



NOTICE

Notice is hereby given that the first draft of the **IMPLEMENTING GUIDELINES OF SECTION 3 OF DEPARTMENT OF ENERGY CIRCULAR NO. DC2015-06-0008, "MANDATING ALL DISTRIBUTION UTILITIES TO UNDERGO COMPETITIVE SELECTION PROCESS (CSP) IN SECURING POWER SUPPLY AGREEMENTS (PSA)"** by the Technical Working Group (TWG) is posted for comments from industry stakeholders on the Energy Regulatory Commission (ERC) and Department of Energy (DOE) websites www.erc.gov.ph and www.doe.gov.ph.

All interested parties may submit their comments through tariffs@erc.gov.ph and mnalingdoe@gmail.com before 01 October 2015. Said Rules may be downloaded from the abovementioned websites or may be photocopied, at cost, during regular office hours at the ERC and/or DOE Main Office.

Pasig City, 11 September 2015.

TWG-CSP


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**IMPLEMENTING GUIDELINES OF
SECTION 3 OF DEPARTMENT OF ENERGY
CIRCULAR NO. DC2015-06-0008, "MANDATING ALL
DISTRIBUTION UTILITIES TO UNDERGO COMPETITIVE
SELECTION PROCESS (CSP) IN SECURING POWER SUPPLY
AGREEMENTS (PSA)"**

WHEREAS, the Electric Power Industry Reform Act of 2001 or "EPIRA" declares among others the following policy of the State:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- (g) To assure socially and environmentally compatible energy sources and infrastructure.

WHEREAS, Section 37 of the EPIRA mandates the Department of Energy (DOE), in addition to its powers and functions under Republic Act No. 7638 or the Department of Energy Act of 1992, to supervise the restructuring of the electricity, and shall undertake among others:

- "(d) Ensure the reliability, quality and security of supply of electric power;
- (e) Following the restructuring of the electricity sector,
 - (i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;

- (ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;
- (iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply;
- (i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;
- (j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided*, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;
- (l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;
- (p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and
- (q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.”

WHEREAS, pursuant to the said mandates, the DOE issued Department Circular No. DC2015-06-0008, “*Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)*,” hereinafter referred to as the “CSP Circular;”

WHEREAS, Section 43(t) of the EPIRA mandates that the “ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. x xx. Towards this end, it shall be responsible for the following key functions in the restructured industry:

- (t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry x xx;”

WHEREAS, Section 3 of CSP Circular mandates the issuance jointly by the DOE and ERC, within one hundred twenty (120) days from effectivity thereof, of the “guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party the conducts the CSP x xx.”

NOW, THEREFORE, premises considered, the DOE and ERC hereby jointly adopt and issue the following guidelines and procedures pursuant to Section 3 of the CSP Circular:

Section 1. Definition of Terms. For purposes of this Implementing Guidelines , the following shall be defined as follows:

- (a) **“Aggregated Distribution Utilities”** refers to a group of Distribution Utilities whose combined demand or energy requirements shall be subjected to a Competitive Selection Process (CSP) through a Third Party, duly appointed by the DOE and ERC.
- (b) **“Competitive Selection Process”** or **“CSP”** refers to the process wherein a Generation Company is awarded to supply electric power requirements of an Aggregate Distribution Utilities through transparent and competitive bidding undertaken by Distribution Utility(ies) to secure supply of electricity at the least cost.
- (c) **“Optimal Supply Mix”** refers to the most desirable generation mix derived from various fuel technologies that shall provide the supply electricity in the least-cost and reliable manner, with due consideration to the Government policy on utilization of Renewable Energy Sources.
- (d) **“Third Party”** refers to an entity created under DC 2015-06-0008 whose responsibilities are detailed in this Implementing Guidelines or respective subsequent issuances.

Section 2. General Policies and Principles.

- (a) Consistent with Section 23 of EPIRA, all DUs shall have the obligation to supply electricity in the least-cost manner to its Captive Market, subject to the collection of retail rate duly approved by the ERC.
- (b) All DUs shall procure their respective Power Supply Agreements (PSAs) through conduct of Competitive Selection Process (CSP) pursuant to the provisions prescribed in this Implementation Guidelines (IG) and Supplemental Guidelines to be issued by the ERC.
- (c) All DUs operating in areas not connected to the main transmission lines and in isolated areas are not covered by this IG as these areas are governed by the provisions of Department Circular No. 2004-01-001, which prescribed the rules and procedures for Private Sector Participation in the Generation and Transmission in existing SPUG Areas, and ERC Resolution No. 11, Series of 2005, which adopted the guidelines for the setting of the rates and subsidies in missionary electrification areas.

- (d) All DUs shall, at all times, ensure an Optimal Supply Mix for its Captive Markets.
- (e) All DUs are enjoined to secure their respective PSAs in advance of their requirements (i.e., three (3) to five (5) years ahead under long-term contracts (e.g., at least fifteen (15) years). However, the DUs may continue to contract, also through the annual CSP, for the short-term or interim requirements with existing power generation plants to address their respective load growth variations.
- (f) The Aggregated DUs shall have the final decision on the timing and volumes of demand or energy to be procured, *Provided, That* the same upon determination of the Third Party shall redound to adequacy of power supply and least-cost supply to the Captive Markets. Prior to launch of any CSP, the Third Party shall, after due consultation with the Aggregated DUs, seek approval from the ERC of the terms and parameters of the CSP for any particular Aggregated DUs. Towards this end, the Third Party shall only serve as a conduit in facilitating transparent and competitive procurement for supply of electricity for the Captive Markets.

