

AMENDING CERTAIN PROVISIONS OF AND SUPPLEMENTING DEPARTMENT CIRCULAR NO. DC2018-02-0003 ON THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT BY THE DISTRIBUTION UTILITIES OF POWER SUPPLY AGREEMENT FOR THE CAPTIVE MARKET

WHEREAS, Republic Act (RA) No. 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA), Section 2 (b) and (c), declares that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market. Furthermore, Section 2 (f) of the EPIRA declares that it is also the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37 (p) of the EPIRA mandates the Department of Energy (DOE) to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA. In view of such mandate, the DOE has issued Department Circular (DC) No. DC2004-01-001 and DC2015-06-0008, requiring the conduct of a Competitive Selection Process (CSP), initially for Distribution Utilities (DUs) in off-grid areas, and eventually mandating all DUs to undergo CSP in the procurement of Power Supply Agreements (PSAs) for their captive market. The mandate of the DOE to issue rules and regulations to implement the EPIRA has also been confirmed by the Supreme Court in its Decision in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*. (G.R. No. 227670, May 3, 2019);

WHEREAS, on 1 February 2018, the DOE issued DC No. DC2018-02-0003 aimed to ensure transparency and competitiveness in the conduct of CSP through wide dissemination of bid opportunities to ensure participation of all eligible and qualified generation companies;

WHEREAS, electric power industry participants have identified and recommended various improvements in the policy, thereby, necessitating several revisions of the CSP Policy in order to ensure its efficiency and effectiveness;

WHEREAS, DOE recognizes that there are other CSP modalities in providing competition and transparency in the procurement of PSA;

WHEREAS, RA No. 11234 or the *Energy Virtual One-Stop Shop (EVOSS) Act* established an online platform, under the supervision of the DOE, for and among others government bureaus, offices, and entities involved in the permitting process of power generation, transmission, or distribution projects in accordance with their respective processes and procedures within a strict time frame using published standards;

WHEREAS, Rule 11 or the *Cross Ownership, Market, Abuse and Anti-Competitive Behavior* Section 5 (b) or the *Limits on Bilateral Supply Contracts by a Distribution Utility*, under the Implementing Rules and Regulations (IRR) of RA 9136 - EPIRA

states that no DU shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an Affiliate engaged in generation, but such limitation shall not prejudice contracts entered into prior to the effective date of the Act. This limitation shall apply regardless of whether demand is expressed in terms of capacity or energy;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues and promulgates the following amendatory and supplementary provisions to DC No. DC2018-02-0003 in the conduct of CSP.

SECTION 1. Section 2 (*Coverage*) of DC2018-02-0003 shall be revised to read as follows:

“SECTION 2. SCOPE, APPLICATION AND EXEMPTION FROM CSP.

2.1. SCOPE AND APPLICATION.

2.1.1. This Circular shall apply to all DUs and Power Suppliers in the procurement of electric power supply.

2.1.2. All PSAs shall be procured through CSP, consistent with the latest and duly accepted Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP) and consistent with the principles enshrined in Section 1 of DC2018-02-0003, which declares technology neutrality.

2.2. EXEMPTION FROM CSP.

2.2.1 The following instances shall warrant a Certificate of Exemption from the conduct of Competitive Selection Process (COE-CSP) from the DOE:

2.2.1.1. Any generation projects funded by grants or donations, and will become fully-owned, operated, and controlled by the DU within its franchise area, subject to ownership and market-share limitations as provided under relevant laws and issuances. The DU may be allowed to infuse internally generated funds; *Provided*, that the amount shared by the DU shall not exceed 30% of the total project cost; *Provided also*, that taxes to be paid by the DU shall not be included in the total project cost; *Provided still*, that the generation project or facility shall be structurally, administratively and financially unbundled from the DU; *Provided further*, that the DU shall prove that the generation rate from such project or facility can clearly be distinguished from the distribution rates of the DU; *Provided finally*, that the generation project shall not be transferred or assigned to an affiliate or subsidiary Power Supplier of the DU.

2.2.1.2. Negotiated procurement of emergency power supply; *Provided*, that the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year and such EPSA shall be filed immediately

before the Energy Regulatory Commission (ERC), upon the issuance and within the effectivity of the COE-CSP; *Provided also*, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and canvassed from at least three (3) generation company for EPSA to address the emergency situation and to avert and mitigate its consequences, and the offers from the available Power Suppliers shall be attached in the request for COE-CSP; *Provided further*, that the procurement of emergency power supply shall be without any form of subsidy. *Provided finally*, that the rate shall preferably be lower than the latest ERC-approved generation tariff for same or similar technology in comparable areas.

2.2.1.3. Any generating plant to be embedded in the DU, with fuel that is indigenous to the franchise area of the DU, subject to ownership and market-share limitations as provided under relevant laws and issuances, unless it intends to sell generated power outside of the embedded area, in which case, it shall undergo CSP with respect to its excess power. The size of the generation plant shall have a maximum capacity of 10 MW for Luzon and 5 MW for Visayas and Mindanao. The provision for power supply by the National Power Corporation (NPC) for off-grid areas prior to and until the entry of New Power Providers (NPP) in an area, in which case, a copy of the EPSA between the Electric Cooperative (EC) and the NPC shall be submitted to the DOE and the National Electrification Administration (NEA), in case of ECs.

2.2.1.4. The provision for power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation or its successors-in-interest through bilateral contracts for the power produced from the undisposed generating assets and independent Power Producer contracts. Request for exemption must be submitted to the DOE at least three (3) months prior to the expiration of the Contract of Supply of Electric Energy (CSEE) or intended cooperation period. Upon its execution, the DU or EC shall furnish the DOE and NEA, respectively, with a copy of the CSEE between the DU and the PSALM.

2.2.2 The COE-CSP shall be issued by the DOE within twenty (20) working days subject to complete submission of requirements as provided in **Annex A**.

2.2.3 For EPSAs contemplated under Section 2.2.1.2, the grant of the COE-CSP authorizes the DU to immediately implement the EPSAs executed by virtue of such certificate, without prejudice to the evaluation and final decision of the ERC on the application for the approval of such EPSA.

