



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC 2018-02-0003 *js*

ADOPTING AND PRESCRIBING THE POLICY FOR THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT BY THE DISTRIBUTION UTILITIES OF POWER SUPPLY AGREEMENT FOR THE CAPTIVE MARKET

WHEREAS, Section 5 (d) of Republic Act No. 7638 or the "Department of Energy Act of 1992" declares, among others, that the Department of Energy (DOE) has the powers and functions to supervise and control over all the government activities relative to energy projects in order to attain the goals embodied in this Act;

WHEREAS, Section 2 of the "Electric Power Industry Reform Act of 2001" or "EPIRA" declares, among others, that it is policy of the State to: (i) ensure the quality, reliability, security and affordability of the supply of electric power; (ii) ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability; (iii) enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors; (iv) protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and (v) encourage the efficient use of energy and other modalities of demand-side management;

WHEREAS, Section 37(i) of the EPIRA mandates the DOE, in addition to its powers and functions under Republic Act No. 7638 to supervise the restructuring of the electricity industry and to develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

WHEREAS, Section 2 of Republic Act No. 9513 or the "Renewable Energy Act of 2008" states the policy of the State to increase the utilization of renewable energy (RE) resources by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives, among others;

WHEREAS, consistent with Section 23 of the EPIRA, all distribution utilities (DUs) must supply electricity in the least-cost manner to their respective Captive Market;

WHEREAS, Section 43 of the EPIRA mandates the Energy Regulatory Commission (ERC) to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electric industry;

WHEREAS, on 26 January 2004, DOE issued Department Circular No. DC2004-01-001 entitled "Prescribing the Rules and Procedures for Private Sector

Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 (EPIRA-IRR)" requiring the conduct of Competitive Selection Process (CSP) as the basis of the DUs in off-grid areas for selecting New Power Providers (NPPs) and entering into corresponding Power Supply Agreement (PSA), among others;

WHEREAS, on 11 June 2015, the DOE issued Department Circular No. DC2015-06-0008, entitled "Mandating All Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)", which required all DUs to conduct CSP, through a Third Party, in the procurement of PSAs for their captive market;

WHEREAS, there is a need to formulate a specific CSP Policy for all DUs in the country defining a clear, transparent and fair supply procurement process that will promote competition and greater private sector participation in the provision of adequate generation capacity to meet the demand in the captive market, and full accountability of the DUs in the provision of affordable electricity prices to their captive market;

NOW, THEREFORE, premises considered, and pursuant to its authority under EPIRA and its Implementing Rules and Regulations, the DOE hereby adopts and prescribes the "**Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market**" in both grid and off-grid areas, herein attached as **Annex "A"** and is an integral part of this Circular.

This Circular shall take in effect immediately after its publication in two (2) Newspapers of general circulation and shall remain in effect until otherwise revoked.

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


ALFONSO G. CUSI
Secretary



FEB 01 2018

ANNEX "A"
**POLICY FOR THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT BY
THE DISTRIBUTION UTILITIES OF POWER SUPPLY AGREEMENT FOR THE CAPTIVE
MARKET**

SECTION 1. GOVERNING PRINCIPLES

The procurement of power supply for the Captive Market shall be governed by the following principles:

- 1.1. Transparency in the conduct of Competitive Selection Process (CSP) through wide dissemination of bid opportunities and participation of all Generation Companies (GenCos);
- 1.2. Competitiveness by extending equal opportunity to eligible and qualified GenCos to participate in the CSP;
- 1.3. Least cost manner in ensuring that each distribution utility (DU) is able to meet the demand for its Captive Market at any given time;
- 1.4. Simple, streamlined and efficient procurement process applicable to the specific requirements of each DU in accordance with its Distribution Development Plan (DDP). These requirements shall specify, the following technical, economic and other parameters: (i) baseload, mid-merit and/or peaking capacities; (ii) the amount of energy to be delivered; (iii) type of fuel or resource, whether conventional fossil fuel (such as oil, coal, or natural gas) or renewable energy resources (such as biomass, geothermal, solar, hydro, ocean and wind); (iv) choice of other emerging systems and technology;(v) environmental standards; (vi) timing and delivery of supply; and (vii) other considerations of the DU, as may be applicable; and
- 1.5. Accountability involved in the procurement process and implementation of the Power Supply Agreements (PSAs) awarded under the CSP.

SECTION 2. COVERAGE

- 2.1. This Policy shall govern all DUs, grid and off-grid.
- 2.2. All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant a Certificate of Exemption from the Department of Energy (DOE) on the conduct of CSP:
 - 2.2.1. Any generation project owned by the DU funded by grants or donations. 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 further, that taxes to be paid by the DU shall not be included in the total project cost;

- 2.2.2. Negotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology in the area;
 - 2.2.3. Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off-grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and
 - 2.2.4. Provision of power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Reform Act of 2001" or EPIRA as deemed by the DUs, subject to a periodic review by the DOE.
- 2.3. The Certificate of Exemption shall be issued by the DOE within ten (10) working days from receipt of the application.
 - 2.4. For PSAs contemplated under Section 2.2.2, the grant of a Certificate of Exemption shall authorize the DU to immediately implement such PSAs, without prejudice to the evaluation and final decision of the ERC within sixty (60) working days from filing of the relevant application for approval thereof.
 - 2.5. The DU shall be required to inform the Energy Regulatory Commission (ERC), National Power Corporation (NPC) and National Electrification Administration (NEA) of the exemption.

