



**BID BULLETIN NO. 007  
SERIES OF 2020**

**COMPETITIVE SELECTION PROCESS (CSP) BY FIRST BAY POWER CORPORATION FOR THE  
SUPPLY OF TEN MEGAWATTS (10MW) WITHIN ITS FRANCHISE AREA"**

This Bid Bulletin No.007 is being issued to clarify/update the responses under Bid Bulletin No. 003 which was released dated 19 August 2020.

**TERMS OF REFERENCE**

<b>Page no./Subject</b>	<b>Queries / Clarifications / Comments</b>	<b>TPBAC Response</b>
Page 3 No. 11 Outage Allowance	Is FBPC open to consider allowing the supplier to propose its own outage allocation as long as it would not exceed the total number of outage hours stated in the TOR and ITB?	Yes. The Bid Proposal Form allows the Bidder to propose the outage allowance.  Yes, the Bidder may offer its own allocation as long as it does not exceed 720 hours scheduled and 360 hours unscheduled outages. For the avoidance of doubt, the allocations allowed for each form of outage are not interchangeable, binding and the Bidder cannot reallocate unused scheduled/unscheduled outages to the other nor carry it over to the next contract year.

**INSTRUCTION TO BIDDERS**

<b>Page no./Subject</b>	<b>Queries / Clarifications / Comments</b>	<b>TPBAC Response</b>
Page 2 <b><u>Eligible Bidders</u></b>  1. The Bidding is open to all Generation Companies in Luzon who can meet the minimum requirements of FBPC as specified in the attached TOR	In the draft PSA, supply may come from, among others, <i>power plant it (the Bidder) owns and/or operates or any of those that is owned/operated by its affiliates, the WESM, or any other third party supplier xxx (4.2 PSA)</i> The PSA recognizes that the Bidder, even if it does not own a power plant, may supply the electricity requirements exclusively from the WESM, or even from other third-party suppliers. May we suggest rephrasing item #1 under Eligible Bidders of Page 2 of the ITB, to capture the intention under the PSA, and to allow supply by the Bidder from the WESM or even third-party suppliers. We propose the paragraph to read as follows:	The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.  The TPBAC decides to maintain the provision as agreed with the DU.

	<p>“The Bidding is open to all Generation Companies in Luzon Bidders in Luzon who can meet the minimum requirements of FBPC as specified in the attached TOR, and that owns and/or operates Power Plants, or any of Power Plants that is owned/operated by its affiliates, is a direct member of the WESM, or is an Offtaker of the output of any other third party supplier.</p>	
<p>Page 4 Bidding Summary</p>	<p>Further, we would like to clarify the rationale behind limiting the levelized horizon for the bid price computation to only 5 years. To be consistent with the PSA cooperation period, we suggest to set the levelized price horizon to 10 years to ensure that FBPC will be able to evaluate the full extent of how escalating rate components will affect the bid price offers. This evaluation process is consistent to other CSPs conducted by DUs in the past</p>	<p>The 5-year evaluation period is based on reliable data from the sources specified.</p> <p>The TPBAC wishes to clarify that the request to cover the 10-year duration for the LCOE has been accepted. Hence all related provisions in the evaluation were also modified accordingly.</p>
	<p>Further, in connection to the suggestion to set the levelized horizon to 10 years, we suggest the Table 8.12 to be supplemented of the monthly contracted energy up to 2030</p>	<p>The 5-year evaluation period is based on reliable data from the sources specified.</p> <p>The TPBAC wishes to clarify that the request to cover the 10-year duration for the LCOE has been accepted. Hence all related provisions in the evaluation were also modified accordingly.</p>
<p>Page 10 Bid Submission</p>	<p>TOR states bid submission is at FBPC Building. We would like to clarify where should the bid be submitted?</p>	<p>The submission will be at Bauan Plaza Hotel located at J.P. Rizal, cor. Kapitan Ponso Street, Poblacion 2, Bauan, Batangas.</p>
<p>Page 11 Envelope 1: (x)</p>	<p>As per IRR of RA 1984, can we confirm that we will use this formula for computing the NFCC  <math display="block">NFCC = [(Current\ assets\ minus\ current\ liabilities) (15)]\ minus\ the\ value\ of\ all\ outstanding\ or\ uncompleted\ portions\ of\ the\ projects\ under\ ongoing\ contracts,\ including\ awarded\ contracts\ yet\ to\ be\ started,\ coinciding\ with\ the\ contract\ to\ be\ bid.</math></p>	<p>The TPBAC wishes to clarify that the computation for NFCC shall be based on the guidelines specified in the 2016 IRR of RA 9184</p>
<p>Page 11 Envelope 1 - Item v, vii, xi</p>	<p>Will the TPBAC provide templates for these certifications?</p>	<p>Yes, the TPBAC will issue guides but Bidder may use their own language. Only the Annexes are not supposed to be modified.</p>

