

ANGELES ELECTRIC CORPORATION

TERMS OF REFERENCE ON AEC'S COMPETITIVE SELECTION PROCESS (CSP) FOR THE SUPPLY OF RENEWABLE ENERGY FROM ELIGIBLE RENEWABLE ENERGY (RE) RESOURCES

AEC-RPS-CSP-2021-01

(As Amended on 04 November 2021)

1. BACKGROUND

The DOE's *RPS Rules for On-Grid Areas*¹ mandates electric power industry participants to source or produce a specified portion of their electricity requirements from eligible RE resources. In compliance thereof, AEC is going out on a competitive procurement for the supply of renewable energy to its Captive Market from eligible RE resources in accordance with DOE's *Policy for the Competitive Selection Process (CSP) in the Procurement by Distribution Utilities of Power Supply Agreement for the Captive Market*².

2. SCOPE OF COMPETITIVE SELECTION PROCESS

AEC is going out on a *competitive selection process* to procure renewable energy from eligible RE resources to supply its daytime peak hour requirements from 6am to 6pm, in the approximate amount of 35,697,000 kWh/year (97,800 kWh/day average), for a contract term of (ten) 10 years, to commence from 26 March 2023 to 25 March 2033, or upon ERC approval, whichever comes later. **If the ERC approval comes later than 26 March 2023, the contract terms shall be adjusted accordingly.** Annex 3 shows the load profile to be procured through this CSP.

3. TIMETABLE

In compliance with safety protocols amid the pandemic, AEC will conduct its CSP virtually.

| ACTIVITY | DATE |
|--|---|
| Publication and Dissemination of Invitation to Bid (ITB) | 10 & 17 Oct. 2021 |
| Issuance of Bid Documents to Interested Bidders, after: | From 18 Oct. 2021 up to noon of 27 Oct. 2021 |

¹ DOE Department Circular No. DC2017-12-0015

² DOE Department Circular No. DC2018-02-0003

| | |
|---|---|
| 1. Submission of <i>Expression of Interest (EOI)</i> to Bid; and 2. Purchase of Bid Documents | |
| 1 st Pre-Bid Conference (<i>Invitation limited to Interested Bidders who submitted EOI and purchased bid documents</i>) | 21 Oct. 2021, Thursday, 4 PM |
| 2 nd Pre-Bid Conference (<i>if needed</i>) | 28 Oct. 2021, Thursday, 10 AM |
| Submission of Bids Deadline | 25 Nov. 2021, Thursday, 4:00 PM |
| Opening and Qualification of Bids | 26 Nov. 2021, Friday, 2 PM |
| Presentation of Qualified Bids (Schedule to be determined) | 1-3, Dec. 2021 |
| Internal Evaluation of Bids by TPBAC | 6-9 Dec. 2021 |
| Ranking of Bids by TPBAC | 10 Dec. 2021 |
| Contract Negotiation and Post-Qualification of Lowest Competitive Bidder <i>to ensure meeting of minds. If successful, move on to the next stage. If unsuccessful, move on to next lowest competitive bidder.</i> | 13-17, Dec. 2021 |
| Contract Award and Signing | 21 Dec. 2021 |
| Target Joint Pre-Filing of PSA application before ERC | 06 Jan. 2022 |

The Pre-Bid Conference shall be held on 21 Oct. 2021 to commence at 10 AM and to be conducted online thru ZOOM or Microsoft Teams application (MSTeams). ZOOM or MSTeams Meeting Invites shall be forwarded to the e-mail addresses registered through the Expression of Interest Form.

If needed, a second Pre-Bid Conference shall be held on 28 Oct. 2021 following the same schedule and meeting mode mentioned above.

The CSP schedule may be revised by AEC without prior notice. Bidders will be notified promptly of such revision in a Supplemental Bid Bulletin.

