

TERMS OF REFERENCE

ENGAGEMENT OF CERTIFIED PUBLIC ACCOUNTANTS TO REVIEW THE FINANCIAL RECORDS AND FINANCIAL STATEMENTS OF THE PHILIPPINE ELECTRICITY MARKET CORPORATION FOR THE YEARS 2006 – 2014

1. The Energy Regulatory Commission (ERC), through the General Appropriations Act (GAA) of 2015 intends to apply the sum of **Four Million Five Hundred Thousand Pesos (Php4,500,000.00)** being the Approved Budget for the Contract (ABC) for payments under the contract for the Engagement of Certified Public Accountants to Review the Financial Records and Financial Statements of the Philippine Electricity Market Corporation for the Years 2006 – 2014.
2. Bids received in excess of the ABC shall be automatically rejected at the opening of the financial proposals.
3. The ERC now calls for the submission of the **Best Bid Offer** for the *“Engagement of Certified Public Accountants to Review the Financial Records and Financial Statements of the Philippine Electricity Market Corporation for the Years 2006 – 2014”* **subject for post qualification to determine its legal, technical, and financial capability of the bidder.**
4. Said project requires an Independent Third Party Auditor with the following minimum qualifications:
 - a) With experience conducting audit in the energy sector, provided that it must not have been previously engaged by PEMC to conduct operational and/or financial audit. In the event that the said auditor was previously engaged, it must not have completed such operational and/or financial audit at all;
 - b) With experience working for regulators in similar regulatory environments;

- c) Can submit acceptable proposed approach and methodology;
- d) Can submit the best Project Plan, Documentation of Procedures, Inception Report and Final Report;
- e) Can propose ideal working set-up; and
- f) With reasonable offer price.

Must be able to deliver a concise and complete audit report which should include the following:

- a) An inception report that should identify pertinent issues and the scope of audit and discussion, on how data are to be analyzed by the expert;
- b) A Preliminary audit report where findings are presented including recommendations to the ERC;
- c) Documentation of all the procedures performed in evaluating the financial documents provided and of the reasons for coming up with the recommendations or results to a specific revenue or expenditure item; and
- d) The Final Audit Report

5. The Bidder must submit their bids together with the following eligibility documents:

- (a) Class “A” Documents –

Legal Documents

- (i) Registration certificate from Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives;
- (ii) Mayor’s permit issued by the city or municipality where the principal place of business of the prospective bidder is located;

- (iii) Tax clearance per Executive Order 398, series of 2005, as finally reviewed and approved by the BIR.

Technical Documents

- (iv) Statement of the prospective bidder of all its ongoing and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid. The statement shall include, for each contract, the following:
 - (iv.1) the name and location of the contract;
 - (iv.2) date of award of the contract;
 - (iv.3) type and brief description of consulting services;
 - (iv.4) consultant's role (whether main consultant, subcontractor, or partner in a JV)
 - (iv.5) amount of contract;
 - (iv.6) contract duration; and
 - (iv.7) certificate of satisfactory completion or equivalent document issued by the client, in the case of a completed contract;
- (v) Statement of the consultant specifying its nationality and confirming that those who will actually perform the service are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

Financial Document

(vi) The consultant's audited financial statements, showing, among others, the consultant's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission.

(b) Class "B" Document –

Valid joint venture agreement (JVA), in case a joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful, shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial documents by any of the joint venture partners constitutes compliance.

(c) Other requirements –

(i) PhilGEPS Registration; and

(ii) Latest income and business tax returns

6. The Bid Offer must be submitted on or before **December 18, 2015 (Friday), 10:00 AM** at 18th floor, Pacific Center Building, San Miguel Ave., Ortigas Center, Pasig City.

7. The ERC shall evaluate bids using the Quality Based Evaluation (QBE) procedure. The criteria and rating system for short listing are:

EVALUATION FACTORS	WEIGHT (%)
I. EXPERIENCE AND REPUTATION FACTORS:	
a) Experience of audit in the energy sector, provided that it must not have been previously engaged by PEMC to conduct operational and/or financial audit With experience conducting audit in the energy sector, provided that it must not have been previously engaged by PEMC to conduct operational and/or financial audit; and if was previously engaged, it must not have completed such operational and/or financial audit.	30
b) Experience of working for regulators in similar regulatory environments	20
TOTAL WEIGHTED SCORE	50
II. TECHNICAL FACTORS:	
a) Proposed approach and methodology	20
b) Deliverables (i.e., the Project Plan, Documentation of Procedures, Inception Report and Final Report)	25
TOTAL WEIGHTED SCORE	45
Other Factors:	
III. PROPOSED WORKING SET UP	5
TOTAL WEIGHTED SCORE	5
GRAND TOTAL	100

The contract shall be completed within Three (3) months from receipt of the Notice to Proceed.

