



Procedures of the Competitive Public Bidding for Distribution Utility's (DUs) Power Supply Contracting

BID TERMS AND SPECIFICATIONS

Part I INSTRUCTIONS TO BIDDERS

1-01 REQUIREMENT FOR ISSUANCE OF BIDDING DOCUMENTS

The Bidding Documents is being issued by the _____ Electric Cooperative, Inc. to interested parties who want to bid for the supply of electricity in the DU Franchise Area.

The Bidding Document consists of the following:

A. Bidding Procedures

1. Terms and Specifications
 - a) Part I -Instructions to Bidders
 - b) Part II –General Provisions
2. Forms of Acceptance of Bidding Procedures
3. Undertaking to Post Performance Bond
4. Certification/Undertaking that Bidder or his authorized representative:
Additional Requirement
 - a) Attests to the responsibilities provided in Section 1-06 (Responsibilities of Bidders)
 - b) Letter authorizing the BAC or its duly authorized representative(s) to verify any or all of the documents submitted for the eligibility check/post qualification.
5. Financial Bid Form
6. Form of Transaction Documents – Power Supply Agreement (PSA)

The Bidding documents is being issued in accordance with the invitation for Expression of interest published in: _____, on _____

Certain capitalized terms as used in the Bidding Procedures are defined in "Part II – General Provisions, Section 1-24 Definitions."

Bidders are required to acknowledge receipt of the Bidding Documents and acceptance of the terms and conditions of the Bidding Procedures by [date] in the form attached hereto as Schedule 1 (Acceptance of the Bidding Procedures).

1-02 ADDENDA AND CLARIFICATIONS TO THE BIDDING PROCEDURES

The DU Bids and Awards Committee ("BAC") reserves the right to amend, revise, modify, or clarify the Bidding Procedures. Such amendments, revisions, modifications, or clarifications, if any will be made through Supplemental Bid Bulletins, copies of which will be made available to all Bidders at least five (5) days prior to the Bid Submission Deadline and are incorporated into and made integral parts of the Bidding Procedures. In case material changes are made to the Bidding Procedures through Supplemental Bid Bulletins, committee, may, at its discretion, extend the Bid submission Deadline.

Bidders are required to acknowledge receipt and acceptance of the terms and conditions of the Bidding Procedures and each Supplemental Bid Bulletin on the space provided in the letter of transmittal.

Failure to acknowledge receipt and acceptance of the terms and condition of the Bidding Procedures and each Supplemental Bid Bulletin may cause the Bid to be considered as not responsive to the Bidding Procedures, which could result in the disqualification and/or rejection of the Bid.

Should a Bidder find discrepancies or omissions in the Bidding Procedures, or should it be in doubt as to the meaning of any provision thereof, it should at once call the attention of the Chairman of the BAC obtain clarification or interpretations thereon. The BAC will issue Supplemental Bid Bulletin/s regarding the clarifications the BAC desires to make at any time. It shall be the responsibility of Bidders to inquire and secure the Supplemental Bid Bulletins that may be issued by the Committee.

Failure of a Bidder to secure the Supplemental Bid Bulletins shall constitute a waiver of its right to be informed thereof.

In any case, it is conclusively presumed that the information and procedures set forth in the Bidding Documents and each Supplemental Bid Bulletin have been taken into account by the Bidding in preparing its Bid.

1-03 TIMETABLE FOR COMPETITIVE SELECTION PROCESS

The schedule and process for the Bidding ("Bidding Schedule") is as follows:

No.	Activities	Elapsed Time From the Publication of Invitation to Submit Pre-qualification Requirements
1.	Publication of Invitation to submit Pre-qualification Requirements	Zero Days
2.	Submission of Pre-qualification Requirements	
3.	Announcement of Pre-Qualified Bidders	
4.	Issuance of Information Memorandum / Bid Documents	
5.	Pre-Bid Conference/Start of Due Diligence	
6.	Last day of due diligence	
7.	Submission and Opening of Technical and Financial Bids	
8.	Evaluation of Technical and Financial Bids	
9.	Post-Qualification	
10.	Confirmation of BOD	
11.	Announcement of Winning Bidder/Sending of Notice of Award	
12.	Negotiation of the PSA	
13.	Signing of PSA	
14.	Filing of Joint ERC Petition for the Approval of the PSA	
15.	Target Commercial Operation Date of Power Plant/Start of Delivery of Electricity	

The Bidding Schedule may be change and the Bidders will be notified promptly of any change thereto. Notice of the Pre-bid Conference will be given no less than seven (7) days before the date of the actual conference thru the email address or fax number.

Unless otherwise expressly specified in writing, all references to times and dates shall refer to Manila time. Should any of the above dates fall on holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. Unless otherwise expressly specified in writing, the venue of all the above shall be at the DU's Main Office, _____.

1-04 SUBJECT OF THE BID

The selected generation company shall enter into a _____ year Power Supply Agreement with the DU. The scope of supply includes _____ MW capacity and _____ kWh energy requirements of the DU.

1-05 BIDDING INFORMATION

No official or employee of the DU, nor shall any Bidder be entitled to, any information regarding the Bidding Process of the other Bidders, other than what constrained in the Bidding Procedures. Supplemental Bid Bulletins and in the official announcement of the Bid results.

1-06 RESPONSIBILITIES OF BIDDERS

The Bidder shall be responsible for the following:

1. Carefully examining the Bidding Procedures and Undertakings and accepting all terms and conditions hereof;
2. Fully informing itself and understanding all conditions and matters affecting or that could affect its Bid, participation or undertaking in the Bidding or the implementation of the transaction;
3. Conducting an independent due diligence investigation of the energy supply situation in the DU franchise Area, all matters related to the Bidding process; and
4. Securing, carefully examining and accepting the terms and conditions of all Supplementary Bid Bulletins.

By submitting a Bid, the Bidder acknowledges that it has reviewed, is fully acquainted with, and unconditionally accepts the terms of the Bidding Procedures each Supplemental Bid Bulletin and the Final Transaction Documents (*PSA*). Bidders will not be granted relief on the plea of negligence, error or mistake in their Bids.