Communications must be addressed to the TPBAC Secretariat whose contact details are more particularly described as follows:

Engr. Allan M. Santillan

Secretariat, Third Party Bids and Awards Committee (TPBAC)

c/o Angeles Electric Corporation (AEC)

Don Juan D. Nepomuceno cor. Doña Teresa Avenue

Nepo Center, Angeles City

Email: tpbac.secretariat@angeleselectric.com.ph

4. INSTRUCTIONS ON ELECTRONIC SUBMISSION OF BIDS

- 4.1. Bidders must email their bids with the **Subject:** “[BIDDER NAME]” – Bid Folders” (ex. *Genco Name – Bid Folders*)
- 4.2. Attached to the bidder’s email must be TWO (2) PASSWORD PROTECTED zip files:
 - (a) *One containing, in PDF format, the Eligibility Requirements and Technical Component (First Electronic Folder) of their bid must be named: “[BIDDER NAME] – First Folder.zip” (ex. Genco Name – First Folder.zip); and*
 - (b) *Another containing, in PDF format, the Financial or Price Proposal (Second Folder) of their bid must be named “[BIDDER NAME] – Second Folder.zip” (ex. Genco Name – Second Folder.zip).*
- 4.3. *The passwords to the zip files must NOT be disclosed until requested by the TPBAC during the opening of the bids.*
- 4.4. *The passwords to the two zip files must not be the same.*
- 4.5. *It is the bidder’s responsibility to ensure that the passwords to the zip files are not easily guessed.*
- 4.6. *It is the bidder’s responsibility to ensure that the zip files and their contents are not corrupted.*
- 4.7. *If the bidder’s email contains any sort of malware, the bidder’s bid security shall be forfeited in favor of AEC.*

5. TERMS OF REFERENCE

Below are the minimum contract requirements of AEC for the supply of its RPS Energy requirement for the period 26 March 2023 to 25 March 2033. The terms of reference indicated below are non-negotiable and bidder must meet all requirements of AEC.

| | |
|-----------------|--|
| Contract Term | 10 Years |
| Start of Supply | 26 March 2023, or upon ERC Approval, whichever comes later. If the ERC approval |

| | |
|--|--|
| | comes later than 26 March 2023, the contract terms shall be adjusted accordingly. |
| Nature of Requirement | Wholesale supply of RPS-eligible Renewable Energy (RE) catering to daytime peak load from 6am to 6pm. |
| Contract Energy, kWh per year and/or daily average | <ol style="list-style-type: none"> 1. 35,697,000 kWh/year (97,800 kWh/day average) 2. Take-and-pay scheme. AEC will pay only for the contracted RE produced. 3. The BCQ Nomination (kWh) shall be as per Annex 3, AEC Load Profile to be Procured. The peak demand to be procured under the CSP is 13,000 kW. |
| Nominated Power Plant | <p>Bidder must identify location of the proposed power plant ("Nominated Power Plant")</p> <ol style="list-style-type: none"> 1. If already operating, Nominated Plant must be capable of supplying the Contract Energy to AEC for the required Contract Period beginning on target Commercial Sale Date, after considering energy and capacity already committed to other off takers. 2. If the electricity will be sourced from a new RE plant, Bidder shall state Capacity (kW) to be constructed and the Plant Factor, depending on the technology to be used. 3. Bidder shall specify location of the metering point and connection node of its RE plant. 4. A grid connected RE plant is preferred as any ancillary charges that may be imposed by the grid operator against an embedded RE plant shall be for the sole account of the RE plant supplier/operator. |
| Contract Price, PhP/kWh | <ol style="list-style-type: none"> 1. Bidders shall submit a rate in PhP/kWh for each contract year (<i>See Annex "H" of RE PSA Template</i>). 2. Bidder with the Lowest Complying Calculated Bid shall be ranked first if its proposed contract terms meet the minimum contract terms of AEC. 3. The Lowest Complying Calculated Bid includes: (a) the Average Offered Price per kWh for the term of the PSA, (b) Line Rental, |

