

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

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Draft CSP Rules	<p>Article III. Scope and Application</p> <p>These Rules shall apply to all Distribution Utilities whether on-grid or off-grid and Generation Companies, except those which are expressly excluded under these Rules.</p>	<p>We applaud the Honorable Commission for drafting these Rules that effectively firm up the procedures that the DUs shall undertake to ensure competition and transparency in their respective procurement processes for power supply for its captive customers.</p> <p>Aside from the DUs, however, there is also a need to extend the scope to the transmission service provider (NGCP/Transco) in terms of its procurement, execution, and evaluation of Ancillary Service Provider Agreements (ASPA).</p> <p>As part of its mandate to determine, acquire and dispatch the capacity needed to provide the Grid with Ancillary Services, NGCP or the System Operator should also be included in the scope of the Rules.</p> <p>Since NGCP's/Transco's mandate is equally important with the mandate of DU's, the planning and procurement processes of NGCP/Transco for the ancillary services should be conducted similarly with the CSP's conducted by the DUs as both will lead to ensuring that there is capacity and ample reserve to support demand growth.</p> <p>As expected with the DUs, NGCP/Transco should also be proactive in publishing its need for ancillary service</p>	

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		providers and conduct its own stringent CSP.	
Draft CSP Rules	Article V, Section 5. Power Supply Procurement Planning	<p>In order to ensure that there is sufficient time for the generator and the DU to comply with the required governmental permits and authorizations, among others, the CSP should be conducted not later than 24 months before the required delivery while the filing of application with ERC shall be done 18 months before the delivery.</p> <p>Furthermore, in support to DOE and ERC's call for development for additional capacity to address growth in demand and country's economy, DUs are mandated to plan and conduct CSP for greenfield plants and enter into future bilateral contracts.</p>	
Draft CSP Rules	<p>Article VII, Section 8. Bids and Awards Committee (BAC)</p> <p>The DU, through its Board of Directors (BOD), shall establish an <u>independent</u> BAC to spearhead and manage the CSP. The BAC shall comply with the policy and procedures in the conduct of CSP, as provided in these Rules. The BAC shall be accountable to its decision in the conduct of the CSP; Provided however, that the DU shall be responsible for any dispute or litigation arising from the CSP.</p>	<p>We would like to clarify on the term "independent" on whether such BAC shall be independent of the board of directors.</p> <p>In addition, any member of the BOD, should not, in any way, whether directly or indirectly, interfere or cause to interfere in any stage of the bidding process.</p>	

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DOE's comment		There is no need for third parties to be included as part of the BAC. It is enough for them to engage as observers to enhance and ensure the transparency of the process and the reliability of the BAC's evaluation methodology	
Draft CSP Rules	<p>Article VIII, Section 13. Bidding Documents Bidding Documents shall consist of the following:</p> <p>(f) Form and Amount of Performance Security and Warranty;</p>	May we request for the rationale of such requirement from the participating power generation companies? Such requirement is usually being requested for sellers/vendors of other materials and services (ex. electric meters, posts, transformers, equipment, etc. which are fully paid upon delivery and before using such equipment while power supply has been acquired, delivered and consumed before any payment). Generators will always take the first risk for the delivery.	<p>We respectfully suggest the deletion of this as it should be assumed that PSAs to be executed between parties shall already cover the risks and obligations of parties in relation to power supply delivery and off-take.</p> <p>If such is insisted or imposed by DUs upon generation companies, such may pave the way for the latter to ask for the same to cover the risk of non-payment (ex. prudential guarantees, security deposits).</p>

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			<p>Note that the IPPs' huge investment in billions is already a huge risk. In other words, IPPs have taken the first huge risk compared to the DUs. Any additional Performance Bond is an unnecessary burden that may require premium imposed to buyers.</p>
Draft CSP Rules	<p>Article VIII, Section 13.2. Competitive Public Bidding Terms of Reference – The Terms of reference shall include the following, but not limited to:</p> <p>(b) Demand Requirement (baseload, mid-merit or peaking);</p>	<ul style="list-style-type: none"> We respectfully suggest not to impose a segregation of demand requirement (baseload, mid-merit or peaking) as basis of the DU's conduct of CSP. It may be restricting and lead to technology-specific bids. <p>The terms of reference should be clear and fair, not favoring any technology or plant site / area.</p> <ul style="list-style-type: none"> NGCP, in its plan for ancillary requirements, should determine if there is a need for specific technology. <p>A supply offer from one generation facility, if competitive and creative enough, can be diverse, flexible, and more cost-effective that may cater to all demand</p>	