Failure to observe any of the above responsibilities shall be at the risk of the Bidder. For this purpose, a Bidder shall execute a sworn statement attesting to the foregoing responsibilities to be submitted by the Bidder as part of the First Bid Envelope.

1-07 BIDDER'S EXCEPTIONS

The BAC will eliminate or minimize, as much as possible post-bidding discussions of Bidder's deviations or exceptions. The BAC shall not accept any proposed deviation or exception by the Bidder, other than any correction, revision, or clarification that may be established in a Supplemental Bid Bulletin issued by the BAC to all Bidders prior to the Bid Submission Deadline.

Proposed deviations or exceptions made in a Bid may cause the Bid to be considered as not responsive to the Bidding Procedures, which could result in the rejection of the Bid. Nothing contained in this Section should be deemed to impair the rights to reserved by the DU in the Letter of Intent.

1-08 DUE DILIGENCE AND SUPPLEMENTARY BID BULLETIN

DUE DILIGENCE

Bidders shall be allowed to conduct due diligence on the electricity demand and supply, financial and operating performance of the DU. On Business Days from _____ to _____. The conduct of the Due Diligence shall be compulsory on the part of the Bidder. Any Cost and risk associated with the conducts of the due diligence shall be for the sole account of the Bidder.

Any commitment, query or request of a bidder that has been accepted or acted upon by the BAC shall be contained either in the (1) Supplemental Bid Bulletins or (2) revisions to the Transaction Documents. The BAC shall be responsible for any instructions communicated to a Bidder, except when such statement is specifically issued as a Supplemental Bulletin. Only pre-qualified bidders shall be notified of Supplemental Bid Bulletins and/or revisions to the Transaction Document by way of either email and/or posting in their website.

1-09 PREPARATION OF BIDS

1. Each Bid shall be composed of two (2) separate envelopes containing the First Bid Envelope (Technical Component) and Second Bid Envelope (Financial Bid Component) as detailed in Section 1-10 (Contents of Bids). The BAC may exercise its discretion to disqualify or otherwise interpret Bids not in accordance with Section 1-10 (Contents of Bids).
2. Bidders shall properly and completely accomplish all documents submitted with the Bid. No alterations of all submitted documents shall be allowed.
3. The Bidder must type/print his name below his signature or that of his authorized representative on each and every page of all the documents submitted with the Bid.

Bids of a partnership or corporation shall be signed in the name of the entity by an authorized partner or officer, as the case may be followed by the name, signature and designation of the person authorized to sign the Bid and the Final Transaction Documents.

Notwithstanding Section __, a Bid by a person who affixes to his signature the word "president", "secretary", "agent" and other designation without disclosing his principal shall be held personally liable for the Bid. The person signing on behalf of a partnership, or corporation shall furnish the Committee satisfactory proof of such authority from the partnership or corporation, otherwise, the person whose signature appears on the Bidding forms shall be considered the Bidder.

All Bids, documents, specifications, and all information pertinent thereto shall be prepared and submitted in the English language.

4. In each part of the Financial Bid, prices shall be express in written words and figures expressed in Philippine Pesos. In case of discrepancies between prices in words and figures, the prices in words shall be considered as the Financial Bid.

Amounts which shall be expressed in currencies other than those specified in other parts of the Bid Documents shall be rejected outright.

5. Erasures or other changes in the Bid shall not be allowed.

1-10 CONTENTS OF BID

Each Bid shall compose of two (2) separate envelopes containing the First Bid Envelope (Technical Component) and Second Bid Envelope (Financial Bid Component) as follows:

1. The First Bid Envelope that shall be marked "Technical Component" (the "*First Bid Envelope*") shall contain:

- a) The Project;
- b) A certification under oath, in the form provided in the Prequalification Requirements issued by the Bidder or his authorized representative that:
 - i. Each of the documents submitted in satisfaction of the Bidding Procedures is an original copy or a true and faithful reproduction or copy of the original;
 - ii. The Bidder shall advise the BAC within two (2) Business Days of any change in the information contained in any portion of his Bid or in previous submissions,
 - iii. The Bidder undertakes all the responsibilities set forth in Section 1-06 (Responsibilities of Bidders)
- c) Two (2) copies of the Undertaking to Post a Performance Bond in the form attached hereto as Schedule 2 which must be under oath (in the letterhead of the Bidder, if possible); and

Full compliance with the above requirements shall be the basis of the BAC in evaluating the First Bid Envelope (Technical Component).

2. The Second Envelope shall be marked "Financial Bid Component" (*the "Second Bid Envelope"*).

The Second Envelope shall contain the following:

- a) Two (2) copies of the duly executed FB-1 (Financial Bid Form) in the form attached as Schedule IV. The Bidder shall strictly follow the requirements in accomplishing the Financial Bid Form. FB-1 (Financial Bid Form) requires the signature on each page of the Bidder or his authorized representative which must be acknowledged before Philippine Notary Public or Philippine Consular Official authorized to administer oaths.
- b) The original copy of the Bid Security which shall be in the form of cash or manager's/cashier's check by an acceptable banking institution in favor of the DU.

The Bid Security must be in the correct amount and in accordance with Section 1-12 (Bid Security).

The First and Second Bid Envelopes shall be submitted in accordance with Section 1-13 (Submission of Bids). Furthermore, both the First and Second Bid Envelope must be signed by the Bidder or his duly authorized representative on the envelope flap, or the tape binding the envelopes (should several envelopes be used), or the joint where packing papers meet.

1-11 VALIDITY OF THE BID

A Bid must be valid for a period of not less than One hundred eighty (180) days from the Bid Submission Deadline ("*Bid Validity Period*"). Bid with a validity period shorter than the Bid Validity Period shall be rejected outright. The Committee may request for extension of the same.