2.2.4 The DOE shall furnish the NEA in the case of ECs, the NPC and the PSALM, as the case may be, with a copy of the COE-CSP issued in favor of the requesting DU.

SECTION 2. Section 3 (*Definition of Terms*) of DC2018-02-0003 shall be amended to read as follows:

“SECTION 3. DEFINITIONS OF TERMS.

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3.8. **‘Competitive Selection Process’ or ‘CSP’** refers to the process wherein a Power Supplier or, in the case of off-grid areas, NPP is chosen to supply electric power requirements of a DU through transparent and competitive bidding or alternative mode of procurement undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation criteria adopted by the DUs.

3.13. **‘Emergency Power’** refers to the power required by the DU in the event that a DU’s actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, and such shortfall cannot be addressed through any reasonable means within a month and cannot be supplied by the Wholesale Electricity Spot Market (WESM), subject to the final determination by the DOE.

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3.27. **‘Energy Virtual One-Stop Shop’ or ‘EVOSS’** refers to an online system that allows the coordinated submission and synchronous processing of all required data and information, and provides a single decision-making portal for action on applications for permits and/or certification necessary for, or related to, an application of a proponent for a new generation, transmission, or distribution projects.

3.28. **‘Force Majeure’ or ‘Fortuitous Event’** refers to any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable on the part of the DU, and is beyond the will, control, participation and influence of the DU.

This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent or threatening actions. It may likewise pertain to any analogous event that may relate to a power system emergency that shall affect the continuity of delivery of power by the DUs;

- 3.29 **'Power Supplier'** refers to any entity recognized by the ERC to: (a) sell, broker, market or aggregate electricity to DUs, and/or (b) own and operate facilities used in the generation of electricity.
- 3.30 **'Solicited Proposals'** refers to a proposal initiated by a DU based on its final Terms of Reference (TOR) to any Power Supplier to supply electric power for baseload, mid-merit, and/or peaking requirements.
- 3.32 **'True Cost of Generation Rate'** or **'TCGR'** refers to the full efficient cost of generation power in an area.
- 3.33 **'Unsolicited Proposals'** or **'USP'** refers to a power supply proposal submitted by a Power Supplier to a DU, which is not in response to a solicitation or request issued by the latter, to undertake a PSA with the DU covering only the indicated uncontracted demand, pursuant to its final and posted PSPP.

SECTION 3. Subsection 4.2 is amended, and additional provisions are included in Section 4 (*DDP and the PSPP*) of DC2018-02-0003, in this wise:

- 4.1. xxx xxx xxx
- 4.2. The PSPP shall contain the following:
 - 4.2.1. Historical data on peak demand, supply contract, energy sales and energy purchase;
 - 4.2.2. 10-year monthly peak demand forecast; energy sales; existing contracts (expiration);
 - 4.2.3. Committed energy and demand for CSP and its load factor computation;
 - 4.2.4. Currently approved TCGR for Off-Grid DUs;
 - 4.2.5. Projected Load Factor or Load Profile;
 - 4.2.6. Distribution Impact Study/Load Flow Analysis to serve as basis of the prior TOR;
 - 4.2.7. Current supply and demand status of the DU; and
 - 4.2.8. Indicative schedule for CSP taking into consideration the required construction period in the case of new generation plants.
- 4.3. xxx xxx xxx
- 4.4. The Third Party Bids and Awards Committee (TPBAC), Joint TPBAC or Third Party Auctioneer (TPA), (collectively referred to as TPBAC/TPA),

or its authorized representative shall submit and upload in the DOE CSP E-based Portal the PSPP consistent with the latest and accepted DDP.

- 4.5. The ERC shall be copy furnished with the DDP for review and approval of respective PSA applications.

SECTION 4. Section 5 (*Third Party Bids and Awards Committee*) of DC2018-02-0003, is revised to read as follows:

“SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE

- 5.1. Third Party Bids and Awards Committee (TPBAC).

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- 5.1.2. The DU, through its Board of Directors (BOD), shall declare five (5) members of the TPBAC composed of the following:

- a. Two (2) representatives from the captive customer;
- b. Two (2) representatives from the DU; and
- c. One (1) representative from the DOE.

- 5.1.2.1. The TPBAC shall be composed of either of the following:

5.1.2.1.1. One DU officer or employee knowledgeable in the technical operations of the DU.

5.1.2.1.2. One DU officer or employee, or a person with knowledge and/or experience with any local or international competitive bidding procedures;

5.1.2.1.3. One lawyer; and

5.1.2.1.4. One finance officer or accountant that has knowledge on electricity pricing.

- 5.1.2.2. The DOE representative shall be designated by the Secretary of Energy *via* a Special Order.

- 5.1.3. In case the DU fails to find any qualified members, as specified in Sections 5.1.2.1.2, 5.1.2.1.3 and 5.1.2.1.4, after presenting proof of the unavailability of these professionals, the DU may designate captive customer members with knowledge/experience in the fields of accounting, economics, finance, law, engineering or procurement, as may be necessary to complete the composition of the TPBAC;

- 5.1.4. For all DUs, the selection process of the representatives of the captive customers to the TPBAC shall be submitted to the DOE

for approval. A registered customer of a DU as the case maybe, may qualify as a member of the TPBAC; provided that such person is not directly or indirectly employed by the DU, or has not been engaged by the DU in any capacity within one (1) year from the conduct of the CSP, or is not related, within the fifth degree of consanguinity or affinity, to any director or officer of the DU.

- 5.1.5. The Board of Director (BOD) of the DU shall only serve as an observer and not as a member of the TPBAC;
- 5.1.6. The Chair and the Vice Chair shall be selected by the members of the TPBAC;
- 5.1.7. A quorum of the TPBAC shall be composed of a simple majority of all voting members of the TPBAC; and
- 5.1.8. A decision on all questions of the TPBAC shall require the majority of all the members present in the TPBAC meeting.

5.2. TPBAC Technical Working Group (TWG) and Secretariat

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- 5.2.6. The Secretariat is required to make and keep, as part of the TPBAC/TPA records, a complete and unedited video record during the Pre-Bid Conference and Bid Opening.

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5.5. EVOSS Application of TPBAC and JOINT TPBAC.