| | |
|------------------------------|--|
| | <p>(c) Systems Loss, and (d) Transmission Charge.</p> <p>4. If there is no meeting of the minds with the Lowest Complying Bidder, AEC shall move to the next Lowest Complying Bidder, and so on and so forth.</p> |
| Reserve Price | AEC has established a Reserve Price, or a price cap, upon which the bid price of the qualified bidders cannot exceed. The Reserve Price will not be disclosed to the bidders until the Bid Opening Date. |
| Price Components | <p>Price/kWh at current prices, preferably without indexations, covering the following, as applicable:</p> <ol style="list-style-type: none"> 1. Energy (Fuel) fee, if any; 2. Discount/s, if any; 3. Other proposed terms, if any. |
| Billing & Settlement | <ol style="list-style-type: none"> 1. Wholesale RE Supplier to follow WESM Billing Cycle. 2. Stipulated currency shall be in Philippine Peso. 3. AEC shall settle all power bills in Philippine Peso. |
| Period of Validity of Bids | Bids shall remain valid for One Hundred Eighty (180) days from date of deadline for the submission of bids. |
| Bid Security | Proponent shall post a bid bond in the amount of PhP1 Million to guarantee validity of bid. |
| Power Supply Agreement (PSA) | Pro-forma PSA template supplied with the Bid Package shall be used as primary reference. |
| Performance Bond | Winning Bidder shall post a Performance Bond of PhP 15 Million as a <i>condition precedent</i> to the signing of the PSA. The Performance Bond shall be in the form of Cash, Manager's/Cashier's check from a reputable bank, or a Stand-By Letter of Credit (SBLC) from a reputable bank. The Performance Bond should be valid until May 25, 2023. If an SBLC will be used, it must be callable upon demand without need for clearance or approval from winning bidder. |

| | |
|---|--|
| Penalties for Delay | Winning Bidder shall be penalized PhP5/kWh multiplied by the contract energy for every day of delay from target Commercial Operation Date. |
| Joint Filing to ERC | Winning Bidder undertakes to make a Joint Filing with AEC to ERC for the approval of the RE PSA. |
| Non-fulfilment of RE PSA <i>conditions subsequent</i> as ground/s for PSA Termination | Non-acquisition of requisite permits and agreements (<i>ECC, DAR conversion, NCIP clearance, if applicable, CoC, TSA, etc.</i>); submission of proof of ownership of land, or land lease agreement, where power plant is to locate; and financial closing for the power plant, <i>within one (1) year from signing of the RE PSA</i> , shall constitute grounds for termination of the PSA and forfeiture of the Performance Bond. |

6. CONTENTS OF THE BID DOCUMENTS PACKAGE

The Bid Package are the documents stated below:

- (a) (This) Terms of Reference
- (b) Annex 1. Copy of Publication – Invitation to Bid, EOI Form and NDU Form
- (c) Annex 2. *Pro Forma* RE Power Supply Agreement (PSA)
- (d) Annex 3. AEC Load Profile subject for competitive procurement.
- (e) Annex 4. Form, Bid Proposal – Price per kWh for each Contract Year.
- (f) Annex 5. Undertaking to jointly file with AEC the RE PSA application before ERC

7. CLARIFICATION OF BIDDING DOCUMENTS

Prospective Bidders may request AEC for further information or clarification of the Bidding Documents via email indicated in the Invitation for Bid **not later than 15 November 2021**. AEC will respond in kind to any request for information or clarification of the Bidding Documents received by AEC not later than three (3) days prior to the deadline for submission for Bids. AEC's response will be sent via email to all qualified bidders who have received the bidding documents.

8. AMENDMENT OF BIDDING DOCUMENTS

- 8.1. At any time prior to the deadline for submission of Bids, AEC may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by issuing an addendum.
- 8.2. The addendum shall be part of the Bidding Documents.