1-12 BID SECURITY

Each Bidder shall submit as part of the Second Bid Envelope, a Bid Security in accordance with the following terms and conditions:

- a) It is an amount expressed in Philippine Pesos in the form of cash or manager's/cashier's check.
- b) The amount must be equivalent to _____percent (___%) of the estimated project cost;
- c) The Bid Security shall be issued in favor of the DU.
- d) The Bid Security shall guarantee that each Bidder comply with its obligation under the Bidding Procedures during the Bid Validity Period, or any extension thereof. Refusal of the Winning Bidder to accept the award shall cause the forfeiture of his Bid Security. However, should the failure of the Winning Bidder to accept the award and enter into a contract be caused by forced majeure or through no fault of its own, this shall not cause the forfeiture of his Bid Security;
- e) The Bid Security shall be governed by the Philippine Law; and
- f) The Bid Security shall provide for a contact person and address, telephone number and facsimile of the issuing bank for notification and demand.

A Bid submitted either (i) without the required Bid Security (ii) in an amount less than the required amount, (iii) whose effectivity will expire prior to the Bid Validity Period, or (iv) which is materially defective, shall be rejected outright and returned to the Bidder.

All Bid Securities, except those posted by the Winning Bidder, shall be returned without interest to the other Bidders on the date that the "Certificate of Effectivity" is issued upon award of the bid, *provided, that*, Bid Securities of Bidders (i) whose First Bid Envelope was rated "failed" or (ii) whose Second Bid Envelope was not accepted by the Committee may be claimed from the Committee starting on the third (3rd) Business Day from the completion of the evaluation of the Second Bid Envelope.

The Bid Security shall guarantee that each comply with its obligations under the Bidding Procedures during the Bid Validity Period, or any extension thereof, should the Bidder violate the Bidding Procedures in a material way, the Committee may draw upon the instances of a violation of the Bidding Procedures are the following:

- 1) Any event set forth in subparagraphs (a), (f), (g), (i), (j), of Paragraph 13, or paragraphs 14, 15, of Section 1-24 (General Conditions);

2) Refusal of the Winning Bidder to accept the award; or

In addition to Bid Security, each Bidder is required to execute an undertaking in the form provided herein as Schedule 2 (Undertaking to Post Performance Bond) wherein the Bidder undertake to post a Performance Bond in favor of the DU to guarantee prompt faithful and complete performance of its obligations under the Power Supply Agreement.

For the avoidance of doubt, the Committee reserved the right to accept or reject the issuing bank and confirming bank for any reason whatsoever.

The Committee reserves the right to accept or reject any Bid Security and the Bid for non-compliance with this Section.

1-13 SUBMISSION OF BIDS

Bids which shall include both the First and Second Bid Envelope, will be receive by the BAC from 10:00A.M. until 12:00 Noon on _____ ("*Bid Submission Deadline*") in the DU main office. Both the First Bid Envelope (Technical Component) and the Second Bid Envelope (Financial Bid Component) must be submitted simultaneously on or before Bid Submission Deadline. The First and Second Bid Envelope shall each be sealed, sufficiently and clearly marked as follows:

THE CHAIRMAN
DU Bids and Awards Committee

Re: Technical Component and Financial Bid Component

Bids submitted after the Bid Submission Deadline shall be rejected and returned unopened to the Bidder.

For the avoidance of doubt, both the First and the Second Bid Envelope should be ready for submission by the Bidder on or before the Bid submission Deadline as stated herein.

The BAC shall not accept the Bids submitted by the following Bidders:

1. A Bidder which by itself or by anyone on its behalf has offered or paid, directly or indirectly, any DU Director, Official or Employee or any member of the BAC any consideration or commission for the Bidding or Final Transaction Documents; or a Bidder which by itself or by anyone on its behalf has exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, for any consideration or commission;
2. A Bidder which by itself or by anyone on its behalf, from the issuance of the Confidentiality Agreement and Undertaking, fails at any to comply with Philippine Law, including Republic Act No. 9160, (the Anti-Money Laundering Act), as amended; or
3. A Bidder which barred or blacklisted from participating in any bidding by any Government Body.

Should the BAC determine that any Bidder falls under any one paragraphs 1,2, or 3 above, then it shall not receive nor accept for submission the Bid of such Bidder.

1-14 MODIFICATION AND WITHDRAWAL OF BIDS

A Bidder shall not be allowed to modify or withdraw his Bid after submission thereof.

1-15 OPENING OF BIDS

The BAC shall open the bids at the time, date, and place specified in the Bidding Documents. The Bidders or their duly authorized representatives may attend the opening of bids. The BAC shall adopt a procedure for ensuring the integrity, security, and confidentiality of all submitted bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

Each Bid shall be numbered in the order received, and recorded in the order of receipt specifying the date and the hour. Once a Bid has been submitted, under no circumstances shall it be retrievable.

The First and Second Bid Envelopes shall be opened immediately on the same day.

In case the Bidder is represented by authorized representative, the representatives shall present the authority to represent the Bidder and to act for and in behalf of the Bidder on or before the Bid Submission Deadline.

After the BAC has opened all the First Bid Envelopes, the Bidders shall be rated either "Passed" or "Failed". The Bidders whose First Bid Envelope was rated "Passed" , its Second Bid Envelope shall be opened. However, Bidders whose First Bid Envelope was rated "Failed" shall have no right to any further participation in the Bidding, its Second Bid Envelope will be returned immediately unopened.

The BAC reserves the right to change the date, time and venue for the submission, opening and/or evaluation of the First Bid Envelope and/or Second Bid Envelope.

1-16 EVALUATION OF BIDS

After opening of the First Bid Envelope, the Bidder shall be rated either "Passed" or "Failed". The Bidders whose First Bid Envelope was rated "Passed", its Second Bid Envelope shall be opened. However, Bidders whose First Bid Envelope was rated "Failed", its second Envelope will be returned unopened.

