms of securing financing for the project, considering as well that power plants usually have a plant life of more than 10 years.	
Appendix C			
Appendix D			