The following shall be submitted to the DOE, via EVOSS, as a requisite for the approval of the selection process of the TPBAC/Joint TPBAC:

- 5.5.1. Letter of request addressed to the DOE Secretary, attention to the Undersecretary for Power and Director of Electric Power Industry Management Bureau.
- 5.5.2. Selection process to be adopted by the DU in nominating the two (2) captive customer representatives to the TPBAC/Joint TPBAC to include the following:
 - 5.5.2.1. Criteria in selecting the two (2) captive consumer representatives;
 - 5.5.2.2. Qualification for the two (2) captive consumer representatives; and
 - 5.5.2.3. Documentary requirements to be submitted by interested applicant to captive customer representation

in the TPBAC/Joint TPBAC (i.e. Template of Letter of Intent of Applicant, Template of Resume of Applicant and other documents as required by DU).

- 5.5.3. DU Board Resolution, Secretary's Certificate or any equivalent document approving the selection process of the two (2) captive customer representatives to the TPBAC/Joint TPBAC.
- 5.5.4. Memorandum of Agreement in case of Aggregated DUs intending to convene a Joint TPBAC.
- 5.5.5. In any case, if clarification or additional documents is deemed necessary, the DU shall have three (3) calendar days to comply, otherwise the DU's application shall be terminated by EVOSS system. Consequently, the DU shall submit again all relevant and necessary documents for the approval of the selection process being applied for."

SECTION 5. Subsection 6.3, Section 6 (*Third Party Auctioneer*) of DC2018-02-0003 is amended to read as follows:

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- 6.3. The DOE shall issue the guidelines for the accreditation of TPA within one hundred twenty (120) calendar days upon effectivity of this Circular.

SECTION 6. Subsections 7.3 until 7.7 of Section 7 (*CSP Observers*) of DC2018-02-0003 shall be amended to read as follows:

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- 7.3. CSP Observers shall not participate in the proceedings and have no right to vote.
- 7.4. Observers shall be given written and email invitations at least seven (7) working days before the date of the procurement stages.
- 7.5. An invitation in writing and e-mail to Observers shall be extended at each of the following stages of the CSP.
 - 7.5.1. Pre-bid Conferences;
 - 7.5.2. Submission and Opening of Bids;
 - 7.5.3. Bid Evaluation;
 - 7.5.4. Post-qualification;
 - 7.5.5. Awarding; and

7.5.6. Contract Signing.

- 7.6. Observers shall be allowed immediate access to the following documents upon their request (a) minutes of TPBAC/TPA meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) video recording of CSP proceedings; (e) opened proposals; (f) draft PSA template; (g) Bid Documents and other related documents.
- 7.7. Observers may submit to the TPBAC/TPA their written comments and recommendations within seven (7) working days from the CSP activity or from receipt of the documentation of the proceedings.
- 7.8. The absence of Observers will not nullify the CSP proceedings; *Provided*, that Observers have been duly invited in writing and e-mail within the prescribed period.”

SECTION 7. Section 8 (*Competitive Selection Process*) of DC2018-02-0003 is revised in the following manner:

“SECTION 8. COMPETITIVE SELECTION PROCESS

A PSA shall be awarded to a Power Supplier that will supply the whole or a portion of the electric power requirements of a DU through a transparent (A) **Competitive Public Bidding**; or (B) **Alternative Mode of Procurement**, to be undertaken by a DU or by Aggregated DUs, subject to the conditions and requirements provided in this Circular.

The DUs shall comply with the standard procedures, documents and forms in the procurement of power supply for their Captive Market as provided in this Circular.

A. COMPETITIVE PUBLIC BIDDING (*CSP Proper*)

8.1 Preparation of Bid Documents

The TWG of the TPBAC/TPA shall prepare the Bid Documents, which shall be composed of the following:

- 8.1.1. The TOR based on the recent and posted PSCP submission shall, at the minimum, contain the following information as provided in **Annex B**;
- 8.1.2. The Invitation to Bid shall, at the minimum, indicate the following:
- 8.1.2.1. Cooperation Period/Contract Year;
- 8.1.2.2. Demand and Energy for CSP;
- 8.1.2.3. Eligibility Requirements;

- 8.1.2.4. Schedule and Deadlines up to the Certificate of Uploading or Notice to Upload (NTU) (NTP); and
- 8.1.2.5. TOR.
- 8.1.3. The Instruction to Bidders, shall contain, at the least, the following provisions:
 - 8.1.3.1. Corporate Profile of the bidders;
 - 8.1.3.2. Technical Proposal's requirements;
 - 8.1.3.3. Financial Proposal's requirements;
 - 8.1.3.4. Method and Criteria for evaluation;
 - 8.1.3.5. Bidding Procedure;
 - 8.1.3.6. Awarding, Signing of Contract, and Notice of Implementation;
 - 8.1.3.7. Acceptable Form of Bid and Performance Securities;
 - 8.1.3.8. Proposed Timelines or Milestones;
 - 8.1.3.9. PSA Template;
 - 8.1.3.10. Notarized Statement attesting to the information submitted for the bid;
 - 8.1.3.11. Protest Mechanism; and
 - 8.1.3.12. Other documents required and mandated by any government agencies.
- 8.2. Review of the TOR, draft Instruction to Bidders, Supplemental Bid Bulletin and other related documents.

The DOE shall review the following prior to the issuance of a Certificate of Uploading or NTU for the publication of Invitation to Bid. In the case of ECs, this shall be submitted to the DOE through the NEA, which shall conduct preliminary review and make its recommendations to the DOE:

- 8.2.1. The TOR, if consistent with the CSP Policy; and
- 8.2.2. Draft Instruction to Bidders, if consistent with the final TOR.

In the event that agreements are made during the pre-bid conference, the DOE shall review the Supplemental Bid Bulletin, revised TOR, and the CSP schedule, if any, prior to the issuance and publication of such bid bulletin.

8.3. Publication and Posting

The TPBAC/TPA shall cause the posting of the Invitation to Bid for the procurement opportunity in accordance with periods specified in this Circular.