The First Bid Envelope (*Technical Bid*) shall be evaluated based on all data submitted by each Bidder. Each Bid must detail how the proposed power plant will fulfill the Bidder's obligations under specific terms and conditions for the supply of electric energy to the DU as contained in the Power Supply Agreement (PSA). A draft of the PSA, to be executed by DU and the Winning Bidder, is attached as Annex A.

Only the Second Bid Envelope (*Financial Bid*) of Bidders who's Technical Bids PASSED shall be opened and evaluated. The Second Bid Envelope shall be

evaluated based on arithmetical computation reflected in the Financial Bid Form to determine the Lowest Calculated Bid (LCB).

In case of discrepancies between bid prices in figures and in words, the latter shall prevail. Bids shall be ranked in the ascending order of their Total Calculated Bid as evaluated and corrected for computational errors to identify the Lowest Calculated Bid.

After all bids have been received, opened, examined, evaluated, and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attached thereto all the bids with their corresponding bid securities and the minutes of proceedings of the Bidding. The Abstract of Bids shall contain the following:

- a) Name of the contract and its location
- b) Time, date and place of opening
- c) Name of Bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

1-17 POST QUALIFICATION

The Lowest Calculated Bid 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.

Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the lowest calculated bid, the bidder shall submit the following documentary requirements to the BAC.

- a) Tax clearance
- b) Latest income and business tax returns
- c) Licenses:

ECC, DTI, SEC, Mayors permit, ETC.

Failure to submit the above requirements on the time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.

The post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid, as stated in the Bidding Documents:

- a) Legal Requirements: to verify, validate and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any "blacklisted" company of any government agencies.
- b) Technical Requirements: to determine compliance in the requirements specified in the Bidding Documents, including, where applicable:
 - (i) verification and validation of the bidder's stated competence and experience of the bidder's key personnel to be assigned to the project.
 - (ii) verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the

contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts.

(iii) Ascertain of the sufficiency of the bid security as type, amount, form and wording, and validity period.

- c) Financial Requirements: to verify, validate and ascertain the bid price proposal of the bidder to determine compliance in the requirements specified in the Bidding Documents.

If the BAC determines that the bidder with the Lowest Calculated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid, and recommend to the DU BOD the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure;

If, however, the BAC determines that the bidder with the Lowest Calculated Bid fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.

Immediately after the BAC has notified the first bidder of its post-qualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second lowest calculated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the Lowest Calculated Responsive Bid.

If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next Lowest Calculated Bid, and so on until the Lowest Calculated Responsive Bid, as the case may be, is determined for award.

The post-qualification process shall be completed in not more than fifteen (15) business days from determination of the Lowest Calculated Responsive Bid. In exceptional cases, the post-qualification period may be extended by the DU BOD, but in no case shall the aggregate period may be exceed thirty (30) business days.

1-18 AWARD TO THE WINNING BIDDER

The BAC shall recommend to the DU BOD's the award of contract to the Bidder with the Lowest Calculated Responsive Bid (LCRB) after the post-qualification has been completed.

To facilitate the approval of the award, the BBAC shall submit the following supporting documents to the DU BOD:

- a) Resolution of the BAC recommending award;
- b) Abstract of bids;
- c) Other pertinent documents required by existing laws, rules and/or the DU.

Within the period not exceeding one week or seven days (7) Business Day from the date of receipt of the recommendation of the BAC, the DU BOD shall approved/disapproved the said recommendation. Within the same period provided herein, the BAC shall notify the losing Bidders of its decision.

In case of approval, of the DU BOD the BAC shall immediately issue the Notice of Award to the Bidder with the Lowest Calculated Responsive Bid (LCRB). In the event the DU BOD shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC.

Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

- a) Posting of Performance Security in accordance with Section 1-23 of this Bidding Documents;
- b) Signing of the contract provided in Section 1-19;
- c) Approval by the DU BOD provided in Section 1-20.

Contract award shall be made within the Bid validity period provided in Section 1-11.

1-19 CONTRACT SIGNING

The Winning Bidder shall post the required Performance Security and enter into contract with the DU, within seventeen (15) business days from receipt by the Winning Bidder of the Notice of Award.

The DU shall enter into contract with the Winning Bidder within the same business day period provided that all the documentary requirements are complied with.

The following documents shall form part of the contract:

- a) Power Supply agreement (PSA);
- b) Bidding documents;
- c) Winning Bidder's Bid, including the PQR, Technical and Financial Proposals, and all other documents/statements submitted;
- d) Performance Security;
- e) Notice of Award of contract;
- f) Other contract documents that may be required by existing laws and/or the DU in the Bidding Document ;

1-20 NOTICE TO PROCEED

BAC shall issue the Notice to Proceed to the successful winning Bidder upon the approval of Notice of Award of DU BOD.

1-21 TRANSACTION DOCUMENTS

The draft Transaction Documents containing, among others, the Power Supply Agreement have already been made available to Bidders. A final version of the Transaction Documents ("Final Transaction Documents") is included in the Bidding Documents. Bidders may still provide comments on and suggest amendments to the Bidding Procedures and Transaction Documents (the "Bidder's Comments"). Which must be delivered in duplicate in typewritten, computer-printed form or black-lined mark-ups, addressed and sent in accordance with Section 1-13 (Notice). The BAC may, at its sole discretion, grant Bidders the opportunity to discuss the changes proposed by them with the BAC, dates for which will be communicated subsequently by the BAC.

The BBAC may, in its sole discretion, accept or reject any of the Bidder's Comments. If the BAC, in its sole discretion, considers that any relevant Bidder's Comment should be taken into account, suitable revisions will be made on the

Transaction Documents. Further, the BAC may, even in the absence of any proposed amendment and by itself, make amendments to the Transaction Documents if it considers it appropriate to do so. The BAC shall have no obligation to give the reason for the acceptance or rejection of Bidder's Comments or the BAC own amendments.