8. The ERC reserves the right to reject any and all bids, annul the bidding process, or not award the contract at any time prior to contract award, without thereby incurring any liability to the affected bidder or bidders.
9. Please refer to the Section 2 of this TOR for further details

(Sgd.)
FRANCISCO JOSE S. VILLA, JR.
ERC 2015 BAC Chairman

For further information, please refer to:

MS. CHERRY LYNN S. GONZALES

BAC SECRETARIAT CHAIRPERSON

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December 14, 2015

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1. INTRODUCTION

1.1 Background

The role and mandate of the Energy Regulatory Commission (ERC) as stipulated under Section 43, Paragraph 1(c) of Republic Act No. 9136 of the Philippines, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), is to promote competition, encourage market development, ensure customer choice, and penalize abuse of market power in the restructured industry as well as to enforce the rules and regulations governing the operations of the electricity spot market and the activities of the market operator and participants.

Among the responsibilities of the ERC with respect to the operations of the Wholesale Electricity Spot Market (WESM) provided under Section 30 of the EPIRA, is the approval of the level and structure of its market fees. Such fees, intended to cover the cost of administering and operating the wholesale electricity market by the Philippine Electricity Market Corporation (PEMC), shall be payable by registered participants therein.

Briefly, **the** ERC has approved the market fees for the WESM for Calendar Years (CY) 2006 to 2014 embodied in earlier Decisions dated 22 June 2006, 30 January 2008, 16 March 2009, 06 June 2011, 05 December 2011, 03 December 2012, 01 July 2013, 08 July 2013 and 15 October 2014, respectively.

In ERC Case No. 2010-079 RC [In the Matter of the Application for the Approval of the Level of Market Transaction Fees for Calendar Years 2010-2011 for the Philippine Wholesale Electricity Sport Market (WESM), with Prayer for Issuance Ex-Parte Provisional Authority,

PEMC – Applicant], *Intervenor* the National Association of Electricity Consumers for Reforms, Inc. (NASECORE), represented by its President, Mr. Petronilo Ilagan, filed a motion praying, among others, that the proceedings in the said application be suspended, and requested that the Commission on Audit (COA) examine the books and records of PEMC to determine the reasonableness of the costs to be recovered and the market fees to be charged to participants. Accordingly, the ERC, in its Order dated 24 January 2011, found the said motion to be partially meritorious, there being a need to audit the books and records of PEMC for the years 2006 to 2009 to account for the utilization of its budgetary allocation. However, on May 3, 2011, PEMC filed a motion for partial reconsideration but, the ERC, in its order dated 25 April 2011 ruled that an independent third party auditor shall undertake the task in accordance with the audit parameters to be set by it.

During the 8 October 2015 budget hearing, the Senate Committee on Finance, through the Honorable Senator Sergio Osmeña III, directed the ERC to resume **with** the conduct of the **aforementioned** compliance audit to include not only **CY** 2006-2009 but also **CY** **2010-2014**.

1.2 Objectives

1. To ascertain the reasonableness of the costs incurred by PEMC, categorized as:
 - a. Personnel Services (PS);
 - b. Maintenance and Other Operating Expenses;
 - c. Capital Expenditure;
 - d. Market Enhancement Project; and
 - e. Provisions for the ERC/Department of Energy (DOE);

2. To ascertain PEMC's compliance with the DOE, ERC Orders, Rules and Regulations as well as the WESM Rules and

Requirements by other government agencies (BIR, SEC, etc.);

3. To ascertain if the market fees and other sources of receipts were properly recognized and recorded in the books of PEMC;
4. Accounting of Fees and Penalties collected.

1.3 Scope of Audit Service

The regulatory compliance audit shall cover all of the financial transactions of PEMC to determine full compliance with the applicable laws, decisions, orders, resolutions and other issuances by the ERC from CY 2006-2014.

The engagement shall include preparation and presentation before the ERC, an initial compliance audit report that will identify key issues in the review and discussion on how these are analyzed by the auditors, including a documentation of all the procedures performed and/or pieces of evidence gathered in evaluating the financial documents provided to them.