8.3.1. The TPBAC/TPA shall cause the posting of the Invitation to Bid for at least fifteen (15) calendar days in the DU's website, if there is any, in the DOE CSP E-based Portal, and in conspicuous places at the office/s of the DU. The TPBAC/TPA shall continuously update the DOE on the status thereof through their respective E-based portals.

8.3.2. The TPBAC/TPA shall likewise ensure that all bid bulletins and related announcements shall be uploaded at the DOE CSP E-based portal.

8.3.3. In cases where the DUs encounter problems in the posting of the necessary pieces of information in the said CSP E-based portals, the DUs shall inform the DOE for assistance in the required posting.

8.3.3.1. Upon issuance of the Certificate of Uploading or NTU, the TOR must be uploaded by the DU in the DOE CSP E-based Portal within twenty-four (24) hours.

8.3.3.2. Upon uploading of the DU's CSP-TOR in the DOE CSP E-based Portal, the DOE shall verify that the uploaded CSP-TOR was given the Certificate of Uploading. After the verification, the DOE shall effect the publication of the DU's CSP-TOR.

8.3.4. The TPBAC/TPA shall also cause the publication of the Invitation to Bid in a newspaper of general circulation once weekly for two (2) consecutive weeks.

8.3.4.1. The TPBAC/TPA may opt to, in addition to the immediately preceding paragraph, publish the Invitation to Bid in one (1) newspaper of local circulation in the region, province, city or municipality indicating the CSP schedules, among other necessary information for the bidders once every week for two (2) consecutive weeks.

8.3.4.2. In addition to publication, the TPBAC/TPA shall exert its best effort to disseminate its Invitation to Bid to all Power Suppliers.

8.4. Pre-Bid Conference

8.4.1. The TPBAC/TPA shall conduct at least one Pre-Bid Conference/s to address the queries of the prospective bidders within seven (7) days after the publication of Invitation to Bid.

8.4.2. The Pre-Bid Conference shall discuss, among other things, the eligibility requirements, the TOR, and the technical, legal and financial components of the PSA to be bid out.

8.4.3. Requests for clarification from prospective bidders may be made during the conduct of the Pre-bid Conference, or in writing to be submitted to the TPBAC/TPA within three (3) calendar days from the Pre-bid Conference.

8.4.4. Decisions of the TPBAC/TPA, clarifying or amending any provision of the TOR or Bidding Documents shall be issued through a Supplemental/Bid Bulletin, at least seven (7) calendar days before the deadline for the submission and receipt of bids and shall be posted in the DU's website, if any, and in the DOE CSP E-based Portal.

8.4.5. Supplemental/Bid Bulletins may be issued in the following circumstances.

8.4.5.1. Request of the prospective Power Suppliers for clarification(s) on, or for an interpretation of any part of the Bid Documents; and

8.4.5.2. Upon the initiative of the TPBAC/TPA for purposes of clarifying or modifying any provision of the Bidding Documents.

Any modification or addition to the Bid Documents shall be identified as an amendment or addendum as the case may be.

8.4.6. If the Supplemental Bid Bulletin(s) will change the substance of the TOR, the TPBAC/TPA shall seek the confirmation of the DU. Thereafter, the DU shall seek the concurrence of the DOE on the Revised TOR.

8.4.7. The TPBAC/TPA shall ensure that all clarifications and queries must be clarified by the issuance of Bid Bulletins, and shall avoid any delay in the conduct of the CSP.

8.5. Bid Evaluation Criteria and Process

8.5.1. The TPBAC/TPA and its TWG of the same shall evaluate the Power Supplier's legal, technical, and financial qualifications based on the criteria indicated in the Bid Documents.

8.6. Submission, Receipt and Opening of Bids.

8.6.1. The Bidders shall be required to submit their bids on or before the deadline stipulated in the Bid Documents and/or in the Supplemental Bid Bulletins.

8.6.2. Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements, and the second shall contain the financial component of the bid.

8.6.3. The TPBAC shall open the bids after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents. The bidders or their duly authorized representatives may attend the opening of bids. The TPBAC shall ensure the integrity, security, and confidentiality of all submitted bids.

In case the bids cannot be opened as scheduled due to justifiable reasons, the TPBAC shall take custody of the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the DU's website, if any, NEA's website for EC and the CSP E-based Portal.

8.6.4. Opening of Bids shall take place in the presence of all qualified bidders and/or their duly authorized representatives and observers, including duly accredited NGOs and consumer organizations.

8.6.5. The TPBAC/TPA shall proceed to determine the lowest calculated bid, using the valuation criteria prescribed in the Bid Documents.

8.6.6. The lowest calculated bid shall undergo a post-qualification process to determine its compliance with all the requirements and conditions, as specified in the TOR and other pertinent bidding documents.

8.6.7. The TPBAC/TPA may delegate to the TWG the conduct of the post-qualification. The TWG of the TPBAC/TPA shall submit the evaluation report to the TPBAC/TPA. The TPBAC/TPA, through a Resolution, shall recommend the award of the contract to the BOD

of the DU within five (5) calendar days from the receipt of the TWG's Resolution.

- 8.7. Within thirty (30) calendar days upon signing of the PSA, the DU and the winning bidder shall jointly file the PSA to the ERC, copy furnished the DOE and NEA, in case of ECs.
- 8.8. Each CSP shall be completed within one hundred eighty (180) calendar days from the time of publication of Invitation to Bid until the filing of the PSA to the ERC.
- 8.9. All expenses incurred in the conduct of the CSP shall be shouldered by the DUs. The DUs may, however, recover these expenses from the costs in the acquisition of the bid documents by prospective bidders.

B. ALTERNATIVE MODE OF PROCUREMENT

As a general rule, the DUs shall adopt the Competitive Public Bidding (*CSP Proper*) prescribed in Section **8 (A)** of this Circular in the procurement of PSAs. However, alternative methods of procurement shall be resorted only to new technology that has yet to be commercially operated in the country upon the effectivity of this Circular.