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		requirements.	
Draft CSP Rules	<p>Article VIII, Section 13.2. Competitive Public Bidding Terms of Reference – Tern Terms of reference shall include the following, but not limited to:</p> <p>XXXX</p> <p>(h) Other key parameters</p>	<p>To reinforce ERC’s mandate to DUs to firm up their energy requirements and seek for future bilateral contract to help in facilitating investments in new capacity, we suggest to include a requirement that only greenfield/new power projects should be allowed to bid for long-term power supply agreements for the projected demand growth. This is to ensure that the industry can expect continued investments and additional capacities coming from new power projects in the coming years -- creating supply-driven market which effectively stabilize WESM prices and power costs in general.</p> <p>This kind of exercise and conscious effort to conduct CSPs for medium- and long-term power supply agreements in support of competitively-priced new power projects being built have been proven to be successful by the aggregation efforts of Mindanao (AMRECO), Region 1/CAR (RECA 1 + CAR), Region 8 (R8JCPSP), and Bohol (1BPJCPSP) Electric Cooperatives.</p>	
Draft CSP Rules	<p>Article VII, Section 9. BAC Technical Working Group (TWG) and Secretariat</p> <p>Xxxx</p> <p>Par. 3 The BAC-TWG shall assist the BAC in the technical components of the CSP, such as development of the Terms of Reference (TOR), eligibility screening,</p>	<p>There should have a defined evaluation process with uniform references (indices, breakdown and movement of variable components) for the rate evaluation and apple-to-apple comparison of the offers.</p> <p>It is important that there should be a clear set of parameters and evaluation method presented to ALL bidders that will ensure that ALL bidders shall be evaluated equally (e.g. are the large-scale CSPs conducted by Region 8 [won by</p>	

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	evaluation of bids, and post-qualification.	<p>GNPD] and Region 1 [won by AES])</p> <p>Rate evaluation, especially with long-term contracts, should be levelized/long-term calculation that will take into account the effects of inflation, foreign exchange, fuel prices and efficiency degradation on the duration of the contract as opposed to Base Price comparison.</p> <p>Other key important terms of the agreement (aside from the rate) should also be included as part of the bid requirements.</p> <p>CSP conducted should focus on the least-cost rate and should not include Corporate Social Responsibility (CSR) or loans of donations or similar offers as a factor of the least cost evaluation</p>	
Draft CSP Rules	<p>Article VIII, Section 26. Lock-down provision</p> <p>The winning bidder shall not be allowed to sell and/or assign the contract to any other entity except upon ERC's approval and determination of the assignee or buyer's legal, technical and financial eligibility.</p>	<p>Most greenfield/new projects have debt-equity arrangement for its financing and it is acceptable practice under the financing arrangements to assign the PSAs to other entities (e.g. project companies)</p>	<p>Instead, pre-qualification of bidders should address this – experience of the company, proof of development, etc.</p>
Draft CSP Rules	<p>Article VIII, Section 16.1 Pre-qualification Requirements</p> <p>Section 16.1. <i>Pre-qualification Requirements.</i> — Prequalification requirements shall consist of the following criteria:</p> <p>(a) Executive Summary - Brief description of the</p>		<p>We respectfully suggest to provide a separate list of Pre-qualification Requirements for prospective</p>

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	<p>Bidder's company history and structure, including relevant capabilities in the construction, operation and maintenance of a power plant.</p> <p>(b) Organization Structure - Basic information of the Bidder's legal status and organizational chart.</p> <p>(c) Financial Information - The Bidder shall submit the following:</p> <ul style="list-style-type: none"> (i) Details of financial and operating background for the two (2) recent full financial years demonstrating the Bidder's financial viability. (ii) Details of equity and financing plan indicating the capital structure and source of funds with supporting documents. (iii) Any other relevant information regarding financial track record and capabilities of the Bidder that it believes would be helpful to the BAC or Joint BAC. <p>(d) Technical Capability Information - The Bidder shall submit the following to demonstrate compliance with the technical criteria established in the Terms of Reference:</p> <ul style="list-style-type: none"> (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. (iii) Track records for the last five (5) years in operation the power plant (iv) Other relevant information showing proof of the technical capabilities of the Bidder that would be helpful to the BAC or Joint BAC. <p>(e) 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 or Joint BAC.</p> <p>(f) Confirmation of Eligibility - The Bidder shall confirm its eligibility, if applicable, as follows:</p> <ul style="list-style-type: none"> (i) The Bidder shall confirm that it is not disqualified 		<p>generation companies / new power projects as the draft exclusively caters to existing generation companies/power plants</p>