9. DOCUMENTS COMPRISING THE BIDS

The Bid prepared by the bidder shall comprise of 2 *electronic folders* with the following components:

- 9.1. **First Folder – (Eligibility Requirements and Technical Component)** – shall contain the following:
 - 9.1.1. **Plant Details:**
 - Nominated Plant Name
 - Location
 - Connection Node
 - Technology
 - Contract Energy per year, kWh
 - Equivalent Contract Capacity, kW
 - Guaranteed/**Historical** Plant Factor
 - 9.1.2. Legal and Technical Qualification Requirements enumerated in Clauses 10.1 and 10.2.
 - 9.1.3. Bid Security described in Clause 12.
- 9.2. **Second Folder – (Financial or Price Proposal)** – shall contain the following:
 - 9.2.1. Financial Qualification Requirements enumerated in Clause 10.3.
 - 9.2.2. Price/Rate in PHP/kWh for each contract year throughout the Required Contract Period beginning on the Target Commercial Sale Date, using Annex 4 – Form, Bid Proposal.
 - 9.2.3. **Line Rental Data** from the node where their plant is connected, to AEC's node (average for the last twelve months). This shall form part of the bid submission which shall be subject for validation of the TWG (e.g. nodal prices data from WESM for the last twelve months signed by authorized signatories from IEMOP).
 - 9.2.4. **Accomplished RE PSA Template and other proposed terms favorable to AEC.**

10. DOCUMENTS ESTABLISHING BIDDERS' QUALIFICATIONS TO PERFORM THE CONTRACT

10.1. Legal Qualification Requirements

- a. A Bidder must be a duly incorporated and validly existing domestic partnership or corporation at least 60% of the capital of which is owned by Filipinos and registered with the Securities and Exchange Commission ("**SEC**").
- b. SEC-registered Articles of Incorporation or Partnership.
- c. Board of Investments (BOI) Certificate of Registration.
- d. Latest General Information Sheet (GIS) filed with SEC.
- e. Latest B.I.R. Certificate of Registration (COR).
- f. Bidder and any of its Affiliates must have no record of Unsatisfactory Performance, unless this qualification is otherwise waived by AEC.
- g. Bidder and any of its Affiliates must not be included in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website (www.worldbank.org/debarr), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium.
- h. Bidder and any of its Affiliates must not have any Outstanding Dispute or pending/outstanding financial obligation/s with AEC, unless this disqualification is waived by AEC. For this purpose, "***Outstanding Dispute***" refers to any pending judicial, administrative or alternative dispute resolution proceeding between the Bidder or any of its Affiliates, on one hand, and AEC, on the other.
- i. Bidder must be authorized under its articles of incorporation, constitutive or charter documents or its equivalent, to engage in the business of power generation and supply of electricity contemplated under the Power Supply Agreement.
- j. Undertaking to jointly file with AEC the RE PSA before ERC.

10.2. Technical Qualification Requirements

- a. Bidder must identify the proposed power plant ("***Nominated Power Plant***"). The *Nominated Plant* must be capable of supplying the Contract Energy to AEC for the required Contract Period beginning on the Target Commercial Sale Date, after considering energy and capacity already committed to other off takers.
- b. In relation to the Nominated Power Plant, Bidder must provide evidence that the Bidder or its direct shareholders is the owner of,

or controls **the output of**, the Nominated Power Plant and has sufficient authority to enter into the power supply agreement with AEC.

- c. *Nominated Power Plant* must be registered as a direct member of the Wholesale Electricity Spot Market ("**WESM**").
- d. *Nominated Power Plant* must be covered by a valid Certificate of Compliance ("**COC**") from the Energy Regulatory Commission ("**ERC**").

10.3. **Financial Qualification Requirements**

- a. Bidder must show satisfactory evidence that it has the financial capacity to fulfill its obligations towards AEC. This requirement may be complied by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent. As evidence thereof, Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent must submit its audited financial statements for the last **two (2) years** (the latest of which must not be earlier than for the year ending 31 December 2020), recent quarterly financial statements.
- b. An "*Affiliate*" means a corporation or other juridical entity effectively Controlled by or Controlling the Bidder or associated with the Bidder under common ownership and Control. "*Ultimate Parent*" means the corporation or other juridical entity that has Control over the Bidder or over any of its direct shareholders that have Controlling interest.