<p>Page 12 Envelope 2 - Item vii</p>	<p>Can the past customer referred to under this requirement be a customer who decided to renew its PSA with the Bidder or is it strictly for a Bidder whose PSA has already expired?</p>	<p>No. This should be a customer who is no longer contracted with the Bidder.</p> <p>Due to the imposition of Community Quarantines, Bidders will be allowed to submit a scanned copy of the document provided that the printed copy is signed by the Authorized Representative.</p>
<p>Page 13 &amp; 14 Main Bid Envelope + Other Envelopes</p>	<p>TOR states Bid Opening is on August 27, 2020. Which date should we follow for the label on the envelopes?</p>	<p>September 4 shall be the correct date on the envelope.</p>
<p>Page 15 Format of Submission of Bids</p> <p>The following instructions shall apply to the <b>electronic copies</b> of Bids:</p>	<p>May we clarify where the electronic copy of the Bid will be saved (USB or CD), and where (in what envelope) in the Hard copy of the submission will this be inserted?</p> <p>Or will the electronic copy of the Bid be sent through electronic mail with ZIP files or with a link to a cloud storage (dropbox, onedrive, google drive).</p>	<p>The TPBAC wishes to clarify that as stated in the ITB, electronic copies of the bid shall form part of envelope 2 and submitted in a flash drive. The electronic copy referred in this response which is to be submitted in a zip file is the electronic copy of ALL documents submitted.</p>
	<p>We respectfully suggest for FBPC to consider bidder's proposed remedy provisions in the PSA to address this item.</p> <p>Bid Validity</p> <p>1. Bids shall remain valid for the duration of the supply period. Except for conditions specified in the resulting Power Supply Agreement related to Change in Law or Change in Circumstances of the Bidder, Winning Bidder shall not be allowed to modify its price structure or offered price in the entire duration of the PSA.</p> <p>2. Likewise, Bidders shall not be allowed to modify its Bid, specifically the winning Bid Price, for reason of delay in the delivery of the supply or the issuance of a Provisional Authority (PA) of the ERC.</p>	<p>The TPBAC will look into it.</p> <p>The TPBAC decides to maintain the provision as agreed with the DU.</p>

## POWER SUPPLY AGREEMENT

Page no./Subject	Queries / Clarifications / Comments	TPBAC Response
Page 4	<p>Suggested Corrections:</p> <p>LINE RENTAL refers to the charge applied per interval for the difference between the Ex-Ante Nodal Prices of Energy at the <del>Delivery</del> <b>Receiving</b> Node and less the ExAnte Nodal Prices of Energy at the Delivery Point <b>Node</b>.</p> <p>ADDITIONAL ENERGY CHARGE refers to the hourly WESM Ex-Ante Price <b>at the Delivery Node</b> multiplied by the difference between the actual consumption of FBPC and the Maximum Contract Energy for the Billing Period in case the actual consumption of FBPC is beyond the Maximum Contract Energy of FBPC for the Billing Period.</p>	<p>The TPBAC shall discuss this with the DU and issue a Bid-Bulletin pertaining to this query.</p> <p><b>Please see revised PSA.</b></p>
Page 9 Billing and Payment	<p>Same comment above on the charging of Additional Energy Charge</p>	<p>The TPBAC shall discuss this with the DU and issue a Bid-Bulletin pertaining to this query.</p> <p><b>Please see revised PSA.</b></p>
Page 11  Force Majeure	<p>May we suggest adding another event of Force Majeure especially when the WESM is not operating. Delivery of electricity will be impossible in this situation.</p> <p>Additional provision to read: 8.1.11 Non-operation or suspension of the WESM.</p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p> <p><b>The TPBAC decides to maintain the provision of the PSA.</b></p>
Page 12  Article 8 Force Majeure	<p>• Suggest to include the following in Section 8.2: “(i) mechanical and electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained (whether or not by such Party); (ii) the Seller finding another market for the Product at a price greater than the Contract Price; (iii) the Buyer having the opportunity to buy the Product at a price lower than the Contract Price; (iv) the Buyer losing its markets; (v) the Buyer’s inability economically to use or resell the Product purchased hereunder; and, (vi) without prejudice to Section 3.5, the Buyer’s inability to use or receive the Product as a result of a failure by a Transmission Utility to perform its obligations under a relevant Transmission Agreement.”</p>	<p>The TPBAC only accepts the following as agreed with the DU:</p> <p>(i) mechanical and electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained (whether or not by such Party); and <b>(ii) the Seller finding another market for the Product at a price greater than the Contract Price;</b></p>