As part of the submission of the Technical Component, each Bidder shall duly execute four (4) identical versions of the Final Transaction Documents, furnished by the BAC, which must be duly acknowledge before a Philippine Notary Public or Philippine

Consular Official authorized to administer oaths, as the case may be, prior to the Bid

Submission Deadline. Within fifteen (15) Business Days after the declaration of the Winning Bidder, the BAC will executed Final Transaction Documents, which was submitted to the BAC as part of the Winning Bidder's Technical Component.

Each page of the Final Transaction Documents including Schedules, Attachments and Annexes should be initialed by the duly authorized representative of the Bidder, provided that, the respective signature pages of each Final Transaction Documents must bear the full and complete signature of the duly authorized representative/s of the Bidder.

All Bidders are notified that no post-binding or post award negotiation shall be allowed or entertained by the BAC, other than negotiations that incorporate non-material changes to the Final Transaction Documents.

1-22 EFFECTIVITY OF FINAL TRANSACTION DOCUMENTS

The effectivity of the Final Transaction Documents shall be in accordance with the terms of the Final Transaction Documents.

1-23 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.

1-24 GENERAL CONDITIONS

1. The BAC has no responsibility for interpretations or conclusions drawn by a Bidder from data furnished by the Committee or any of their investors or for the accuracy or completeness of data furnished by the Committee.
2. Before submitting a Bid, a Bidder is deemed to have become familiar with and must at all times comply with Philippine Law.
3. All risks, taxes, costs, fees and expenses incurred, directly or indirectly, by a Bidder in the preparation of his Bid, inclusive of his due diligence effort as well as the cost incurred in securing the Bid Security, including fees, and disbursements, if any, shall be borne and paid by such Bidder whether his Bid is accepted or rejected for any reason.

The BAC may not be held liable for such risks, taxes, costs, fees, expenses and liabilities. The BAC may be held liable in the event that the court of competent jurisdiction or other governmental authority declares the Bidding, selection and/or award invalid or sets it aside, for any reason whatsoever at any future date.

4. The information contained in the Bidding Procedures does not constitute a binding obligation of the BAC to select a Winning Bidder.
5. Requesting and/or receiving Bids or any other information or document will not constitute an invitation or commitment by the BAC to enter any agreement, undertaking or covenant with a Bidder.
6. All deadlines set out by the BAC as outlined in the Bidding Procedures and other relevant documents or communications that may be issued from time to time during the course of the Bidding must be adhered to strictly. Late submissions will not be accepted.
7. The BAC at their own discretion, reserve the right to: (i) accept or reject any or all Bids or any part thereof; (ii) withdraw from the proposed transaction or any part of the Bidding Process or to vary any of its or their terms at any time without giving any reason thereof; (iii) waive any defect contained therein; (iv) draw the full amount of the Bid Security should any condition for drawing contained therein occur with respect to such Bidder; and (v) exercise any other remedy granted by Philippine Law or the Bidding Procedures.
8. The BAC reserves the right to add to, modify supplement or change the Bidding, including the Bidding Schedule, at any time, for any reason whatsoever, without prior notice.
9. Bidders undertake to carefully examine the Bidding Package, including the Bidding procedures, all Supplemental Bid Bulletins and the Final Transaction Documents, and fully inform themselves of all conditions and matters that could in any way affect the Bid, participation or undertaking in the Bidding. A Bidder, by submitting his Bid, declares that he has read and understood each and every section and page of the Bidding Procedures, each Supplemental Bid Bulletin and the Final Transaction Documents, and the respective provisions, terms and conditions of the same, and accepts and agrees to be bound and fully abide by and comply with Bidding Procedures, each Supplemental Bid Bulletin and the Final Transaction Documents.
10. After the conduct of a failed bidding, the BAC shall conduct a second round of bidding, in accordance with Philippine Law and accordance with procedures to be adopted by the BBAC.
11. Bidders shall be responsible for their own due diligence investigation of the electricity supply and demand of the Areas, the financial and operational performance of the EC and all matters relating thereto, the Bidding Procedures and the Bidding Process, The BBAC make any representation or warranty concerning any matters affecting this transaction except for the representations and warranties of the EC that are set out in the Final Transaction Documents which shall be binding on the EC and the Generation Company on the Effective Date.

12. In computing a period, the first day shall be excluded and the last day included.

13. Disqualification

The following Bids shall be rejected outright;

1. Bids of parties who are disqualified from participating in public bidding or in any kind of contract with the Government;
2. Bids submitted without a Bid Security or without complying with the requirements set forth in Section 1-12 (Bid Security);
3. Bids that are materially defective;
4. Bids which do not comply with the requirements of either the First Bid Envelope or Second Bid Envelope;
5. Bids from parties who are not Bidders;
6. Bids from parties who have not been issued the Bidding Documents;
7. Bids with prices expressed in currencies other than those specified in the Bid Documents;
8. Bids that do not comply with the Bidding Procedures or any portion thereof, including 1-10 (Contents of Bids);
9. Second Bid Envelopes of Bidders whose First Bid Envelope were not rated "Passed" by the BBAC.
10. The Bid of a Bidder who breaches the warranty against offering or paying commission or consideration to any government officer or any official or employee of the DU provided in Section 2-02 (Warranty Against Offering or Paying Commissions or Consideration to any Government Officer or any Official or Employee of the DU and disclosure of Commission Paid to private person);
11. Bids from Bidders who have materially breached the warranty on Compliance with the Philippine Law as provided in Section 2-17 (Warranty on compliance with Philippine Law; and
12. Any other analogous case.

