



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)
[Draft 2] 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	Article I Section 1.e Objectives	<p>The Rules should also apply to Independent Power Producer Administrators (IPPA), as they are entities authorized to supply DUs.</p> <p>The provision is proposed to provide the ERC the flexibility of also applying the rules to such other entities which the ERC may later authorize to supply DUs e.g. Wholesale Aggregators.</p>	<p>We propose that other entities such as IPPAs and entities which may later be authorized by ERC to supply to the DU be included in this rules. We suggest that Section 1.e be revised as follows:</p> <p>xxx</p> <p>To promote competition among Generation Companies (GenCos), Independent Power Producer Administrators (IPPAs) and such other entities that may be authorized by ERC which will ensure least cost of electricity for the DU's captive market in terms of the generation component of their retail rates.</p>
	Article III Section 3 Scope and Application	These rules shall also apply to entities which ERC may later authorize to supply to DUs e.g. WA, IPPA	<p>We propose that other entities which may later be authorized by ERC to supply to the DU be included in this rules. We suggest that Section 3 be revised as follows:</p> <p>xxx</p> <p>These Rules shall apply to all Distribution Utilities whether on-grid or off-grid and Generation Companies, Independent Power Producer Administrators (IPPAs) and such other entities that may be authorized by ERC to supply to the DU, except those which are expressly excluded under these Rules.</p>
	Article IV Definition of Terms General Comment		All references to "Generation Company" shall also include the words "or Authorized Suppliers"

	Article IV Definition of Terms	This shall include GenCos, IPPAs, WAs, and such other entities which the ERC may later authorize to enable this rules to apply to such entities.	We propose to include an additional definition for Authorized Suppliers as follow: xxx “Authorized suppliers” refers to any person or entity authorized by the ERC to supply and sell electricity to the DU.
	Article VII Section 8. Bids and Awards Committee (BAC)	This is to ensure that the BAC members shall possess a certain level of expertise in the conduct of competitive biddings. Previous employment with a GenCo/Authorized Supplier should be prohibited as this will give rise to a conflict of interest situation and give untoward advantage of the affiliated officers of GenCos/Authorized suppliers with the BAC and BAC-TWG members.	We propose to specify the number of years of technical/financial experience for the qualification of the BAC members. We also propose an additional qualification that a member of the BAC and the BAC-TWG shall not be related up to the fourth civil degree of consanguinity or affinity to any officer / authorized representative of any Authorized Suppliers or GenCos. Further, the BAC and the BAC-TWG members must not have been employed with a GenCo or any Authorized Suppliers for the past two years prior to the conduct of the CSP.
	Article VIII Competitive Public Bidding Section 16.1.d Pre-qualification Requirements Technical Capability Information	Some technical requirements applicable to a GenCo may not be applicable to IPPAs or other entities that the ERC may later authorize.	We propose to include a separate technical qualifications for WA and IPPA such as: List of contracts undertaken over the last 10 years, which has the similar contract capacity requirement specified in the CSP.
	Article VIII Competitive Public Bidding Section 19 Bid Security	The bid security is to ensure that the declared LCRB will proceed with the PSA and abide by the procedures of the CSP as the winning bidder. The bid security is proposed to be at a fixed amount to cover the expenses of having another round of CSP or direct negotiation in case of a second failed bidding.	We propose a fixed amount equivalent to the cost of doing another round of bidding.
	Article VIII Competitive Public Bidding Section 20	The provision does not state when the opening of bids will be conducted. To avoid any misinterpretation, we	We propose that the title of Section 20 be revised as "Opening and Evaluation of Bids"