	<p>Suggest to include the following provisions:</p> <p>“The Claiming Party shall always attempt to remedy the Force Majeure with all reasonable dispatch. However, if the duration of any Force Majeure event exceeds or is expected by the Claiming Party to exceed one hundred eighty (180) days, then the Parties shall meet and discuss any appropriate action required with the objective of maintaining, to the extent feasible, the rights and obligations of the Parties under this Agreement. If any Force Majeure exceeds three hundred sixty (360) days, then this Agreement shall be terminated, by notice of either Party delivered to the other Party within five (5) days after the end of such three hundred sixty (360) day period. If any Force Majeure is expected by the Claiming Party to exceed three hundred sixty (360) days then the Claiming Party may give notice to the other Party at any time of the Claiming Party’s desire to terminate this Agreement. The nonClaiming Party shall notify the Claiming Party, within ten (10) days of receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice; or (2) its disagreement with the Claiming Party’s expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Article IX. For the avoidance of doubt, the Scheduled Termination Date shall be extended, day for day, for the duration of any Force Majeure event.”</p> <p><b>Suggest to include the provision on Transmission Failure.</b></p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p> <p>The TPBAC decides to maintain the provision of the PSA.</p>
<p>Page 13</p> <p>ARTICLE 9: INDEMNIFICATION AND LIABILITY</p> <p>9.1 Each party shall indemnify, defend, and hold harmless the other party, from and against all claims, liability, damages, or suits of all kinds made against or suffered by the other Party for any loss of profits or consequential losses or damages that arise out of or is in any manner connected with the performance of its obligation under this PSA except to the extent such loss or damage is attributable to the gross negligence or willful misconduct of, or material breach of this PSA by the other Party or any of its subcontractors, employees, directors, agents or shareholders, or the failure of the other party or any of its subcontractors, employees, directors, agents or shareholders to take reasonable steps in mitigation thereof.</p>	<p>Suggest to restate as follows:</p> <p>“Limitation of Remedies, Liabilities, and Damages. Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor’s liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor’s liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, quasi-delict or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine or obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.”</p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p> <p>The TPBAC decides to maintain the provision of the PSA.</p>