Finally, a final audit report shall be submitted to the ERC in which the findings and recommendations shall be presented for its approval.

1.4 Delivery Schedule of the Audit Service

The ERC's Market Operations Service (MOS) requires a reputable auditing firm or partnership. The ideal timeframe for the audit engagement is for a maximum period of three (3) months.

2. GENERAL INFORMATION AND CONDITIONS

This request for proposal is issued on the basis that the firm or partnership **has been extensively involved** with financial audit of **regulated entities**. Knowledge of the ERC's regulatory processes, documentation and requirements with regard to expenditure reviews would be an advantage.

The invitation to submit a proposal is given to an auditing firm or partnership to conduct the thorough review of PEMC's accounts.

2.1 Content of Proposal

The following minimum information must be provided in the proposals:

2.1.1 Scope of Service

A brief description must be provided on the full scope of services to be offered by the audit experts. This should demonstrate clear understanding of the ERC's requirements.

2.1.2 Methodology

The methodology for the review of all revenue and expenditure accounts of PEMC will conform to what was required in the assistance, indicating previous similar works undertaken and the extent of participation by the auditors. All assumptions made for the preparation of the proposal should be thoroughly explained. These include the assumptions made on the support that will be provided both by the ERC and PEMC.

The proposals should include a detailed description of the proposed methodology to be used in the revenue and expenditure review. The said methodology should show how the review objectives will be achieved taking into account the necessity of working within regulatory processes.

The ERC is also interested in understanding how the auditing firm/partnership will manage situations where information records are incomplete or inexistent, or where the information has to be gathered or verified from other records.

Coordination between the auditing firm/partnership and the ERC as regards the review will be limited to the following:

- a) Written responses to inquiries from the auditing firm/partnership. Inquiries for PEMC shall be submitted in writing to the ERC. The ERC shall issue an Order directing PEMC to reply on the said inquiries;
- b) In the event that the auditing firm/partnership requests for a series of clarificatory meetings for purposes of discussing the objectives and additional information necessary in the conduct of its review, the ERC shall conduct the same. However, prior to any clarificatory meeting, the auditors must provide the ERC with a matrix of inquiries that explicitly identify the topics/issues that they want to discuss during the said clarificatory meeting; and
- c) The replies provided by PEMC to the directives of the ERC and the records of all clarificatory meetings will form part of the records of the engagement.

2.1.3 Commercial Details

The applicable commercial terms and conditions, including terms of payment and mode of currency as well as discounts and penalties, if any, should be thoroughly defined.

2.1.4 Price

Full details of the offer price for the service in Philippine currency must be provided. This must be a fixed price for the duration of the contract and based on the scope of

work described in the proposal. The full cost offered must be clearly indicated.

2.1.5 Confirmation of Commitment to Timelines

The auditing firm/partnership must confirm its availability to provide the required support over the period of timeline agreed upon.

2.1.6 Confidentiality

In no case shall the winning auditing firm/partnership be allowed to divulge any information obtained from the ERC and PEMC for the purposes of this assignment to any third party without express and written consent from the ERC.

2.1.7 Conflicts of Interest

The auditing firm/partnership is required to submit and undertake that there is no existing nor possible conflicts of interest that may arise out of this assignment and shall conform to Section 47 of R.A. 9184 (Disclosure of Relations to PEMC and the ERC)

3. SUMMARY OF WORK

A summary of the work required from the auditing firm/partnership is specifically described below. It is expected that the firm/partnership will, based on previous experiences of similar projects, consider the required outputs, and propose to the ERC additional activities it deem necessary to successfully deliver the required review outputs.

The audit will be conducted within a maximum period of three (3) months and shall deliver the following:

3.1 A complete and concise audit report which should include:

a) A Preliminary Audit Report that has identified pertinent issues in the scope of audit report and discussion on how these were analyzed by the expert;

b) Documentation of all the procedures performed in evaluating the financial documents provided and the reasons for coming up with such recommendations or results to a specific revenue or expenditure item; and

c) A Final Audit Report in which the findings and recommendations shall be presented before the ERC for its approval.

3.2 Coordination and regular liaison with the end-users, the Director of the MOS, and the staff of its Spot Market Division (SMD) will be an integral part of the scope of work.

3.3 Other assistance as the ERC may deem necessary to meet the objectives of the technical service.

END OF TOR