In addition to the grounds for rejection of Bids stated above and the other provisions of the Bidding Procedures, the BAC shall be entitled in its sole discretion, without prejudice to any other rights or remedies of the BAC, to disqualify a Bidder from further participation in the Bidding Process in the event that;

- a) Such Bidder makes a material misrepresentation in any of the documents submitted to the BAC or any supporting documentation or otherwise, whether or oral, including the statement of nationality;
- b) The Bids submitted by any such Bidder is in any material respect inconsistent with, or demonstrates a failure to comply with the Bidding Procedures;
- c) Such Bidder fails to promptly comply with reasonable requests of the BAC for further information or clarification in relation to documents, information or the Bid submitted by such Bidder;
- d) A supervisor, receiver, Administrator or liquidator or other encumbrances takes possession of or is appointed over or any

distress, execution or other process is levied or enforced (and not discharged within 21 days) upon the whole or any substantial part of the assets of such Bidder;

- e) A court petition is presented or a meetings is convened for the purpose of considering the winding up, bankruptcy or dissolution of such Bidder, or circumstances come into existence that would permit such a court petition to be presented;
- f) Such Bidder submits a Bid with conditions or delivers a Bid Security that does not comply with the requirements of Section 1-12;
- g) Such Bidder breaches any of the conditions of the Bidding Procedures;
- h) Such Bidder breaches the warranty against offering or paying commission or consideration to any government officer or any official or employee of the DU provided in Section 2-02 (Warranty Against Offering of Paying Commission or Consideration to any Government Officer of any Official or Employee of DU and disclose of Commission Paid to private person);
- i) Such Bidder breaches the warranty against compliance with Philippine Law as provided in Section 2-17 (Compliance with Philippine Law);
- j) Upon the occurrence of events or material omissions that provide a ground for disqualification contained elsewhere in the Bidding process.

14. All documents which are required to be submitted under oath, sworn to or acknowledge must be sworn to or acknowledged before a Philippine Notary Public or Philippine Consular Official authorized to administer oaths.

15. Whenever an address is required, the full address must be given. Post Office box as an address is not allowed.

PART 2 – GENERAL PROVISIONS

2-01 DEFINITIONS

1. In the Bidding Procedures, unless the context otherwise requires, the following terms shall have the following meanings:

“Affiliate”	Refers to direct subsidiary or parent company of the Bidder who has a majority stake in the body corporate of the Bidder.
“Bid”	Refers to the signed offer or proposal submitted by a Bidder in compliance with Section 1-10 (Contents of Bids) and Second Bid Envelope (Financial Bid component).
“Bidder:	Refers to an Interested Party, or a consortium including one or more Interested Parties, who has executed the confidentiality Agreement and to whom the Committee issues the Bidding Documents with the intention of participating in the Bidding Process.
“Bidder’s Comments”	Refers to the written comments or suggested amendments submitted by the Bidder as set forth in Section 1-22 (Transaction Documents)
“Bidding” or	Shall mean the process through which the Winning Bidder for

"Bidding Process"	the Transaction shall be selected, as outlined in the Bidding Procedure.
"Bidding Forms"	Refers to the Forms used for the Technical Component and Financial Bid Components to be submitted to the Committee as provided for in Section 1-10 (Contents of Bids).
"Bidding Documents"	Refers to the complete set of documents for the Transaction, composed of the Bidding Procedures, the Schedules, and the Due Diligence.
"Bidding Procedures"	Refers to the Documents detailing the instructions for Bidders, General Provision, and its Schedules.
"Bidding Schedule"	Refers to the timeline for the Transaction set out in Section 1-03 (Bidding Schedule)
"Bid Opening Date"	Refers to the date when the First Bid Envelope are opened as referred to in Section 1-15 (Opening of Bids).
"Bid Security"	Shall have the meaning set forth in Section 1-12 (Bid Security)
"Bid Submission Deadline"	Refers to the deadline or the submission of a Bid as provided for in Section 1-13 (Submission of Bids).
"Bid Validity Period"	Refers to the meaning set forth in Section 1-11 (Validity of the Bid).
"Business Day"	Means any day other than a Saturday, Sunday, a public holiday in the Republic of the Philippines or Makati City, or a day on which banks in the Republic of the Philippines are authorized by law to be closed.
"Business Hours"	Refers to any time between 9:00a.m. to 12:00p.m. and 1:00p.m. to 5:00p.m. of a Business Day.
"Committee"	Shall have the meaning set forth in Section 1-02 (Addenda and Clarification to the Bidding Procedures).

The members of the Committee will be made known to interested Parties through a Supplemental Bid Bulletin

"Confidentiality Agreement"	Refers to the agreement entered into by the Interested Party and the Transaction Advisor to keep the information obtained in this Transaction strictly confidential and as a prerequisite to receive any document related to the Transaction.
Distribution Utility	Refers to the electric cooperative of
"Effective Date"	Shall have the meaning set forth in the Final Transaction Document (Power Supply Agreement)
"Final Transaction Documents"	Refers to the Final version of the Transaction Documents as set forth in Section 1-22 (Transaction Documents).
"Financial Bid Document"	Refers to the final version of the transaction documents as set forth in Section 1-22 (Transaction Documents)
"Financial Bid"	Shall mean the financial proposal of the Bidder.
"Financial Bid Component"	Means that component of the Bid that contains the requirements of the second Bid Envelope as detailed in Section 1-10 (Contents of Bids).
"First Bid Envelope"	Shall have the meaning set forth in Section 1-10 (Contents of Bids).
"Governmental Body"	Refers to any agency, office, authority, commission department, or political subdivision of the Philippines, whether national, regional, provincial, municipal or otherwise.
"Interest Party"	Refers to a person who is willing to undertake the power generation and associated power delivery systems in EC and has executed the Confidentiality Agreement.
"Lowest	Refers to the Lowest Arithmetical Computation reflected in the