10.4. **Qualification Documents for Submission. For clarity, the following shall comprise the Qualification Documents:**

- a. Bid Security per Clause 12
- b. Scanned copy of:
 - i. Participation Fee Official Receipt
 - ii. Expression of Interest, and
 - iii. Notarized copy of Non-Disclosure Undertaking
 - iv. Copy of Expanded Withholding Tax Certificate
- c. SEC Registration
- d. Articles of Incorporation
- e. Latest General Information Sheet (GIS) filed with SEC
- f. LGU Permits
- g. BIR Certificate of Registration (COR)
- h. BOI Certificate of Registration
- i. Last 2 years Audited Financial Statements stamped "*Received*" by the BIR or its duly accredited and authorized institutions, for the

- immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities.
- j. Evidence that Bidder or its direct shareholders is the owner of, and Controls, the Nominated Power Plant and has sufficient authority to enter into a power supply agreement with AEC.
 - k. If the Nominated Plant is existing and operating:
 - i. Plant Description: Location, Connection Node, RE Technology, Installed Capacity and Plant Factor
 - ii. WESM Registration of the Nominated RE Plant
 - iii. Certificate of Compliance ("COC") of the Nominated Plant
 - l. If the Nominated Plant is new or to be constructed:
 - i. Description of the Proposed Plant: Location, Connection Node, RE Technology, Installed Capacity and Plant Factor
 - ii. Copies of available Permits and Licenses e.g. Environmental Compliance Certificate ("ECC"), DAR Conversion, NCIP clearance, if applicable, etc.;
 - iii. Evidence of Control of Plant Location/Land: Proof of Ownership of Land (TCT, Tax Dec., etc.), Proof of Ownership of Land, Land Lease Agreement or Option to Lease, where power plant is to locate; and
 - iv. Project Milestones: Financial Closing Date, Schedule of Plant Construction, and Testing & Commissioning.
- 10.5. Qualified bidder or its duly authorized representative shall certify under oath that each of the documents submitted in satisfaction of the eligibility requirements are based on authentic documents of the bidding corporation/partnership, and that they are a true and faithful reproduction of the originals.

11. CURRENCIES OF BID AND PAYMENT

Contract price and power bills shall be denominated in Philippine currency.

12. BID SECURITY

- a) Bidder shall furnish, as part of its Qualification Documents, a bid security. The **Bid Security** shall be in the form of a manager's check issued by a reputable bank payable to **Angeles Electric Corporation**, in the amount of **One Million Pesos (PHP1,000,000.00)**, (the "Bid Security"), valid for **180 days** from date of Bid Submission Deadline.

The Manager's Check shall be delivered to AEC on or before the deadline for the submission of bids addressed to the **TPBAC Secretariat** at AEC's

main office located at *Don Juan D. Nepomuceno corner Doña Teresa Avenue, Nepo Center, Angeles City.*

- b) Any bid not accompanied by a bid security shall be rejected by the TPBAC for being non-responsive.
- c) The bid securities of unsuccessful bidders will be returned as promptly as possible not later than 30 days from Contract Signing of RE PSA.
- d) The bid security of the successful bidder will be returned when the bidder has signed the Power Supply Agreement and posted the Performance Bond.
- e) The bid security **shall** be forfeited if the bidder withdraws its bid during the period of bid validity period; or in the case of a successful bidder, withdraws its bid or fails in any of its undertaking in its bid within the specified time limit.

13. PERIOD OF VALIDITY OF BIDS

- a) Bids shall remain valid for One Hundred Eighty (180) days from date of deadline of submission of bids prescribed by AEC.
- b) This notwithstanding, AEC may solicit bidder's consent to an extension of the period of bid validity. The request and the response thereto shall be made in writing or email. If bidder agrees to the extension request, the validity of the bid security provided under Clause 16 (Late Bids) shall also be correspondingly extended. A bidder may refuse the request without forfeiting its bid security. A bidder granting the request will not be required or permitted to modify its Bid.

