



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

GENERAL OBSERVATION:

We laud the Energy Regulatory Commission (ERC) in issuing the 2nd draft of the CSP Rules, which clearly attempts to incorporate the inputs from and concerns of all stakeholders in a balanced and broad-based approach. We note in particular two basic principles seemingly espoused by the ERC as reflected in the provisions of the 2nd draft:

1. The ERC CSP Rules is sufficiently detailed in terms of specific procedures (*e.g.*, periods, qualification of BAC members, etc.) and submissions required (*e.g.*, Power Supply Procurement Planning, etc.); and
2. The ERC CSP Rules grants distribution utilities sufficient discretion and latitude in determining necessary information and critical matters that should be included in the terms of reference for the conduct of CSP.

Document	Article / Section	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
	26	What is the rationale for the prohibition of winning bidder to sell or assign a contract without ERC's approval? We suggest that ERC consider the lock-down provision be time-bound (<i>e.g.</i> , the need for ERC approval shall be needed only during the period of completion of the power plant). Once the power plant is built, ERC should no longer have any concerns in any commercial transactions involving the winning bidder.	Section 26. Lock-down provision.- The winning bidder shall not be allowed to sell and/or assign the contract to any other entity until completion or commercial operation of the power plant , except upon ERC's approval and determination of the assignee or buyer's legal, technical and financial eligibility.
	28 (a)	While the use of DU's total annual peak demand may be a good barometer in determining the capacity cap, ERC may wish to create tiers or gradation given the different sizes of the	(a) Capacity Cap. – The contracted capacity subject of the unsolicited proposal shall not exceed <u>50%</u> of the DU's total annual peak demand <u>but in no case greater than 600 MW</u> .

		<p>DUs. As illustration, while the 10% cap works for Meralco (which has an annual peak demand of 9,500 MW and therefore it can receive a bid for a 950 MW plant), the same 10% cap may be too small for a DU that only has a 40 MW annual peak demand (which therefore can receive an unsolicited proposal from a power plant with a maximum capacity of 4 MW). In the alternative, ERC may wish to consider increasing the % cap but putting a limit in MW capacity as follows:</p> <p>(a) Capacity Cap. – The contracted capacity subject of the unsolicited proposal shall not exceed <u>50%</u> of the DU's total annual peak demand <u>but in no case greater than 600 MW.</u></p> <p>For a DU that only has a 40 MW annual peak demand, then it can receive an unsolicited proposal of 20 MW (a more commercially viable size for a small power plant)</p>	
	29	<p>In case of perceived incomplete submission, Original Proponent may be given ten (10) days from notice of incomplete submission to cure the same before</p>	<p>Section 29. xxx</p> <p>The DU shall acknowledge receipt of the proposal within ten (10) days and advise the proponent whether the proposal is complete or incomplete within fifteen (15) days from submission thereof. If incomplete, the DU shall return to the proponent its submission indicating what information is lacking or necessary and give the</p>

		DU can entertain other offers. This is to avoid DUs from arbitrarily claiming incompleteness.	proponent ten (10) days from receipt of the submission to complete what is lacking. If proponent fails to complete its submission within ten (10) daysm the DU may entertain thereafter other same or similar project proposal.
	38	The entire process of Swiss Challenge, including the award of the contract, should be completed within <u>four (4) months</u> from first publication... A Swiss Challenge process should be more efficient and faster than the public bidding process which ERC expects to be completed within six (6) months.	
	42 (b)	What is the rationale for exempting PSAs when mandated by a GOCC? The EPIRA encourages private sector participation.	
	49	Given the different nature of a renewable energy plant and its PSA, does the ERC-proposed pricing structure apply? Perhaps ERC should provide for a different pricing structure for RE PSAs?	
Formal Changes			
Document	Article / Section	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
	8	Use BOD abbreviation	Section 8. <i>Bids and Awards Committee (BAC)</i> . - The DU, through its BOD , shall establish an independent BAC xxx