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	<p>from bidding for the supply of the DU's electricity requirements.</p> <p>(ii) An authorized signatory of the Bidder must sign the Pre-Qualification Requirements (PQR) on each and every page, and submit a duly notarized Special Power of Attorney, Secretary's Certificate or Board Resolution evidencing such authority.</p> <p>(g) Power of Attorney and other documents - Each Bidder must submit the following documents:</p> <p>(i) Original or Certified true copies of all corporate/legal documents (e.g. Board Resolution, Powers of Attorney) evidencing grant of authority to the individual submitting the Bid and making representation on behalf of the Bidder.</p> <p>(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 of the Transaction.</p> <p>(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 DU BAC, shall hold DU, 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."</p>		
Draft CSP Rules	<p>Article VIII, Section 19 Bid Security Bid Security- Each Bidder shall submit as part of the Second Bid Envelope, a Bid Security in accordance with the following terms and conditions:</p>	<ul style="list-style-type: none"> We would like to know the purpose of imposing bid security. If the purpose is to secure the bid and prevent bidders to backout so easily at the middle of the CSP, the price is too high. This risk can be already covered by the process of the pre-qualification which initially identifies which of the bidders are legitimate and 	<p>We respectfully suggest for the DU to set a nominal amount per CSP instead in order to</p>

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	<p>(b) The amount must be equivalent to one-year contract cost of the proposed power supply agreement computed using the bid price offered by the bidder.</p> <p>Article IX, Section 33 Posting of Bid Bond by the Original Proponent</p> <p>On the first day of the publication of the "invitation for comparative proposals", the original proponent shall be required to submit a bid security in the form and in the amount required, following the requirements of Section 19.</p>	<p>determined to move along the process.</p> <ul style="list-style-type: none"> Will the bid security replace other fees? <p>Please note that, as practiced, bidders are required to pay joining fees and bidding document fees as well as the bid security which are unnecessary costs which has to be recovered from the consumers.</p>	<p>provide a standardized cost for each of the prospective proponent's bid submission.</p> <p>If required, we respectfully suggest to impose Bid security to the Winning Bidder after the acceptance of the Notice of Award to penalize the bidder once it back out.</p> <p><i>i.e. PhP2M for every 10MW</i></p>
Draft CSP Rules	<p>Article VIII, Section 21 Post Qualification.</p> <p>The Lowest Calculated Bid (LCB) shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding documents.</p> <p>Within five (5) days after the approval</p>	<p>We can dispense with the post qualification. The results of the pre-qualification should hold until the winning bidder decided to back out or unless the winning bidder has been proven to have misrepresented information during the pre-qualification.</p>	<p>The BOD should confirm under oath the result of the evaluation of the BAC as necessary. Should they think otherwise, the BOD should be compelled to</p>

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	<p>of the Abstract of Bids, the bidder with the LCB should be notified through electronic mail or in writing that the bidder shall undergo post-qualification and submit the post-qualification requirements within five (5) days from receipt of the notice.</p> <p>If the BAC or Joint BAC determines that the bidder with the LCB passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid (LCRB), and recommend to the DU BOD the award of contract to the said bidder.</p> <p>If, however, the BAC or Joint BAC determines that the bidder with the LCB fails the criteria for post-qualification, it shall immediately notify the said bidder electronically or in writing of its post-disqualification and the grounds for post-disqualification.</p> <p>The post-qualification process shall be completed in not more than fifteen (15) days from determination of the Lowest Calculated Responsive Bid (LCRB). In exceptional cases, the post-qualification period may be extended by the DU BOD, but in no case shall the aggregate period exceed thirty (30) days.</p>		<p>provide the reason of the disapproval which shall also be done under oath.</p>

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Draft CSP Rules	<p>Article VIII, Section 23 Notice of Award. Notice of Award – In case of approval by the DU BOD, the BAC or Joint BAC shall immediately issue the Notice of Award to the Bidder with the Lowest Calculated Responsive Bid (LCRB). The "Notice of Award", which is issued by the DU, shall indicate, among others, that the winning Project Proponent must submit within twenty (20) days from official receipt of the "Notice of Award" the following:</p> <p>Prescribed performance security</p>	<p>May we request for the rationale of such requirement from the Winning Bidder? Usually, such requirement is being requested for sellers/vendors of other materials and services (ex. electric meters, posts, equipment, etc.) but not from a power supply provider/generation company.</p>	<p>We respectfully suggest the deletion of this requirement as it should be assumed that PSAs to be executed between parties shall already cover the risks and obligations of parties in relation to power supply delivery and off-take.</p> <p>If such is insisted or imposed by DUs upon generation companies, such may pave the way for the latter to ask for the same (ex. prudential guarantees, security deposits). These funds, if required to the DUs, are put up using the DUs' resources or are shouldered</p>