14. ALTERNATIVE BIDS

Alternative Bids **more onerous to AEC than the terms provided in the RE PSA template** will not be considered. **However, bidders may propose terms more favorable to AEC than that provided in the RE PSA template.**

15. DEADLINE FOR SUBMISSIONS OF BIDS

- 15.1 Bids must be received by AEC's TPBAC Secretariat at the designated email address on or before 4PM of the date of Deadline for Submission of Bids.

- 15.2 AEC may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with Clause 8; in which case, all rights and obligations of AEC and Bidders previously subject to the deadline will thereafter be subject to the new deadline as extended.

16. LATE BIDS

Any Bid received by AEC after the deadline for submission of Bids prescribed by AEC will be declared **"Late" and rejected and shall be returned unopened to the bidder.**

17. MODIFICATION AND WITHDRAWAL OF BIDS

- 17.1. The bidder may modify or withdraw its Bids after the Bid's submission; provided, that written notice of the modification or withdrawal is received by AEC prior to the deadline for the submission of Bids.
- 17.2. The bidder's modification or withdrawal notice shall be sent via email with markings: **"MODIFICATION"** or **"WITHDRAWAL"**, as appropriate.
- 17.3. No Bid may be modified after the lapse of deadline for submission of Bids.
- 17.4. No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified in Clause **13 (a)**.

18. OPENING OF BIDS

- 18.1. TPBAC shall commence the opening of bids via video conference on 26 November 2021 at 2 PM.
- 18.2. TPBAC shall open the Bids with representatives from DOE and ERC as invited Observers. All members of TPBAC or their duly authorized representatives who are virtually present during bid opening, shall affix their electronic initials on each and every page of all bids received and opened.

- 18.3. The bidders' names, modifications, bid withdrawals, and the presence or absence of the requisite bid security, and such other details as AEC may consider appropriate will be announced and recorded.
- 18.4. If required, each bidder shall be asked to make an expository presentation of its bid prices, all discounts offered, and other services **during the scheduled individual presentation of bids**.
- 18.5. Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid will result in the forfeiture of the bid security pursuant to Clause **12 (e)**.

19. PROCESS TO BE CONFIDENTIAL

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for award of a contract shall not be disclosed to other bidders or any other persons not officially concerned with such process during the bidding. Any efforts by a bidder to influence the AEC's processing of Bids or award decisions may result in the rejection of the bidder's Bid.

20. CLARIFICATIONS OF BIDS

To assist in the examination, evaluation, and comparison of Bids, AEC may opt to ask bidder for clarification of its Bid. All responses to request for clarification shall be in writing, and no change in the price or substance of the Bid shall be sought, offered or permitted.

21. PRELIMINARY EXAMINATION OF BIDS

- 21.1. TPBAC shall open the First Electronic Folder of qualified bidders to determine each bidder's compliance with the documents required to be submitted for the first component of the bid. For this purpose, TPBAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the first bid Folder, using a non-discretionary **"pass/fail"** criteria, as stated in the Invitation to Bid (ITB) and the **Terms of Reference (TOR)**. If a bidder submitted the required documents, it shall be rated **"passed"** for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered **"failed"** for the particular requirement concerned. In case one or more of the above required

documents in the first Folder of a particular bid is missing, incomplete, or patently insufficient, the TPBAC shall rate the bid concerned as **"failed"** and immediately return to the bidder concerned its second bid folder unopened. Otherwise, TPBAC shall rate the said first bid Folder as **"passed"**.

- 21.2. Immediately after determining compliance with the requirements in the first Folder, TPBAC shall forthwith open the Second Electronic Folder of each remaining qualified bidder whose first bid Folder was rated **"passed."** The second electronic folder of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second Folder of a particular bid is missing, incomplete or patently insufficient, TPBAC shall rate the bid concerned as **"failed."** Only bids determined to contain all the bid requirements for both components shall be rated **"passed"** and shall proceed to be considered for evaluation.

22. **BID EVALUATION**

Bids who have qualified will be ranked based on their Lowest Calculated Bid. The **Lowest Calculated Bid** includes:

- a. The Average Offered Price per kWh for the term of the PSA;
- b. Discounts, if any;
- c. Line Rental, if any;
- d. Systems Loss, if any, and;
- e. Transmission Charge, if any.