8.10. Alternative Method of Procurement via Competitive Challenge

This is a three-stage method of procurement as provided for hereunder by Sections 8.10.1 (*Submission, Evaluation and the Acceptance or Rejection of the USP from DUs*), 8.10.2 (*Detailed Negotiations*) and 8.10.3 (*Comparative Challenge*), as follows:

8.10.1. Submission, Evaluation and the Acceptance or Rejection of the Unsolicited Proposal from DUs, as follows:

8.10.1.1. A Power Supplier submits an USP to a DU before any CSP bidding process has started and after the DU's latest and accepted PSPP duly reviewed and approved by the DOE and posted at the DOE CSP E-based Portal;

8.10.1.2. A complete proposal shall contain the following documents:

8.10.1.2.1. Cover Letter indicating the basic information of the USP such as:

8.10.1.2.1.1. Company Profile;

8.10.1.2.1.2. General Description of the Proposal,

8.10.1.2.1.3. Cooperation Period;

8.10.1.2.1.4. Rate offered (PhP/kWh);

- 8.10.1.2.1.5. Capacity;
- 8.10.1.2.1.6. Baseload/ Mid-merit/
Peaking, and;
- 8.10.1.2.1.7 Other relevant information.

8.10.1.2.2. Attachment of relevant company information to include Securities and Exchange Commission registration or the equivalent document from the country of incorporation which includes the Articles of Incorporation and the By Laws, Latest General Information Sheet and Latest Tax Returns;

8.10.1.2.3. Business Case or Concept Plan and Feasibility/Pre-feasibility study, when applicable especially for greenfield power plants;

8.10.1.2.4. General Description of new technology or new concept, whenever applicable; and

8.10.1.2.5. Proposed TOR/draft PSA.

8.10.1.3. The USP shall comply with the following conditions:

8.10.1.3.1. Proposed TOR/draft PSA;

8.10.1.3.2. The proposal is in accordance with the DU's latest and accepted PSCP duly reviewed and approved by the DOE and posted at the DOE CSP E-based Portal;

8.10.1.3.3. There is no on-going CSP, for the same demand requirement of a DU, commencing with the publication of Invitation to Bid by the DU;

8.10.1.3.4. The resulting PSA will not result in over contracting on the part of the DU in terms of both capacity and energy requirements as indicated in the latest and approved DDP, with due consideration to its existing PSAs, PSAs for approval at the ERC, and the ensuing PSA from its on-going CSP activity, if any;

- 8.10.1.3.5. The proposed generation cost must be lower than the lowest ERC approved generation tariff for same or similar technology in comparable area;
 - 8.10.1.3.6. The unsolicited proposal shall result in fair and equitable cost of energy to the captive consumers, and;
 - 8.10.1.3.7. The unsolicited proposal shall exclude any subsidy in the resultant PSA.
- 8.10.1.4. Evaluation, Acceptance Process and Timeline:
- 8.10.1.4.1. The DU shall acknowledge receipt of the USP within seven (7) calendar days upon submission by the Power Supplier;
 - 8.10.1.4.2. The DU, through its TPBAC shall commence the evaluation of the USP pursuant to Sections 8.10.1.2 and 8.10.1.3 hereof within fourteen (14) calendar days from date of acknowledgment. The TPBAC shall conduct a preliminary evaluation on the completeness of the USP pursuant to Section 8.10.1.2 and inquire whether or not the USP meets the requirements pursuant to Section 8.10.1.3 hereof.
 - 8.10.1.4.3. The TPBAC shall complete the evaluation within twenty-one (21) days and submit its recommendation to the Head of the DU;
 - 8.10.1.4.4. The Head of the DU shall approve/accept or reject the USP and forward his recommendation to his BOD in seven (7) days, as the case maybe available, unless he has been pre-authorized, or any approval is not required or within his level of authority. In this light, Power Suppliers are encouraged to secure special power or authority to approve/accept USPs. The BOD acts a collegial body.

8.10.1.4.5. In ten (10) days, the BOD shall approve/reject the USP.

8.10.1.4.6. Within seven (7) days after the BOD approval, the head of the DU shall then either issue the following documents relative to the DU's acceptance or non-acceptance to the USP, as follows:

8.10.1.4.6.1. If the DU accepts, it shall issue a *Certificate of Acceptance* to the Power Supplier. An acceptance, however, shall not bind the DU to enter into the proposed TOR or draft PSA incorporating USP, but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the PSA;

8.10.1.4.6.2. Likewise the DU shall issue a *Declaration* stating that the Power Supplier is the Original Proponent (OP);

8.10.1.4.6.3. In case of non-acceptance, the Power Supplier entity shall be informed of the reasons/grounds for such action; and

8.10.1.4.6.4. The DU shall submit a report to the DOE, duly certified and verified by the evaluators, about the DU's acceptance and declaration of the Power Supplier as the OP, or rejection as the case may be, including a report of the evaluation and all

documents relative thereto.

8.10.2. Detailed Negotiations

The parties shall negotiate the terms and conditions of the PSA seven (7) days after the issuance of the Certificate of Acceptance and shall, at the end, of the negotiations prepare a mutually acceptable TOR and draft PSA.

8.10.2.1. The DU shall review the eligibility and qualification of the proponent pursuant to similar standards provided for in solicited PSA proposals.

8.10.2.2. The DU and the Power Supplier shall negotiate on the *terms and conditions* of the proposed PSA – i.e. legal, technical and financial components. The negotiation shall, as far as practicable, comply with the same process, requirements and conditions as in the case of solicited PSA proposals. The negotiation shall be completed within thirty (30) calendar days upon acceptance by the DU of the proposal or as negotiated by the parties without prejudiced to the basic requirements summed-up by DOE under the rules.

8.10.2.3. After the 30-day negotiation period, the head of the DU shall then either issue the following documents relative to the success or failure of negotiations as, follows:

8.10.2.3.1. If the DU and the Power Supplier negotiated successfully, the parties, in seven (7) days, shall issue a signed *Certification* that an agreement has been reached and both agree to submit the proposal to competitive challenge. The certification shall include that DU finds the Power Supplier eligible to enter into the proposed terms and conditions and that it is the OP;

8.10.2.3.2. Should the parties not agree by the end of the negotiation period, the DU, in seven (7), shall officially reject in writing the Power Supplier stating the grounds thereof. Thereafter, the DU has the option to accept a new proposal/s from other Power Supplier/s, or to pursue the

PSA through competitive selection/
bidding the soonest possible.