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			by consumers.
Draft CSP Rules	<p>Article VIII, Section 25 Execution/Approval of Contract</p> <p>The authorized signatory(ies) of the winning bidder and the DU shall execute and sign the power supply agreement as approved in accordance with Appendix "B", within five (5) days from receipt by the winning bidder of the Notice to Proceed from the DU that all conditions stated in the Notice of Award have been complied with.</p> <p>XXXX</p>	<p>May we request for the draft rules to also provide for a schedule or timeline for contract negotiation? Parties may find the prescribed five (5)-day deadline to sign a power supply agreement too tight to iron out issues and/or negotiation points.</p>	
Draft CSP Rules	<p>Article IX, Section 28. Requisite for Unsolicited Proposals (Swiss Challenge)</p> <p>A DU may accept unsolicited proposals for supply of electricity, provided the following conditions are present:</p> <p>a. Capacity Cap. – The contracted capacity subject of the unsolicited proposal <u>shall not exceed 10%</u> of the DU's total load;</p> <p>XXXX</p>	<p>We would like to be clarified with what is the basis of the 10% capacity cap?</p> <p>GNPower suggests to dispense with the 10% capacity cap as long as proper rate evaluation has been conducted and transparent evaluation of the rate is required for the challenger</p>	<p>We respectfully suggest that the cap should depend on the size of the DU.</p>

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Draft CSP Rules	<p>Article IX, Section 28. Requisite for Unsolicited Proposals (Swiss Challenge)</p> <p>xxxx</p> <p>(c) The unsolicited proposal is made public and subjected to competition. – When a Distribution Utility receives an unsolicited bid for the supply of electricity, the <u>DU shall then publish and invite third parties to match or improve it;</u></p> <p>xxxx</p>	<p>We suggest that there should still be a form of protection for the confidentiality of the proposal and the other details should not be unnecessarily disclosed to the public. We suggest that the publication should rather contain the result of the evaluation of the unsolicited proposal conducted by the distribution utility and the terms of such unsolicited proposal that must be challenged.</p> <p>For instance, the publication may reflect the Key Terms and the Weighted Rate / Levelized Price to be challenged.</p> <p>Moreover, the provisions for Swiss Challenge under the proposed Rules should also contain the requirements as basis for the pre-qualification of the challengers (e.g. Letter of Intent, TOR / evaluation method for the qualification of the proposal) and should follow the applicable steps for the conduct of competitive bidding.</p>	
Draft CSP Rules	<p>Article IX, Section 37 Right to Match</p> <p>If during the evaluation of the proposals, the BAC determines that the best proposal came from the comparative proponent/s, the original proponent has a period of thirty (3) days from receipt of BACs or Joint BACs notice to match the determined best proposal.</p>		<p>We respectfully suggest to impose a certain percentage or amount to be met by any challenger to be considered as a “lower” offer than the Unsolicited Proposal (e.g. 5% lower than the Price of the Original Proposal).</p>

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Draft CSP Rules	<p>Article X, Section 39 Direct Negotiation</p> <p>Direct negotiation with an interested party for the supply of electricity may be made by the DU after at least two (2) failed competitive public bidding (CPB) or during an emergency supply situation in accordance with Section 40 hereof.</p> <p>xxxxx</p>	<p>We would like to request ERC to provide a more specific and defined terms of reference for the process for Direct Negotiation to ensure fairness – not favoring any Genco.</p>	
Draft CSP Rules	<p>Article XI, Section 40. Emergency Supply procurement</p> <p>Emergency Supply Procurement may be undertaken by the affected DUs due to the occurrence of Force Majeure, Fortuitous Event or other analogous circumstances not specifically enumerated under the definition of a force majeure or fortuitous event, in order to Maintain safe, reliable, secure and efficient operation of the power system.</p> <p>xxxxx</p>	<p>We respectfully suggest to delete of the word “analogous”. Otherwise, provide a clear definition.</p>	
Draft CSP Rules	<p>Article XII, Section 42. Exemptions</p> <p>All PSAs shall be procured through CSP; Provided, however, that the following instances shall warrant an exemption from the conduct of the</p>	<p>PSALM can be given a maximum of two (2) years to be exempted from the CSP to give way to the privatization of its facilities in accordance with the rules of the EPIRA. Beyond this, it would be unfair for other gencos that DUs can directly negotiate with PSALM for its demand</p>	