Contract negotiations will take place with the Lowest Calculated Bid. If there is meeting of the minds on the terms and conditions of the RE PSA, the Contract will be awarded to that Lowest Calculated Bid. If there is no meeting of the minds, contract negotiations will move on to the next Lowest Calculated Bid until a meeting of the minds is reached between the parties.

23. **POST QUALIFICATION**

The Lowest Calculated Bid shall undergo post-qualification to determine whether the bidder concerned complies with all the requirements and conditions specified in the Bidding documents. The post qualification shall verify, validate and ascertain all statements and documents submitted by the Bidder with the Lowest Calculated Bid. If the Lowest Calculated Bid does not meet the post-qualification requirements, contract negotiations will move on to the next Lowest Calculated Bid until the post-qualification requirements are satisfactorily met.

24. AEC RIGHTS

- 24.1 AEC reserves the right to accept or reject any Bid and to annul the bidding process and reject all Bids at any time prior to Contract Award, without incurring any liability to the affected bidder or bidders as per Section 41 of the IRR-A (Reservation Clause) of R.A. 9184.
- 24.2 To amend, revise, modify or clarify the CSP through the issuance of a Supplemental Bid Bulletin at any time not later than one (1) week prior to date of Deadline for Submission of Bids.
- 24.3 Modify the timetable or any schedule if necessary.
- 24.4 To annul and declare a failure of the competitive selection process and reject all bids at any time prior to contract award without incurring any liability to the affected bidders or any obligation to inform the bidder/s of the ground of action.
- 24.5 AEC shall not be liable nor shall assume any responsibility regarding erroneous interpretations or conclusions of prospective bidders out of the data furnished by the AEC.

25. SUPPLEMENTAL BID BULLETIN

Any amendment, revision, modification or clarification shall be made through supplemental bid bulletin copies of which will be made available to all qualified bidders.

A Supplemental Bid Bulletin shall be sent to the bidders' registered email address. All bidders must acknowledge receipt of Supplemental Bid Bulletin via email.

Issuance of Supplemental Bid Bulletin will be at least (7) working days while bidders are allowed to request information or clarification not later than **ten (10)** days prior to the deadline of submission of bids.

It shall be the responsibility of all bidders to inquire and secure any such Supplemental Bid Bulletin. Failure of the bidders to secure any of the supplemental bid bulletin shall constitute a waiver of its/their rights to be informed of the contents thereof.

26. RESPONSIBILITY OF BIDDERS

Bidder must carefully examine the Bid Package, including the Procedures and Terms of Reference, and any Supplemental Bid Bulletins that may be issued, and fully inform themselves of all conditions and matters that could affect their Bid in any way.

27. FAILURE OF BIDDING

The TPBAC shall declare the bidding a failure when:

- a. Only one (1) bidder submits a bid on the Bid Submission Deadline
- b. All except one (1) bidder withdraws its bid prior to Bid Submission Deadline.
- c. All the First Folders of the bids submitted were rated **"failed"**
- d. All the Second Folders of the bids submitted were rated **"failed"**
- e. Winning bidder refuses to accept the award or enter into an RE PSA with AEC or refuses to jointly file with AEC the RE PSA before ERC, **and only one bidder is left to negotiate with AEC.**

In case a failure of bidding is declared, AEC shall rebid the RE power supply procurement *under the same or modified terms and conditions*, as the case may be. If a failure of bidding is again declared, AEC may enter into a negotiated RE Power Supply Agreement with any of the qualified bidders.

28. NOTICE OF AWARD

- 28.1. After the AEC's Board of Directors (BOD) has approved the selection of the winning bid, AEC will notify the successful bidder in writing that its Bid has been accepted.
- 28.2. Winning bidder shall acknowledge receipt of the notice and sign its conformity to the Notice of Award to signify its acceptance of the notice within seven (7) days from notice.

29. SIGNING OF CONTRACT

Winning bidder or its duly authorized representative shall undertake to comply with all the remaining documentary requirements as *conditions subsequent* to the RE PSA.