Calculated Bid”	financial Bid Section 1-16.
“Lowest Calculated Responsive Bid”	Refers to the Lowest Calculated Bid which complies and its responsive to all requirements and conditions as specified in the Bidding Documents as set forth in Section 1-17
“Manila Time”	Refers to the time in Manila, Philippines.
“Notice of Award”	Shall have the meaning set forth in Section 1-19 (Award to the Winning Bidder).
“Performance Bond ”	Refers to the security or guarantee required to be posted by Winning Bidder on terms and conditions acceptable to the EC as provided in Schedule 2 of the PSA.
“Philippine Law”	Shall mean (i) the Constitution of the Republic of the Philippines and all Philippine laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Authority, and (ii) judgments, decrees, injunctions, with orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case: (a) that apply top these Bidding Procedures and the performances of the Final Transaction Documents by the parties thereto: and (b) as amended, supplemented, replaced, interpreted by a duly authorized governmental authority, or otherwise modified from time to time.
“Second Bid Envelope”	Shall have the meaning set forth in Section 1-10 (Contents of Bids)
“Substitute Selection Notice”	Shall have the meaning set forth in Section1-21 (Obligations of the Other Bidders other than the Winning Bidder).
“Supplemental Bid Bulletins”	Shall mean amendments, supplements or clarifications to the Bidding Procedures or the Bidding Process that will be in writing and numbered sequentially as the Committee may issue from time to time. The Supplemental Bid Bulletins are incorporated into Bidding Procedures by reference.
“Transaction Documents”	Refers to the documents set forth in Section 1-21
“Technical Component”	Refers to the technical requirements of the Bid and contained in the First Bid Envelope as detailed in Section 1-10 (Contents of Bids).
“Total Calculated Bid Price”	Refers to the Bid Prices as evaluated and corrected
“Winning Bidder”	Shall have the meaning set forth in Section 1-18 (Award to the Winning Bidder).

2. Unless the context otherwise requires:

- a. Words singular and plural in number shall be deemed to include the other.
- b. Words referred to as “he”, shall be deemed to include the male, female and neuter (e.g. his/her/its), and vice-versa.
- c. The terms “include” and “including” shall be construed as being all times followed by the words “without limitation” unless the context specifically indicates otherwise.
- d. Whenever a Bidder is required to form an opinion, make a determination or designation, give notice of approval or consent, incur costs or expenses, request any item or action, exercise a discretion or perform an act under the Bidding Procedures, it must be done reasonably under the circumstances in accordance with the terms of the Bidding Procedures,

- and must not be done or refused capriciously or arbitrarily or unduly delayed.
- e. References to Bidding Procedures shall include the Bidding Procedures and Supplemental Bid Bulletin, and the respective provision, terms and conditions thereof, and any amendment, supplement or modification thereto as well as the decisions of the BAC.
 - f. Article and Section headings are for convenience of reference only and shall not be deemed to limit or otherwise affect any of the provision hereof.
 - g. Unless expressly provided, any reference to a "day" shall refer to a calendar day.
 - h. Unless expressly provided, reference to a person shall refer to a natural or juridical person.

2-02 WARRANTY AGAINST OFFERING OR PAYING COMMISSION OR CONSIDERATION TO ANY GOVERNMENT OFFICER OR ANY DIRECTOR, OFFICIAL OR EMPLOYEE OF PSALM, MEMBERS OF THE COMMITTEE AND DISCLOSURE OR COMMISSION PAID TO PRIVATE PERSON

Each of the Interested Parties Bidders and the Winning Bidder warrants that neither he or nor anyone on his behalf has offered or paid, directly or indirectly, any director, official or employee or any member of the Committee any consideration or commission for the Bidding or Final Transaction Documents, nor has he or anyone on his behalf exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, or the Final Transaction Documents for any consideration or commission. Any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of the Final Transaction Documents, enforcement of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law, including the Anti-Graph and Corrupt Practice Act (Republic Act. No.3019) against the interested Party, Bidder, Winning Bidder and/or his representatives and the DU Officials/employees involved.

2-03 WARRANTY AGAINST CONFLICT IN INTEREST

Each of the Interest Parties, Bidders and the Winning Bidder warrants that neither he nor anyone on his behalf was previously employed or worked with any entity involved in the preparation and implementation of this project and disclose in writing detailed information regarding any existing, potential, possible or future conflict to interest that he may have with the Transaction, the BAC.

2-04 VARIANCE IN DOCUMENTS

In case of conflict or discrepancy between the Bidding Procedures and its Supplemental Bid Bulletins on the one hand, and other documents on the other hand, the Bidding Procedures and its Supplemental Bid Bulletins shall prevail.

2-05 LANGUAGE

The official language to be used in the Bidding, Bidding Procedures and the Final Transaction Documents, reports, communications, and correspondence between the parties, as well as all orders, procedures, work instructions, and safety notices shall be English.

2-06 NON-WAIVER OF RIGHTS

The BAC's failure to exercise, or delay in exercising, any of its rights under the Bidding Procedures and the Final Transaction Documents shall not operate as a waiver thereof, nor shall the BAC's single or partial exercise of any right preclude any other or further exercise of any other right. The right and remedies provided herein are cumulative and not exclusive of any right or remedies provided by Philippine Law.

2-07 INDEMNITY

The Interested Parties, Bidders and Winning Bidders/Buyer shall indemnify the BAC and the DU and hold it harmless against any and all losses, claims, liabilities, damages and expenses arising out of or relating to its fault or negligence in the Bidding, including without limitation any claims by third parties for personal injuries, property damage, or consequential damages as further provide in the Final Transaction Documents.

2-08 LIMITATION OF LIABILITY

The BAC, nor the DU shall not be liable to the interested Party, Bidders, Winning Bidders/Buyer or any third party in contract, tort or otherwise for any loss or damage sustained in connection with the Transaction including without limitation any claims for loss of use, loss income or consequential damages, except as provided for in the Final Transaction Documents executed by DU and the Winning Bidder.

2-09 TAXES, CUSTOMS, DUTIES, COSTS OR CHARGES

The Winning Bidder shall (i) pay any and all costs, expenses, fees and taxes, including all documentary stamp taxes payable in connection with the execution, and any amendment or other modification of the Final Transaction Documents (including any taxes applicable to any draws made upon the Performance Bond); and (ii) pay all costs, expenses, fees and taxes related to and arising from its exercise or performance of its obligations under the Bidding, Bidding Procedures or the Final Transaction Documents.

2-10 NOTICES

All notices to and communications with the BAC pursuant to the Bidding Procedures and the Transaction Documents shall be in writing and shall be sent to:

THE CHAIRMAN
Bids and Award Committee

Bidders shall include with their bids the designation of the person or organization to whom notices or other communications shall be sent.