<p>Page 15</p> <p style="text-align: center;">Article 11 Representations, Warranties, and Covenants</p> <p>11.2 Assignability. Neither Party shall assign any of its rights or obligations under this PSA, unless the express, written consent of FBPC is obtained at least ninety (90) calendar days prior to the proposed date of assignment.</p>	<p>Proposed amendment to the assignment provision</p> <p>“Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, the Seller, with notice to the Buyer but without its consent, may: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds in respect hereof in connection with any financing or other financial arrangements wherein the lenders, subject to the terms and conditions of the financing documents, shall have the right to exercise the Sellers’s rights and obligations hereunder, and in such case, the Buyer agrees to enter into an acknowledgement and consent with the collateral agent as to the foregoing substantially in the form set forth in Annex C, or (ii) transfer or assign this Agreement to any Affiliate of the Seller or to any entity organized as the Project company; provided, further however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, and upon any such assumption pursuant to (ii) above, the assignor shall be relieved of any further liability hereunder to the maximum extent permitted by law.”</p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p> <p style="color: red;">The TPBAC decides to maintain the provision of the PSA.</p>
	<ul style="list-style-type: none"> <li>• Suggest to include FCPA provisions:</li> </ul> <p>“U.S. Foreign Corrupt Practices Act. The Parties agree to comply with the provisions of the United States Public Law 95213, the Foreign Corrupt Practices Act of 1977, and any amendments thereto (the “FCPA”). The Parties specifically understand and agree that they shall not, contrary to the prohibitions set forth in the FCPA, make any offer, payment, promise to pay or authorization of the payment of any money, or make any offer, gift, promise to give, or authorization of the giving of anything of value, to any government official, any political party or official thereof, any candidate for political office, any official of any public organization, or any other person associated with the Buyer or its executives or officers related in any way with the transactions contemplated by this Agreement.”</p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p> <p style="color: red;">The TPBAC decides to maintain the provision of the PSA.</p>
<p>Page 16</p> <p style="text-align: center;"><b>ARTICLE 12: CONFIDENTIALITY</b></p>	<p><b><i>Suggest to include standard DPA provisions:</i></b></p> <p>"Data Privacy. The Supplier shall comply with the requirements under the Data Privacy Act of 2012, and such rules, orders, and regulations as may be issued by the National Privacy Commission (“NPC”) in relation to the processing and possession of Personal Information and/or Sensitive Personal Information (as such terms are defined in the Data Privacy Act of 2012) comprising the Data. The Supplier exercise of the rights of data subjects under the Data Privacy Act of 2012.</p>	<p>The TPBAC shall discuss this with the DU and issue a bid bulletin pertaining to this query.</p>



<p>12.1 Each Party agrees that it, its employees, officers, directors, and agents will hold in confidence all information, documentation, or data containing Confidential Information disclosed to it by the Disclosing Party, will not reproduce, copy, or disclose any Confidential information to any third party, and will not use Confidential Information or any part thereof without the other Party's prior written approval; provided, that Confidential Information may be disclosed to: (i) a Government Authority required pursuant to a judicial order, notice or mandated by Applicable Law; and (ii) financial institutions, bona fide potential investors, consultants, contractors and legal advisors whose duties reasonably require such disclosure, provided that, except for a bona fide disclosure to independent legal advisors, such other party shall first have agreed not to disclose the relevant Confidential Information to any other person for any purposes whatsoever.</p>	<p>"Data" means the contract files, materials and other information in physical, electronic or any other form pertaining to the Services, as communicated and provided to the Supplier by BUYER. Data shall include All Personal Information and Sensitive Personal Information as defined in the Data Privacy Act of 2012, pertaining to BUYER's personnel or to any third party whose Personal Information and/or Sensitive Personal Information as disclosed by BUYER to the Supplier in accordance with this Agreement.</p> <p>5.17.1 The Supplier shall ensure that only authorized employee shall process or have access to the Data. Confidentiality obligations shall be imposed to such employees evidenced by a written confidentiality agreement which shall survive the term of employment of the employee.</p> <p>5.17.2 The Supplier shall be responsible for the custody and safekeeping of the Data, immediately from the Supplier's receipt of such Data until the same is returned by the Supplier to BUYER. All Data shall be returned by the Supplier within thirty (30) days from the date of termination of this Agreement:</p> <p>5.17.2.1 The Supplier shall cease to be responsible for the loss of Data from the date the same is returned to BUYER; provided, that the Supplier's liability for the loss of Data not returned within the period specified above shall be in full force and effect until such Data is returned by the Supplier, or the return of such Data is waived by BUYER in writing. Data shall be considered lost if the Supplier is not able to return Data received by it within a period of fifteen (15) days from the lapse of the period specified above;</p>	<p>The TPBAC decides to maintain the provision of the PSA.</p>
<p>12.2 The restrictions specified in Article 12.1 shall not apply, or shall cease to apply, to any part of the Confidential Information that is in the public domain other than by reason of a breach of this Article, or was in the rightful possession of the recipient Party or an employee, officer, director or agent of the Receiving Party at or prior to the time of disclosure, or was obtained by the recipient Party in good faith from a third party duly entitled to disclose it.</p>	<p>5.17.2.2 All Data provided by BUYER shall be used and processed by the Supplier exclusively and solely for the purpose of allowing the Supplier to perform the Services specified in the scope of work pursuant to this Agreement. The Supplier shall be solely and exclusively liable for the use of such Data beyond the normal requirements to perform its obligations under this Agreement, and the Supplier shall indemnify and hold BUYER free and harmless from and against any and all liability, damages, claims, actions, expenses, losses, or fees that may arise from the unauthorized use of the Data;</p> <p>5.17.2.3 The Supplier shall return such Data or portions thereof as BUYER may request from time to time, within fifteen (15) days from the date of BUYER's written request. The Supplier shall furthermore comply with BUYER's reasonable instructions for the correction, alteration, and disposal of any Data provided by it and under the custody of the Supplier;</p>	