30. PROTEST MECHANISM

- 30.1. To question a decision of the TPBAC, a Bidder may file a written request for reconsideration within three (3) calendar days from receipt of written notice or verbal notification. The TPBAC shall decide on the request for reconsideration within seven (7) days from receipt thereof.
- 30.2. If the request for reconsideration is denied, decisions of the TPBAC may be protested in writing to the AEC's Board of Directors within seven (7) days upon receipt of the resolution denying its request for reconsideration, following the steps below:
 - a. Bidder shall file a **Verified Position Paper** containing the following information/documents:
 - i. Name of Bidder and Address;
 - ii. Name of Project or Bidding;
 - iii. Brief Statement of Facts;
 - iv. Issue to be resolved and other matters/information relevant to the resolution of the protest.
 - b. Deposit of a non-refundable Protest Fee of One Hundred Thousand Pesos (PhP 100,000.00) to a designated bank account of AEC.
- 30.3. An unverified Position Paper shall be considered unsigned and produces no legal effect, and non-payment of the Protest Fee will result to the outright dismissal of the protest.
- 30.4. Within thirty (30) calendar days from receipt thereof, the AEC Board, constituting a quorum, shall resolve the protest. The Board's resolution resolving the protest ***shall be final and unappealable.***

31. PERIOD OF ACTION ON PROCUREMENT ACTIVITIES

The procurement process from the **Publication** of the ***Invitation to Bid*** up to the award of contract shall not exceed six (6) months. **All members of the TPBAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the head of the procuring entity in order to complete the entire procurement process at the earliest possible time.**

32. JOINT FILING OF PSA APPLICATION FOR ERC APPROVAL

Successful bidder unconditionally binds itself to jointly file with the AEC the application for approval of the Power Supply Agreement (PSA) before the Energy Regulatory Commission (ERC).



RANULFO M. OCAMPO

Chairman

AEC Third Party Bids and Awards Committee (TPBAC)

ANNEX 3
BCQ Nomination *

| HOUR OF DAY | Trading Interval | kWh |
|--------------------|------------------|---------------|
| 1:00am | 00:00 – 01:00 | |
| 2:00am | 01:00 – 02:00 | |
| 3:00am | 02:00 – 03:00 | |
| 4:00am | 03:00 – 04:00 | |
| 5:00am | 04:00 – 05:00 | |
| 6:00am | 05:00 – 06:00 | 20 |
| 7:00am | 06:00 – 07:00 | 1,400 |
| 8:00am | 07:00 – 08:00 | 4,900 |
| 9:00am | 08:00 – 09:00 | 8,200 |
| 10:00am | 09:00 – 10:00 | 11,020 |
| 11:00am | 10:00 – 11:00 | 13,000 |
| 12:00pm | 11:00 – 12:00 | 13,000 |
| 1:00pm | 12:00 – 13:00 | 13,000 |
| 2:00pm | 13:00 – 14:00 | 11,560 |
| 3:00pm | 14:00 – 15:00 | 9,800 |
| 4:00pm | 15:00 – 16:00 | 6,600 |
| 5:00pm | 16:00 – 17:00 | 4,100 |
| 6:00pm | 17:00 – 18:00 | 1,200 |
| 7:00pm | 18:00 – 19:00 | |
| 8:00pm | 19:00 – 20:00 | |
| 9:00pm | 20:00 – 21:00 | |
| 10:00pm | 21:00 – 22:00 | |
| 11:00pm | 22:00 – 23:00 | |
| 12:00am | 23:00 – 00:00 | |
| DAILY TOTAL | | 97,800 |

*Note:

AEC can opt to nominate a BCQ higher than the quantities specified in the above Table; *Provided*, that AEC's nomination is done in accordance with a Nomination Protocol agreed upon by the contracting parties and specified in the PSA; *Provided Further*, that the nomination does not exceed **107%** of the **Total kWh/day**. For avoidance of doubt, all BCQ shall be paid at the Purchase Price.