	8	Differentiate “An officer or employee knowledgeable in the technical operations of the DU” from “An officer or employee with technical experience and/or background.”	
	10	Use DU abbreviation	Section 10. <i>Joint BAC of Aggregated DUs.</i> - DUs may choose to aggregate
	11	Use TOR abbreviation	The Joint BAC-TWG shall assist the Joint BAC in the technical components of the CSP, such as development of the TOR , eligibility screening, evaluation of bids, and post-qualification.
	12	Define NEA	(2) Representative from National Electrification Administration (NEA) , in case of electric cooperatives;
	12	Clarification sought as to why Parent Teachers Associations were chosen as part of the CSP Observers	
	12	Capitalize Observers; numerical figure for 2 and spell out 3	The consumer groups to be invited by the concerned DU is to serve as Observers shall not be less than two (2) nor more than three (3) groups.
	12	Capitalize Observers	The Observers shall have the following responsibilities:
	12	Insert “or Joint BAC”	a. To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC or Joint BAC . The report shall assess the extent of the BAC's or Joint BAC’s compliance with these rules and areas of improvement in the BAC's or Joint BAC’s proceedings
	12	Capitalize Observers	b. To submit their report to the DU BOD and furnish a copy to the ERC. If no report is submitted by the Observers within seven (7) calendar days after each procurement activity, it is presumed that the bidding activity conducted by the BAC followed the correct procedure;
	12	Suggest to put first as responsibility of the Observer to notify the Procuring Entities or DU of actual or potential interest in the contract to be bid.	The Observers shall have the following responsibilities: a. To immediately notify in writing the DU of any actual or potential interest in the contract to be bid and immediately inhibit as an observer; b. To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC. The report shall assess the extent of the BAC’s compliance with these rules and areas of improvement in the BAC’s proceedings;

			c. To submit their report to the DU BOD and furnish a copy to the ERC. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, it is presumed that the bidding activity conducted by the BAC flowed the correct procedure.
	14	Change “x1” to “1x”	The BAC or Joint BAC shall publish the "Invitation to Pre-Qualify and Bid" in a newspaper of general circulation, once (1x) weekly for two (2) consecutive weeks.
	16.1. (e)	Clarify instances of Conflict of Interest	(e) Conflict of Interest - The Bidder must disclose detailed information regarding any existing, potential or future conflict of interest, as discussed under Section 2-03 of Appendix A , that a Bidder may have with the BAC or Joint BAC.
	16.1. (f)	Clarify instances where a Bidder will be disqualified from bidding for the supply of the DU's electricity requirements	(i) The Bidder shall confirm that it is not disqualified under Appendix A from bidding for the supply of the DU's electricity requirements.
	16.2	Indicate how BAC or Joint BAC shall inform the prospective Project Bidder who have been pre-qualified within five (5) days	The DU, through its BAC or Joint BAC, shall within a period of at least ten (10) days after the deadline set for the submission of the prequalification documents, determine which among prospective bidders are "pre-qualified" or "disqualified". Accordingly, the BAC or Joint BAC shall duly inform in writing or through electronic mail the prospective Project Bidder who have been pre-qualified within five (5) days after approval thereof.
	17	Indicate where the sixty (60) days shall be reckoned from	In no case shall the deadline for submission of bids be less than sixty (60) days following the last publication of the Invitation to Pre-Qualify and Bid (“Bid Submission Deadline”) .
	17	Capitalize Bidder for consistency; insert “Joint BAC”	All envelopes shall bear the name of the Bidder and project to be bidden out in capital letters and addressed to the BAC or Joint BAC of the concerned DU.
	18	Insert “Joint BAC”	The BAC or Joint BAC may request for extension of the same.
	19 (a) (i)	Insert “or”	i. Cash or cashier's manager's check issued by a Universal or Commercial Bank or any other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument, or
	19 (a) (iii)	Capitalize Bid Security for consistency	iii. In case the Bid Security is issued by an international bank
	20.1	Capitalize Bidder for consistency	The first envelope evaluation shall involve the assessment of the technical and operational capability of the proposal as contained in the Bidders' first envelopes

	21	Capitalize Bidder for consistency	The Lowest Calculated Bid (LCB) shall undergo post-qualification in order to determine whether the Bidder concerned complies xxx
	21	Clarify the activities undertaken during post-qualification. <i>“The post-qualification process shall be completed in not more than fifteen (15) days from determination of the Lowest Calculated Responsive Bid (LCRB).”</i> Apart from the determination of the LCRB, what other post-qualification activities are there?	
	22	Use LCRB abbreviation for consistency	Section 22. <i>Award of Contract.</i> -The BAC shall recommend to the DU BOD the award of contract to the Bidder with the LCRB .
	22	Indicate how losing Bidders will be notified	Xxx Within the same period provided herein, the BAC or Joint BAC shall notify in writing or through electronic mail the losing Bidders of its decision.
	23	Use LCRB abbreviation for consistency	Section 23. <i>Notice of Award.</i> - 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 LCRB .
	23	Use “Winning Bidder” for consistency	Section 23. <i>Notice of Award.</i> - 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 Bidder must submit within twenty (20) days xxx
	23	Clarify period of submission of documents along with the Notice of Award. In the 1 st paragraph, it states: <i>“winning Project Proponent must submit within twenty (20) days from official receipt of the "Notice of Award" the</i>	