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	<p>CSP:</p> <p>(c) Provision of power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation through bilateral contracts for the power produced</p>	<p>requirements especially that PSALM has its recovery mechanisms which can be adjusted from time to time.</p>	
Draft CSP Rules	<p>Article XV, Section 46. Filing of the PSA</p> <p>The PSA shall be a joint responsibility of the generation company and the DU. Following the execution of the PSA, the parties thereto shall file with the ERC, within sixty (60) days therefrom, a joint application for the approval of said PSA. XXX</p>	<p>PSAs shall be filed not later than one (1) year before its delivery to allow time for approval and/or public hearing.</p>	
Draft CSP Rules	<p>Article XV, Section 47.ERC Evaluation of the Application</p> <p>Any PSA submitted to the ERC for approval shall be reviewed on two (2) levels. The first level is to determine whether the bidding process is in accordance with these rules and to ensure that there are no indications of any form of anticompetitive behavior. The second level is to determine the PSA's "reasonableness" in terms of costs, risk allocation, and other contractual terms.</p>	<p>For the conduct of CSP to be encouraged, ERC should focus on the evaluation of the process as the main basis of its approval. For the Swiss Challenge and Direct Negotiation, ERC can re-apply the cost-based evaluation.</p>	

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Draft CSP Rules	<p>Article XV, Section 49.PSA Pricing Structure</p> <p>The ERC shall determine the reasonable generation cost under the said PSA, taking into account the following fees:</p> <p>(A) Capital Recovery Fee (CRF) - a capital-related component to recover the cost of investment over the economic life of the plant together with a reasonable rate of return. In the case of an Independent Power Purchase Agreement, the CRF shall pertain to the recovery of fees paid/payable to NPC to operate the plant. This amount shall include a reasonable amount of return on capital based on an ERC approve WACC.</p>	<p>If there is a CSP conducted, the evaluation of the PSA entered into by a generator and DU should focus on the validation of the proper conduct of the CSP and to ensure that the rate and terms won by the generator was applied to the PSA.</p> <p>This will be consistent in the objective of the proposed Rules to “streamline the review and process of the PSA”. This will also facilitate and accelerate the review process of the ERC.</p>	
Appendix A	<p>1-22 Performance Bond. The Winning Bidder is required to post a Performance Bond under each PSA in the amount equivalent to []% of the Project Cost directly to the DU in the form of cash or manager’s/cashier’s check.</p>	<p>May we request for the rationale of such requirement from the Winning Bidder? Usually, such requirement is being requested for sellers/vendors of other materials and services (ex. electric meters, posts, equipment, etc.) but not from a power supply provider/generation company.</p>	<p>We respectfully suggest the deletion of this requirement as it should be assumed that PSAs to be executed between parties shall already cover the risks and obligations of</p>

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			<p>parties in relation to power supply delivery and off-take.</p> <p>Furthermore, DUs should also be required of security deposit as IPPs have greater risks.</p>
Appendix B	<p>3. Term of contract period of the PSA. The term of the PSA should not exceed ten (10) years</p>	<p>May we request for the rationale behind the limiting of the Contract Period to 10 years?</p> <p>Greenfield power projects that are usually financed under long-term loans that are most likely more than the prescribed Contract Term of 10 years. Generation companies aim to secure such loans in order to lock-in the best arrangements that would result to lower project cost. Limiting the Contract Period may also limit the generation company's ability to provide competitive rates to off-takers due to financing/economic constraints.</p>	<p>Suggest to impose no limit or state that Parties may be allowed to negotiate or agree on the Contract Period that is best fitting.</p>
Appendix B	<p>4. Effective Date / Commercial Operations Date and Conditions Precedent</p> <p>XXX</p> <p>The provision should also indicate the agreement of the parties in the event the conditions precedent do not occur within a specific period of time (e.g. sunset clause)</p>	<p>If the ERC would require to indicate a sunset date, then prospective generation companies should be allowed to register at the WESM even if there is no Certificate of Compliance issued yet to be able to fulfill their obligations to the DUs and will be authorized to arranged its replacement supply.</p>	