8.10.2.4. In fourteen (14) at the end of the thirty (30) day period, the DU shall and submit to DOE the TOR for the PSA including the draft contract for its review. The DOE shall review, pursuant to the same manner done in solicited proposals, and return the TOR/draft contract to the DU in fourteen (14) days indicating its approval, disapproval and comments, as the case may be.

8.10.3. **Competitive Challenge**

8.10.3.1. After it reviews and finds the TOR including the related documents proper, the DOE shall advise the DU to proceed to prepare tender documents (bid documents) to pave the way for the bidding of comparative proposals, the lowest calculated complying bid of which shall serve as the subject of competitive challenge.

8.10.3.1.1. The TPBAC shall prepare, in fourteen (14) days, the bid documents (referred hereto as Comparative Bid Document or CBD) in accordance with provisions set forth in Section 8.1 of this Circular.

8.10.3.1.2. The TPBAC shall comply with the publication and posting requirements, as provided in Section 8.3 of this Circular. The DU shall cause the publication within seven (7) days after the completion of the consolidation of the CBD. The publication must contain all information required in a solicited proposal pursuant to Section 8.1. Bidders must submit comparative proposals in thirty (30) days from publication.

8.10.3.1.3. The TPBAC shall conduct the Pre-Bid Conference in the manner prescribed in Section 8.4 of this Circular. Pre-bid conference shall be conducted seven (7) days after the publication.

8.10.3.2. Evaluation Criteria and Process - The TPBAC shall, in thirty (30) days undergo a qualification and evaluation process of the legal, technical, and

financial requirements submitted by proponents using the criteria indicated in the CBD.

8.10.3.2.1. The lowest calculated complying comparative proposal shall be declared as the winning comparative proposal.

8.10.3.2.2. The DU shall declare the lowest calculated complying bid in fourteen (14) days and shall issue to the owner a Certificate in relation thereto, at the same notifying the OP.

8.10.3.3. In the absence of any specific provision herein in the conduct of the bidding of the comparative proposals, Section 8 of these rules shall supplement the provisions herein provided.

8.10.3.4. If a comparative bid/proposal is lower and compliant as compared to the original proponent, the original proponent shall have the right to match such price proposal within fifteen (15) calendar days from receipt of a notification from the TPBAC of the result of the comparative bid.

8.10.3.4.1. In case, the original proponent fails to match the price proposal of the comparative proponent within the 15-day period, the PSA shall be awarded to the comparative proponent. On the other hand, if the original proponent matches the price proposal of the comparative proponent within the 15-day period, the PSA shall immediately be awarded to the OP.

8.10.3.5. Thirty (30) days after the award, the DU and the winning proponent shall then sign a PSA and jointly submit the same to the ERC, copy furnishing the DOE and NEA, in case of ECs.

8.10.3.6. All costs incurred in preparing and submitting an USP shall be deemed as part of the risks of the proponents and shall not be refunded through pass-on rate to the consumers.

8.10.3.7. In case similar proposals are received after acceptance of the first proposal but before conferment of OP, the DU may either reject all such proposals or subject it to competitive

selection/public bidding. Otherwise, the DU shall evaluate the proposals using a first-in time approach. Under this approach, the first complete proposal is evaluated and decided upon. The second complete proposal will only be entertained if the first one is rejected, or if there is a failure in the negotiation of the first proposal, and so on until an OP is conferred.

SECTION 8. Section 10 (*Compliance to Renewable Energy Law*) of DC2018-02-0003 is amended to read as follows:

“SECTION 10. COMPLIANCE TO RENEWABLE ENERGY LAW

Pursuant to RA No. 9513 or the ‘Renewable Energy (RE) Act of 2008’, DUs, Power Suppliers and Retail Electricity Supplier shall comply with the DOE issuances pertaining to the RE Act.

For clarity and in light of the implementation of the Green Energy Auction Program (GEAP), all compliances with the Renewable Portfolio Standards On-Grid Rules, shall follow the provisions of DC2020-07-0017 (Promulgating the Guidelines Governing the Policy for the Conduct of Green Energy Auction in the Philippines” and its implementing rules, guidelines and procedures).

SECTION 9. Section 12 (*Regulatory Support*) of DC2018-02-0003 is revised to read as follows:

“SECTION 12. REGULATORY SUPPORT

- 12.1. The ERC, in the exercise of its powers and functions under the RA No. 9136, otherwise known as the EPIRA, shall formulate a penalty mechanism and impose appropriate fines and penalties for non-compliance of the provisions of the CSP Guidelines, as amended hereof, by electric power industry participants.
- 12.2. The ERC shall have the power to review and determine whether the parties have complied with the requirements of CSP and shall issue appropriate regulations upon as may be necessary.
- 12.3. The ERC shall develop rules and procedures to address dispute arising from the conduct of the CSP within 120 days upon the effectivity of this Policy.
- 12.4. The ERC shall develop rules and procedures to review and approve PSAs from the outcome of COE-CSP granted by the DOE within 120 days upon the effectivity of this Policy.
- 12.5. The ERC shall provide the PSA Template to be used by electric power industry participants within 120 days upon the effectivity of this Policy.

12.6. The ERC shall ensure that generation facilities owned, operated, and controlled by DU that were funded by grants and donations should not form part of the electricity rate applications by the DUs.

12.7. In the case of ECs, the NEA shall develop rules and procedure to support this Circular within 60 calendar days upon its effectivity.

SECTION 10. TRANSITORY PROVISION

Upon the effectivity of this Policy, all prospective PSAs shall hereafter be procured in accordance with DC2018-02-0003 and this Circular.

All PSAs that have been procured and executed, including those to be filed and pending before the ERC, prior to this Circular and in line with DC2018-02-0003 shall be honored and recognized. All DUs with on-going CSP activities prior to the effectivity of this Circular shall continue to observe the 2018 CSP Policy.

SECTION 11. REPEALING CLAUSE

11.1 Any issuance made by any Government-owned and Controlled Corporations regarding CSP that is inconsistent with this Circular is hereby repealed.

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

11.3 Provisions of DC2018-02-0003 not affected by this Policy shall remain in effect.

SECTION 12. SEPARABILITY CLAUSE

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

SECTION 13. EFFECTIVITY

This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on _____ at Energy Center, Bonifacio Global City, Taguig City.