	Evaluation of Bids	propose that the opening and evaluation of the bids be conducted on the same day.	We further propose that the opening and evaluation of bids be conducted on the same day in the presence of the bidders.
	Article VIII Competitive Public Bidding Section 21 Post-Qualification	May we be clarified about what are the contents of the Abstract of Bids?	
	Article VIII Competitive Public Bidding Section 21 Post-Qualification	This is to ensure the continuity in the conduct of CSP from the opening and evaluation of bids to post-qualification process	We suggest the following revision to the 2 nd paragraph as follows: xxx Within five (5) days after the opening and evaluation of the bids , the BAC shall approve the Abstract of Bids and shall notify the bidder with the LCB through electronic mail or in writing... xxx
	Article VIII Competitive Public Bidding Section 21 Post-Qualification	Is the second ranking LCB be subjected to the same post-qualification process?	We propose that a procedure be indicated in the event that the LCB does not qualify as the LCRB.
	Article VIII Competitive Public Bidding Section 22 Award of Contract	What would be the next step in case the DU BOD disapproves the recommendation of the BAC? Will this result to a failed bidding? The disapproval of DU BOD may be susceptible to other deals which may defeat the purpose of an open and competitive bidding.	We propose the provision authorizing the DU BOD to disapprove the recommendation of the BAC be removed.
	Article VIII Competitive Public Bidding Section 23 Notice of Award	What if the facility of the winning bidder is already existing or in the case of IPPAs and WAs--what are the alternative requirements substituting Section 23 items (b), (c), (d), and (e)?	
	Article VIII Competitive Public Bidding Section 23 Notice of Award	The number of days shall be changed from 15 to 20 days in order to be consistent with the first paragraph of Section 23.	We propose the following revision: xxx Failure to submit the above-listed requirements within the prescribed twenty (20)-day

			period... xxx
Article VIII Competitive Public Bidding Section 24 Notice to Proceed	To put a distinction between a notice to proceed in the supply of electricity and notice to proceed in the execution of a PSA.		We propose that the heading be reworded as follows: Notice to Proceed for the Execution of PSA
Article VIII Competitive Public Bidding Section 25 Execution/Approval of the Contract			We propose that the refusal to enter of either party into the PSA shall also result to the award of the contract to the next LCRB.
Article IX Unsolicited Proposal Section 28.b Requisites for Unsolicited Proposal	The requirements of the publication for the unsolicited proposals shall also follow the requirements for solicited competitive public bidding		We propose the following revision: xxx c. ...When a Distribution Utility receives an unsolicited proposal for the supply of electricity, the DU shall the invite third parties to match it by publication in a newspaper of general circulation once (x1) in a week for two (2) consecutive weeks, each publication not less than 7 days apart. xxx
Article X Direction Negotiation			We propose that only the participants of the last round of CPB be allowed to enter into Direct Negotiation with the DU. In case of Section 39 (b) i.e. no proposals were submitted, who may be allowed to undergo direct negotiation with the DU?
Article XII Circumstances Exempt from the Conduct of CSP Section 42. a Exemptions	This is to further encourage competition and ensure competitive rates to the captive market.		We propose to limit the capacity to be supplied to the DU coming from this generation project up to 10% of the DU's peak capacity.
Article XV Filing and Review Procedures Section 47 ERC Evaluation of the Application	The walk-away clause ensures that the GenCos will have the option to terminate the contract should the approved rate of ERC be unviable for the GenCo to continue business operations. The ERC is a rate-fixing		We propose that the walk-away clause be respected, as these are terms agreed upon and are acceptable by both parties.

		agency, thus, approval of the contract should be limited to the reasonableness of the rates proposed under the contract.	
	<p>Article XV Filing and Review Procedures</p> <p>Section 48 Review of the ERC</p>		<p>In the evaluation of the reasonableness of the rates, it is suggested to adopt a benchmarking method that takes into account the technology and the capacity of the power plant.</p> <p>Should the winning bid (overall rate) be lower than the corresponding benchmark rate, the winning bid shall automatically be approved by ERC since it has already satisfied the reasonableness of rates requirement through the CSP. The ERC will just need to evaluate the compliance of the DU with the process of the CSP.</p> <p>Only if the winning bid (overall rate) is above the corresponding benchmark rate, ERC shall evaluate its reasonableness through the cost-based methodology specific to the bidder.</p> <p>ERC shall update and publish the Benchmark rates annually for the guidance of the Power Industry.</p>
	<p>Article XV Filing and Review Procedures</p> <p>Section 49 PSA Pricing Structure</p>	How do we structure pricing mechanism for IPPAs and WAs, or other entities that may be authorized later by the ERC?	We propose to allow an alternative pricing structure for the PSA (TOU, Energy based pricing, Fixed pricing, etc.)
ANNEX B	General Comment		Provisions on the Trading Protocols and Billing Protocols shall not be made part of the profoma PSA for these are unique to every supplier.