2-11 INCORPORATION OF THE TERMS OF THE FINAL TRANSACTION DOCUMENTS

The terms and conditions of the Final Transaction Documents are deemed incorporated herein by reference and made an integral part hereof.

2-12 FORCE MAJEURE

The DU Bids and Award Committee or the DU shall not be liable for any loss or damage arising out of any delay or its inability to perform its obligations under the Bidding, Bidding Procedures and the Transaction Documents if the same is due to causes beyond its reasonable control and which could not be reasonably remedied or overcome, including without limitation acts of God, accidents, acts of war, labor shortages or labor difficulties, strikes which are parts of a wider industrial dispute materially affecting employees of other firms or entities, civil disturbances, insurrections, riots, revolutions, acts of sabotage, governmental actions, delays or failures by the appropriate government authorities to issue necessary licenses, permits or authorizations, delays or accidents occurring in the course of transportation, unavailability of material or equipment, acts of or failures to act by third parties, and acts of or failures to act by the Winning Bidder or his contractors, suppliers, agents, or employees.

2-13 CONFIDENTIAL INFORMATION

The terms and conditions of the Confidentiality Agreement are deemed incorporated herein by reference and made an integral part hereof. Each Bidder agrees that its officers, directors, employees, affiliates, outside auditors and legal, technical, financial other representatives are covered by the terms of the Confidentiality Agreement of such Bidder.

2-14 WARRANTY ON COMPLIANCE WITH PHILIPPINE LAW

Each of the Interested Parties , Bidders and the Winning Bidder hereby represent and warrant that from issuance of the Confidentiality Agreement, it shall at all times comply with Philippine Law, including Republic Act No. 9160, (the Anti-Money Laundering Act), as amended. Any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of the Final Transaction Documents, enforcement of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Interested Party, Bidder, Winning Bidder/Buyer and/or his representative.

Appendix A-1

_____ Electric Cooperative Inc., holding office at _____, is looking for a Power Supplier/Generation Company which will supply the capacity and energy requirements within its franchise area. _____ Electric Cooperative Inc. is conducting a transparent and Competitive Selection Process which shall be in accordance with the following Timelines, Pre-Qualification Requirements (PQR) and Terms of Reference (TOR):

TIMELINES FOR COMPETITIVE BIDDING PROCESS

Activity	Elapsed Time From the Publication of the Notice to submit Pre-Qualification Requirements
Publication of the Invitation to Bid	
Publication of the Notice to Submit Pre-Qualification Requirements	
Submission of Pre-Qualification Requirements	
Announcement of Pre-Qualified Bidders	
Pre-Bid Conference / Release of Information Memorandum & Bid Documents / Start of Due Diligence	
Last Day of Due Diligence	
Submission of Sealed Technical & Financial Bids	
Announcement of Winning Bidder (Sending of Notice of Award)	
Signing of Power Supply Agreement (PSA)	
Filing of Joint ERC Petition for the Approval of the PSA	
Target Commercial Operations Date of Power Plant	

The following Pre-Qualification Requirements shall be submitted to the _____ Electric Cooperative Inc. main office not later than _____ the 60th day from publication of the Notice to submit Pre-Qualification Requirements (PQR):

PRE-QUALIFICATION REQUIREMENTS

1. Executive Summary

Brief description of the Bidders company history and structure, including relevant capabilities in the construction, operation and maintenance of a power plant.

2. Organization Structure

Basic information of the Bidders legal status and organizational chart.

3. Financial Information

The Bidder shall submit the following:

- (a) Details of financial and operating background for the two (2) recent full financial years demonstrating the Bidder's financial viability.
- (b) Details of equity and financing plan indicating the capital structure and source of funds with supporting documents.
- (c) Any other relevant information regarding financial track record and capabilities of the Bidder that it believes would be helpful to the _____ Electric Cooperative Inc. Bids & Awards Committee.

4. Technical Capability Information

The Bidder shall submit the following to demonstrate compliance with the technical criteria established in the Terms of Reference:

- (a) List of projects undertaken over the last ten (10) years.
- (b) List of electricity generation plants that the Bidder has operated for the last five (5) years.
- (c) Track records for the last five (5) years in operating the power plant
- (d) Other relevant information showing proof of the technical capabilities of the Bidder that would be helpful to the _____ Electric Cooperative Inc. Bids & Awards Committee.

5. 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 _____ Electric Cooperative Inc. Bids & Awards Committee.

6. Confirmation of Eligibility

The Bidder shall confirm its eligibility, if applicable, as follows:

- 6.1 The Bidder, shall confirm that the Bidder are not disqualified from bidding for the supply of the DU electricity requirements.

6.2 An authorized signatory of the Bidder, must sign the PQR on each and every page, and submit a duly notarized Special Power of Attorney or Board Resolution evidencing such authority.

7. Power of Attorney and other documents

Each Bidder must submit the following documents:

- (a) Original or Certified true copies of all corporate/legal documents (e.g. Board Resolution, Powers of Attorney) evidencing grant of authority invested in the individual submitting the Bid and making representation on behalf of the Bidder
- (b) Certification by the Bidder to the effect that the Bidder 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.
- (c) Sworn Undertaking that the Bidder, if applicable, as well as their affiliates, assigns and successors-in-interest, shall abide by the decisions of the _____ Electric Cooperative Inc. Bids and Awards Committee, shall hold _____ Electric Cooperative Inc., its Board Members, Officers and Management, and Bids and awards Committee 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."

Qualified Bidders shall then be invited to participate in the Pre-Bid Conference scheduled on 15th day from the announcement of pre-qualified bidders. During the Pre-Bid Conference, a detailed Information Memorandum shall be released to all interested bidders, subject to payment of a non-refundable Bid Fee of Pxxxx. Thereafter, Competitive Proposals shall be submitted 60 days from the pre-bid conference based on the TOR.