ALFONSO G. CUSI
Secretary

ANNEX A
MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION

A. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION

1. Letter of Distribution Utility (DU) to the Department of Energy (DOE), requesting for Certificate of Exemption (COE) from the conduct of Competitive Selection Process (CSP);
2. Resolution from the Board of Directors (BOD) of the DU requesting for COE-CSP. At a minimum, the Resolution should indicate the following:
 - (a) Capacity to be procured; and
 - (b) Duration of the Power Supply Agreement (EPSA).
3. Justification for the request of COE-CSP;
4. One (1) year projection of supply-demand profile indicating power shortage in the next twelve (12) months;
5. Distribution or System Impact Study for the existing capacity;
6. Rate Impact of the Emergency Power; and
7. Draft PSA or Terms of Reference (TOR) for the procurement of emergency power supply.

B. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF EXEMPTION – POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION

1. Letter of DU to DOE, requesting for COE-CSP;
2. Resolution from the BOD of the DU requesting for COE-CSP. At a minimum, the Resolution should indicate the following:
 - (a) Capacity to be procured; and
 - (b) Duration of the Contract for the Supply of Electric Energy (CSEE);
3. Letter of DU to PSALM Corporation, requesting provision of power supply; and
4. Letter of PSALM Corporation to DU, granting/approving the request of the DU for the provision of power supply.

ANNEX B

STANDARD TEMPLATE FOR TERMS OF REFERENCE (TOR) (Minimum Terms and Conditions)

A. GENERAL INFORMATION

<p>1 NAME OF UTILITY: _____</p> <p>2. AREA TO BE SERVED:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><input type="checkbox"/> Grid</td> <td style="width: 50%; border: none;"><input type="checkbox"/> Both Grid and Off-Grid</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Off-Grid</td> <td style="border: none;"></td> </tr> </table> <p>3 CURRENT YEAR OF FILING: _____</p>	<input type="checkbox"/> Grid	<input type="checkbox"/> Both Grid and Off-Grid	<input type="checkbox"/> Off-Grid		<p>4. PRE-REQUISITE FOR TOR SUBMISSION</p> <p>DOE Approval of TPBAC Selection _____</p> <p>NEA-Endorsed DDP to DOE (Current Year) _____</p> <p>NEA-Endorsed PSPP to DOE (Current Year) _____</p> <p>NEA issuance of Notice to Proceed (for ECs) _____</p> <p>5. TARGET DATE OF PUBLICATION: _____</p>
<input type="checkbox"/> Grid	<input type="checkbox"/> Both Grid and Off-Grid				
<input type="checkbox"/> Off-Grid					

B. REQUIREMENTS

<p>1. GENERAL SUPPLY DESCRIPTION</p> <p>1.1 Purpose of Procurement</p> <table style="width: 100%; border: none;"> <tr><td style="border: none;"><input type="checkbox"/> As scheduled in the PSPP</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Emergency Power</td></tr> <tr><td style="border: none;"><input type="checkbox"/> For RPS Compliance</td></tr> </table>	<input type="checkbox"/> As scheduled in the PSPP	<input type="checkbox"/> Emergency Power	<input type="checkbox"/> For RPS Compliance	<p>Note: Proposed technology must be consistent with the supply requirements.</p> <p>1.2 Supply Type</p> <table style="width: 100%; border: none;"> <tr><td style="border: none;"><input type="checkbox"/> Firm</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Non-firm</td></tr> </table>	<input type="checkbox"/> Firm	<input type="checkbox"/> Non-firm	<p>1.3 Supply Side</p> <table style="width: 100%; border: none;"> <tr><td style="border: none;"><input type="checkbox"/> Baseload</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Mid-Merit</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Peaking</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Load Following (Non-firm only)</td></tr> <tr><td style="border: none;"><input type="checkbox"/> Escalating Capacity (Non-firm only)</td></tr> </table>	<input type="checkbox"/> Baseload	<input type="checkbox"/> Mid-Merit	<input type="checkbox"/> Peaking	<input type="checkbox"/> Load Following (Non-firm only)	<input type="checkbox"/> Escalating Capacity (Non-firm only)
<input type="checkbox"/> As scheduled in the PSPP												
<input type="checkbox"/> Emergency Power												
<input type="checkbox"/> For RPS Compliance												
<input type="checkbox"/> Firm												
<input type="checkbox"/> Non-firm												
<input type="checkbox"/> Baseload												
<input type="checkbox"/> Mid-Merit												
<input type="checkbox"/> Peaking												
<input type="checkbox"/> Load Following (Non-firm only)												
<input type="checkbox"/> Escalating Capacity (Non-firm only)												
<p>2. TERMS OF SUPPLY SERVICES</p> <p>2.1 Contract Capacity: _____</p> <p>Minimum Energy Off-take (if applicable): _____</p> <p>2.2 Contract Energy: _____</p> <p>2.3 Delivery Period: _____ years</p> <p>2.4. Conditions Precedent to Start of Supply:</p> <p>a. ERC approval of the PSA</p> <p>b. Security Deposit (<i>please state the amount and form of payment</i>) : _____</p>	<p>Note: Terms of supply must be in accordance to the load profiles described in the PSPP.</p> <p>MW/year With Breakdown by Period? <input type="checkbox"/> Yes (attach details as Annex "A") <input type="checkbox"/> No</p> <p>% of Contract capacity per interval based on minimum loading requirements.</p> <p>MWh/year With Breakdown by Period? <input type="checkbox"/> Yes (attach details as Annex "B") <input type="checkbox"/> No</p> <p>Inclusive Dates (Optional): From _____ To _____</p> <p style="text-align: center;">(mm/dd/yyyy) (mm/dd/yyyy)</p>											