Section 3. Aggregation Parameters. The Third Party shall determine the appropriate DU groupings, which would yield the most efficient and cost-effective results in terms of allocation of all existing and new generation capacities; and ensure least-cost supply to the DUs. Among the parameters or considerations for the aggregation that the Third Party may consider are:

- (a) geographical location of the DUs, i.e regional or grid-wide;
- (b) market nodes where DUs are connected;
- (c) terms of the contract to be auctioned;
- (d) nature of the DU requirements, i.e., baseload or peaking;
- (e) volume to be procured, capacity and energy, or energy only;
- (f) generation capacities that may participate in the CSP;
- (g) other relevant considerations.

Section 4. Aggregation Process.

- (a) On or before the First Working Day of each year, or on such other Date recommended by the designated Third Party, all DUs shall submit to the Third Party their projected annual peak demands and annual energy requirements for the next twenty (20) years, based on scientifically-formulated load forecast models; information on the

existing PSAs, such as the Generation Company counter-party, contract duration, contracted demand and energy levels; and proposed contracts to be procured through the CSP based on proposed timelines/schedules.

- (b) On or before the First Working Day of each year, or on such other Date recommended by the designated Third Party, all DUs shall also submit five-(5)-year historical demand and energy consumption, and the previous year's hourly load duration curve.
- (c) At any time after its selection, the Third Party may request from all DUs and from other agencies such as the DOE, ERC, and the National Electrification Administration (NEA) and from private entities such as the Philippine Electricity Market Corporation (PEMC), the National Grid Corporation of the Philippines (NGCP), and the various Generation Companies, for such other information as would aid in its determination of the most appropriate and efficient Aggregation of DUs and the corresponding CSP Procurement Plan for the Aggregated DUs.
- (d) No later than March 1 of each year, the Third Party shall submit to ERC its proposed Aggregation of DUs; the proposed CSP design, rules, procedures, and timelines.
- (e) Consistent with Section 4 of the CSP Circular, ERC shall issue Supplemental Guidelines prescribing such other implementation details to complement the IG in the execution of the CSP Procurement Plan for the Aggregated DUs.
- (f) The ERC and the DOE shall conduct public consultations prior to promulgation of the Supplemental Guidelines.

Section 5. Criteria for Selection of a Third Party. The DOE and ERC shall appoint a Third Party to conduct and manage the CSP Procurement for the Aggregated DUs. The Third Party shall compose a team of foreign and/or national experts with vast experience in open and competitive bidding as lead auction design advisor and auction manager in at least five(5) separate successful auctions for power supply contracts of electric utilities preferably in countries that have implemented auctions, such as Chile and Brazil, with comprehensive knowledge of the legal and regulatory framework for the Philippine electric power industry, and with demonstrated ability to simultaneously manage the CSP for the power supply of the Aggregated DUs.

Section 6. Competitive Selection Process for the Third Party. No later than September 1 of each year, the DOE and the ERC shall issue their joint Request for Proposals (RFP) to all interested parties to qualify as the Third Party for the following year's auction. The DOE and the ERC shall endeavor to select, in consultation with the NEA, the Third Party based on the parameters and weightings of qualifications to be detailed in the RFP by November 30.

Section 7. Remuneration of the Third Party. The remuneration of the Third Party shall be taken out of the energy sales for the first year of implementation of the contracts successfully facilitated and closed by the Third Party. The Third Party's fee shall be included in the Generation Company's billings to the Aggregated DUs and shall be remitted by each DU on a monthly basis directly to the Third Party.

Section 8. Responsibilities of the Third Party. The Third Party shall be responsible for the following:

- (a) Collect all pertinent data for the aggregation of the DUs' requirements.
- (b) Come out with the various DU groupings and contracts to be auctioned. In so doing, and based on justifiable reasons, it may propose to have a DU grouping consisting of only one DU.
- (c) Develop the CSP design for the PSAs. This involves the development of the templates and uniform procedures to be followed in the auction. The CSP design shall ensure a competitive, transparent and fair auction; maximize participation of existing and new suppliers and minimize procurement cost while enhancing sustainability of investments in the Philippine electricity generation sector.
- (d) Develop Bidders' Qualification Criteria.
- (e) Draft and propose the CSP Rules - Format (sealed, open, combination; single vs. multiple round; descending clock, hybrid, etc.), activity rules and competitive safeguards, stopping rules, contingency rules, auction price, determination of winning bidders, etc.
- (f) Develop and propose the PSA template depending on whether the contracts to be procured will be financial or physical. The PSA shall set out the minimum terms and conditions to govern the implementation principally by each DU and the winning bidders of the results of the CSP. It shall contain a commitment by the bidder to deliver the agreed product on definite date, and the penalties in case of failure to do so. It shall also allow for the termination of the PSA in case of delays in the plant construction, with the penalties to be paid as a consequence thereof, and for the partial reduction on the contracted volumes in case of reduction in the DU's captive demand as a result of the continuing implementation of Retail Competition and Open Access (RCOA).
- (g) Manage the conduct of the CSP up to the award and execution of the PSAs.

Section 9. Repealing Clause.

Nothing in these Implementing Guidelines shall be construed as to amend, supersede, or repeal any of the mechanism or institutions already existing or responsibilities already allocated and provided for under any existing law, rule, or contract.

Section 10. Separability Clause.

If for any reason any section of these Implementing Guidelines is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 11. Effectivity.

These Implementing Guidelines shall take effect 15 days following its publication in a newspaper of general circulation.

Signed this _____ day of _____ 2015 at _____.

DEPARTMENT OF ENERGY

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