

**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	Sec. 13. Bidding Documents	To ensure transparency, competition thru completeness and clarity of bidding and procurement requirements and conditions	Include "Draft Contract" or General/Special Conditions of Contract as part of the Bidding Documents.
	Sec 13.3 Draft Contract	To establish ethical and integrity standards for the CSP	<ul style="list-style-type: none"> <li>• Include "Anti-Corruption and Fraud" provisions. (See GCC of PBDs of RA 9184 Incorporate in Bid Docs/GCC.) Amend or modify if needed to safeguard interest of EC and to protect it from unreasonable risks or liabilities. See to it that Anti-Corruption clauses of RA 9184 are included in the Bid Docs/GCC. Commission by the Supplier of any prohibited act during procurement and within the Period of Cooperation will constitute breach and be cause for termination of the PSA.</li> <li>• Include the condition that the BAC members (or his/her relatives by consanguinity or affinity up to the fourth civil degree) shall not accept employment or any contract involving pecuniary consideration from the Winning Bidder/Seller and its contractors under the CSP for PSAs, within three (3) years after signing or approval of the contract or PSA, or for a period of one (1) after the Commercial Operation date or start-up of power plants or facilities required under the PSA, whichever ends later.</li> <li>• Include the condition that OMECO shall bear the expenses of any dispute or litigation that may arise from the CSP, provided it does not involve sworn and duly verified allegations of the prima facie commission of corrupt, fraudulent, collusive, and coercive practices (as indicated in the Instructions to Bidders and General Conditions of Contract of the standard Philippine Bidding Documents for Goods and Infrastructure, 5th Edition, IRR</li> </ul>

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			of RA 9184) by the concerned TPBAC member.
	<b>Terms of Reference or Specifications</b>		The <u>Terms of Reference and specifications</u> should require that all goods and materials to be incorporated in the Works (Power Plant) be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract (PBDs, RA 9184).
	Insert clause or <b>Element restricting Assignability</b>		Amend and insert the following in the Bid Documents to comply with existing best procurement practices of WB, RA 9184 and existing ERC-approved PSAs of other coops:  1.7 Assignment Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party: (a) may assign the whole or any part <b><u>with the prior agreement of the other Party, at the sole discretion of such other Party</u></b> , and (b) may, <b><u>as security in favour of a bank or financial institution</u></b> , assign its right to any moneys due, or to become due, under the Contract.
Appendix A	Enumeration of Bid Documents should be consistent with Sec 13		Enumeration of Bid Documents should be consistent with Sec 13
Appendix B	Element 16. Events of Default ( <b>Performance Security</b> ) and  Element 18. <b>Liquidated Damages</b>		<ul style="list-style-type: none"> <li>Specify amount and form of <b>Performance Security</b> to guarantee performance of Seller's obligations and conditions when it should be forfeited.</li> <li>Require separate performance securities for the <b><u>power plant construction and installation phase</u></b>, and the <b><u>operation phase</u></b> of the PSA.</li> <li>Require separate penalties for delay or <b>Liquidated Damages</b>, for the <b><u>power plant construction and installation phase</u></b>, and the <b><u>operation phase</u></b> of the PSA.</li> </ul>

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	Specifications		<ul style="list-style-type: none"> <li>The <u>specifications</u> should require that all goods and materials to be incorporated in the Works (Power Plant) be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract (PBDs, RA 9184).</li> </ul>
			<ul style="list-style-type: none"> <li></li> </ul>
Appendix C			
Appendix D			