c. Other conditions (please specify if any). _____

3. COST AND TARIFF STRUCTURE *Note: Must be consistent with ERC regulations.*

- 3.1 For Capacity-based contract, the bidder shall specify both its levelized **Capacity Payment Offer in PhP/kW/month** and **Energy Payment Offer in PhP/kWh** in its bid proposal. For Energy-based contract, the bidder shall specify its levelized **Energy Payment Offer in PhP/kWh** only.
- 3.2 The Bidder shall provide the detailed calculation of its payment offers including formula and references. All cost items such as capital cost, fuel, and other operation and maintenance costs shall be itemized and classified into Fixed Cost and Variable Cost as may be applicable.
 - o Fixed Cost
 - Capital Cost
 - Fuel
 - o Variable Cost
 - Operation and Maintenance
- 3.3 Bidder shall also specify all other applicable charges incorporated in its payment offers such as connection facilities, wheeling charges, metering, communication equipment, and government taxes or levies.
 - o Applicable Charges
 - Connection Facilities
 - Wheeling Charges
 - Metering
 - Communication Equipment
 - Government Taxes/Levies
- 3.4 Bidder shall specify its **Total Landed Generation Cost in PhP/kWh** covering items 4.2 to 4.3 and shall serve as Financial Bid Price.
- 3.5 Capacity payment shall only be paid when the capacity is available on the particular billing period.

4. PAYMENT MODALITIES

- 4.1 Mode of Payment (check as applicable): Cash Manager's Check Others. Please specify. _____
- 4.2 Currency of Payment: Philippine Pesos
- 4.3 Billing Period: Monthly Quarterly Others. Please specify.
- 4.4 Bidder shall specify its offer of prompt payment discount and other incentives to the DU in its bid proposal.

5. OUTAGE ALLOWANCE

- 5.1 Maximum Allowed Scheduled Outage: _____ days per year. Bidder to specify its plant scheduled outage in its bid proposal.
- 5.2 Maximum Allowed Forced Outage: _____ days per year. Bidder to specify its plant forced outage in its bid proposal.

- 5.3 Total maximum allowed scheduled and unscheduled outages **must not exceed ____ hours (full load equivalent)**.
- 5.4 All Scheduled Outages must be scheduled and declared twelve (12) months in advance.
- 5.5 There will be no carry-over of any unutilized outage allowances from a calendar year on the succeeding years.

6. REPLACEMENT POWER

- 6.1 In case of delay in the COD or any outage beyond the maximum allowance, the Power Supplier shall provide the Replacement Power up to the contracted capacity during the period. If the Power Supplier fails to nominate its replacement power ahead of time, the DU shall procure Replacement Power from other sources at the expense of the Power Supplier.
- 6.2 For on-grid area, if the outage is within the maximum allowance, the cost of Replacement Power at the relevant period shall be paid by the DU based on the WESM prices.
- 6.3 For on-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, the cost of Replacement Power provided by the Power Supplier shall be paid by the DU during the relevant period equal to WESM price or the ERC-approved rate under the PSA, whichever is lower.
- 6.4 For off-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, cost of the Replacement Power shall be paid by the DU during the relevant period equal to the ERC-approved rate under the PSA.
- 6.5 If the Power Supplier cannot deliver Replacement Power, the DU shall charge the Power Supplier during the relevant period using the following formula (please specify):

7. FORCE MAJEURE

- 7.1 The events that shall be deemed as Forced Majeure and analogous circumstances shall be in accordance to DOE CSP Policies.
- 7.2 Arrangements in case of any force majeure shall be agreed upon by parties and shall form part of the PSA.
- 7.3 There will be no payment of any capacity fee in case of outage during any force majeure.

8. GROUNDS FOR CONTRACT TERMINATION **Note: Must be consistent with the PSA.**

- 8.1 Valid grounds for terminations are:

<ul style="list-style-type: none"> a. Event of Default b. Expiration of cooperation period c. Failure to achieve COD d. Mutual agreement by both parties 	<ul style="list-style-type: none"> e. Extended Force Majeure as agreed under the PSA. f. Changes in the circumstances as agreed under the PSA. g. Others, please specify. _____
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- 8.2 Rate deductions made by the ERC shall not be a valid ground for the termination of the contract. DU shall not pay for the said rate reduction or adjustments.

9. LIQUIDATED DAMAGES **Note: Must be consistent with the PSA.**

- 9.1 Liquidated damages in case of default shall be equal to the present value of the Capacity Payment computed on a 365-day basis for the remaining term of the PSA.
- 9.2 The discount rate to be used shall be (please specify): _____

10. REDUCTION OF CONTRACT CAPACITY

Note: Must be consistent with the PSA.

- 10.1 The reduction of contract capacity shall be allowed in case of (please check if applicable):
- Loss of captive customers due to Retail competition and Open Access (for on-grid areas only)
 - Reduction of demand of the DU due to special circumstances beyond its control.
- 10.2 Customer may assign, transfer, designate or allocate its rights and obligations to purchase a portion of Contract it no longer requires to:
- a) Any of its business segments without the prior consent of Power Supplier; or
 - b) Any affiliate or third party subject to the consent of Power Supplier
- 10.3 The consent by the Power Supplier shall not be unreasonably delayed or conditioned at the disadvantage of the DU.
- 10.4 Any reduction shall require approval of the ERC and must comply with applicable rules of competition set by the Government.

11. OBLIGATIONS OF THE DU

Note: Must be consistent with the PSA.

- 11.1 The DU shall provide assistance to the successful bidder in the processing of permits and similar requirements from all national agencies and local government units especially if the resulting PSA involves the construction of a new power plant.

12. DISTRIBUTION UTILITY RESERVE PRICE

- 12.1 The Reserve Price must be DECLARED/PUBLISHED and should be lower than the ERC approved rate
- 12.2 The Reserve Price shall be declared/published in the ITB.
- 12.3 The DU-TPBAC reserves its right to reject offers above the Reserve Price.

13. BIDDER'S QUALIFICATIONS

- 13.1 All forms of business organizations including Joint Ventures are encouraged to participate in the bidding process subject to applicable government licenses and permits.
- 13.2 For bidders using indigenous and RE power plants, the bidder must comply with the constitutional requirement for ownership.
- 13.3 The capacity offer of the bidder must be compliant with all the ownership limitations prescribed under EPIRA.
- 13.4 For new power suppliers, the qualification shall be based on: (i) the experience and competence of its personnel to manage and operate the plant; and, (ii) acceptability of its operational management plan during technical bid evaluation.