<p>12.3 The provisions contained in this Article shall be in force from the Effective Date and shall survive the termination or expiration of this PSA as specified in Article 10.6.</p>	<p>5.17.2.4 The Supplier shall exercise extraordinary diligence in protecting the integrity and confidentiality as well as in ensuring the availability of Data and shall implement adequate administrative, physical and technical safeguards for the protection of the Data (“Data Privacy and Security System”); and ensure that all such safeguards, including the manner in which the Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms of this Agreement. The Supplier shall, upon request of BUYER, provide to BUYER information on the Data Privacy and Security Systems employed by the Supplier in relation to the access, use, storage, processing, disposal and disclosure of the Data, and comply with BUYER’s reasonable instructions on such improvements of the Data Privacy and Security System as BUYER finds to be necessary; provided, that the Supplier’s compliance with any such instructions shall not diminish its liability for all indemnities that may be due to BUYER as a result of the Supplier’s breach of any of its obligations pursuant to this Agreement;</p> <p>5.17.2.5 The Supplier shall notify BUYER immediately of any breach of its Data Privacy and Security System which compromises any of the Data, within two (2) hours from knowledge or the reasonable belief of the occurrence thereof. The Supplier shall provide BUYER every assistance necessary to allow BUYER to comply with the notification requirement under existing privacy laws and regulations, as well as in any investigation that may be conducted in connection with the breach. The Supplier shall immediately undertake corrective actions to mitigate possible harm or negative consequences to the individuals affected by the breach;</p> <p>5.17.2.6 Ownership of any Data shall remain with BUYER and the Supplier shall not use the same in other projects; and</p> <p>5.17.2.7 The Supplier shall immediately inform BUYER if, in its opinion, an instruction given by BUYER infringes the Data Privacy Act, its Implementing Rules and Regulations, or any other issuance of the NPC.</p>	
	<p>5.17.3 The Supplier shall provide the Services based on the Data requested from, and provided by, BUYER from time to time.</p> <p>5.17.4 The Supplier shall not subcontract the processing of Data or transfer the Data to another country without the prior written instruction or consent of BUYER.</p> <p>5.17.5 The Supplier shall register and maintain and keep valid and subsisting its registration of its data privacy system with the NPC, within a reasonable time from the effectivity of the requirement therefor pursuant to the Data Privacy Act of 2012, or such rules, orders, circulars or memoranda as the NPC shall issue from time to time during the term of this Agreement.</p>	



	<p>5.17.6 The Supplier shall make available to BUYER all information necessary to demonstrate compliance with the Supplier's obligations under this Agreement, the Data Privacy Act of 2012 and applicable regulations of the NPC. In this regard, BUYER may conduct an audit at its option.</p> <p>The Supplier shall be solely and exclusively liable for any breach of its obligations under this Agreement, and for any breach by it of the relevant data privacy laws, such as but not limited to Data Privacy Act of 2012, during the Term. The Supplier shall indemnify and hold BUYER free and harmless from any liability, damages, claims, action, expenses, losses, or fees that may arise from the Supplier's breach as described under this Agreement, the Data Privacy Act of 2012 and applicable regulations of the NPC; furthermore, the Supplier shall substitute BUYER and assert itself as the real party-in-interest in any and all actions, whether of a civil, administrative, or criminal nature, that may be brought against BUYER in relation to the Supplier's breach of any of its obligations as described under this Agreement.</p>	
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This Bid Bulletin No. 007, series of 2020 shall form part of the Bidding Documents. Any terms, conditions and provisions in the Bidding Documents inconsistent with this Bid Bulletin are hereby amended, modified and superseded accordingly.

Issued this 28<sup>th</sup> day of August 2020 at Bauan, Batangas.

(sgd.)

**ATTY. VICTOR TANTOCO**

**Chairman**

**FBPC Third-Party Bids and Awards Committee**