		<p><i>following xxx”</i></p> <p>However, in the 2nd paragraph, it states:</p> <p><i>“Failure to submit the above-listed requirements within the prescribed fifteen (15)-day period will result in confiscation of the bid security.xxx”</i></p>	
	24	Capitalize Bidder for consistency	Section 24. Notice to Proceed. - Upon determining the compliance of the winning Bidder to the conditions xxx
	25	Capitalize Bidder for consistency; Capitalize Bid Security for consistency	<p>Section 25. <i>Execution/Approval of the Contract</i> – 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>In the event of refusal, inability or failure of the winning Bidder to enter into a contract with the DU within the time provided therefor, the DU concerned shall forfeit its Bid Security.</p>
	26	Capitalize Bidder for consistency	The winning Bidder shall not be allowed to sell and/ or assign the contract xxx
	27	Insert Section title	Section 27. Duration of Competitive Public Bidding - The entire process of competitive public bidding, including the award of contract, should be completed within six (6) months from the first publication of the invitation to bid.
		Use “Unsolicited Proposal” for consistency	Section 28. <i>Requisites for Unsolicited Proposal.</i> - A DU may accept Unsolicited Proposals for supply of electricity, provided the following conditions are present: xxx
	28 (c)	Use DU abbreviation for consistency	(c) The unsolicited proposal is made public and subjected to competition. - When a DU receives an unsolicited proposal xxx
	28	Insert numerical figure 1	In the case where the DU receives more than one (1) Unsolicited Proposal xxx
	29	Use “Unsolicited Proposal” for consistency	Section 29. <i>Submission of a Complete Unsolicited Proposal.</i> - For an Unsolicited Proposal to be considered by the DU xxx
	30	Use “Unsolicited Proposal” for consistency	In case of acceptance, the DU shall endorse the Unsolicited Proposal and submit all pertinent documentation to the BAC or Joint BAC.

	30	Use “Original Proponent” consistency for	xxx The DU shall indicate in its letter of acceptance the confirmation of the proponent as " Original Proponent ".
	32	Insert “or Joint BAC”	Section 32. <i>Swiss Challenge</i> . - The BAC or Joint BAC shall publish the Invitation for Comparative Proposals
	33	Consistency in terms	Section 33. <i>Posting of Bid Bond by Original Proponent</i> . - 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.
	34	Use “Original Proponent” consistency for	The evaluation criteria used for qualifying the Original Proponent should be the same criteria used in the "Terms of Reference" for the comparative proponents.
	37	Use “Original Proponent” consistency for	Section 37. Right-to-Match . - 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 (30) days from receipt of BAC's or Joint BAC's notice to match the determined best proposal. If the Original Proponent matches the best proposal under the tender, the project will be awarded to the Original Proponent . On the other hand, if the Original Proponent failed to match the best proposal, then the contract is awarded to the bidder who submitted the best proposal as determined during the evaluation of the comparative proposals.
	38	Insert Section title	Section 38. Duration of Swiss Challenge - xxx
	39	Use TOR abbreviation	(c) Offers of prospective suppliers failed to meet the requirements prescribed under the TOR , as determined by the BAC or Joint BAC; or
	40	Consider earlier abbreviations	The DU shall provide Written Notice to the ERC, the DOE , the NEA , in the case of ECs and the National Power Corporation , in case of Off-grid areas, of the exemption within thirty (30) days upon the implementation of the Emergency Supply Procurement.
	42 (Article XII)	Proposal to move this Section before Article VII	
	49 (b)	Spell out “O&M Fee”	(b) Operating and Maintenance (O&M) Fee

	49 (b) (1)	Use O&M abbreviation	(1) Fixed O&M - an element to recover fixed O&M costs. This cost is determined by the capacity of the plant, not the level of utilization.
Appendix A	Part 1. 7.ii	Insert “or Joint BAC”	ii. Letter authorizing the BAC or Joint BAC or its duly authorized representative(s) to verify any or all of the documents submitted for the eligibility check/post qualification
	Part 1; 1-13 Bid Security	Insert “or”	i. Cash or cashier's manager's check issued by a Universal or Commercial Bank or any other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument, or
	Part 2; 5	Clarify instances of Conflict of Interest	The Bidder must disclose detailed information regarding any existing, potential or future conflict of interest as discussed under Section 2-03 of this Appendix A that a Bidder may have with the (Name of Distribution Utility) Bids & Awards Committee.