SECTION 3. DEFINITION OF TERMS

- 3.1. **"Aggregation"** refers to the joint action of DUs to aggregate their demand and energy requirements to jointly contract for their power supply to achieve economies of scale.
- 3.2. **"Aggregated Demand"** refers to the consolidated level in MW and volume in MWh of electric power of the DUs hourly, daily, monthly or annually.
- 3.3. **"Base-load"** refers to the minimum amount of electric power delivered or required over a given period of time.
- 3.4. **"Bidding Documents"** refers to the complete set of documents given to interested bidders, including at the minimum the Terms of Reference (TOR) for technical, legal and financial requirements sufficient to allow such bidders to submit a qualified bid.
- 3.5. **"Captive Market"** refers to the electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.

- 3.6. **"Certificate of Exemption"** refers to Certificate issued by the DOE under Section 2.2 of this Policy.
- 3.7. **"Competitive Bidding"** refers to a method of procurement which is open to participation by any interested party and consists of the following processes: a) advertisement or publication; b) pre-bid conference; c) pre-qualifications d) bid evaluation; e) post-qualification, if any and h) award of contract.
- 3.8. **"Competitive Selection Process" or "CSP"** refers to the process wherein a Generation Company or, in the case of off-grid areas, New Power Provider, is awarded to supply electric power requirements of a DU through transparent and competitive bidding undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation criteria adopted by the DUs in accordance with the requirements of this Policy. For purposes of, and throughout the Policy, the terms **"Competitive Bidding"** and **"CSP"** shall have the same meaning and shall be used interchangeably.
- 3.9. **"Distribution Development Plan" or "DDP"** is the program for expansion, reinforcement and rehabilitation of the distribution system which is prepared by the DU and submitted to the DOE for integration with the Power Development Plan and Philippine Energy Plan. In the case of electric cooperatives (ECs), such plans shall be submitted through the NEA for review and consolidation.
- 3.10. **"Distribution Utility" or "DU"** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise or is authorized by law to distribute electricity to end-users.
- 3.11. **"E-based Power Procurement Information Portal" or "DOE E-based Portal"** refers to a portal, to be developed and managed by the DOE that shall be used as the primary and centralized source of information regarding all CSP activities of all DUs.
- 3.12. **"EPIRA"** refers to Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001.
- 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 and Fortuitous Events or other analogous circumstances that are beyond the control of the DU and such shortfall cannot be addressed through any reasonable means within a month, subject to the final determination by the DOE.
- 3.14. **"Energy Regulatory Commission" or "ERC"** refers to the regulatory agency created under EPIRA.
- 3.15. **"Generation Company" or "GenCo"** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.

- 3.16. **"Grid"** refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of the island groups of Luzon, Visayas and Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the EPIRA, together with the sub-transmission systems that are connected to or part of that system and are owned and operated by the Regulated Entity.
- 3.17. **"Joint Third Party Bids and Awards Committee" or "Joint TPBAC"** refers to Aggregated DUs whose composition where established through a Memorandum of Agreement of the participating DUs in accordance with Section 5 of this Policy.
- 3.18. **"National Electrification Administration" or "NEA"** refers to the government agency created under the Presidential Decree 269, as amended by RA 10531.
- 3.19. **"Off-grid"** areas that are not connected to the main high voltage backbone system.
- 3.20. **"Power Supply Procurement Plan" or "PSPP"** refers to a DU's plan for the acquisition of a variety of demand-side and supply-side resources to cost-effectively meet the electricity needs of its customers. The "PSPP" is an integral part of the DU's DDP.
- 3.21. **"Renewable Portfolio Standards" or "RPS"** refers to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible renewable energy (RE) resources.
- 3.22. **"Replacement Power"** refers to the electricity to be delivered by a winning generation company to the DU when its power plant is on forced or unscheduled outage.
- 3.23. **"Subsidized Approved Generation Rate" or "SAGR"** refers to the generation rate expressed in peso per kilowatt hour, which the ERC has approved for an EC to charge its consumers for electricity generation services.
- 3.24. **"Third Party Auctioneer" or "TPA"** refers to a team of private individuals or a private corporation duly recognized in the Philippines with experience in competitive bidding and with sufficient knowledge in the electric power industry.
- 3.25. **"Third Party Bids and Awards Committee" or "TPBAC"** refers to the third party committee established in accordance with Section 5 of this Policy to spearhead and manage a DU's CSP.

SECTION 4. DISTRIBUTION DEVELOPMENT PLAN (DDP) AND THE POWER SUPPLY PROCUREMENT PLAN (PSPP)

- 4.1. Each DU shall annually develop and submit to the DOE its DDP, which contains the PSPP. The DU shall undertake a cost-benefit analysis of the power supply requirements for the Captive Market, taking into consideration, among others, the following factors: a) prevailing cost or price in the market; b) energy demand forecasting; c) power system; d) load matrix; e) energy mix; and other requirements under the policy for DDP.
- 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;
 - 4.2.4. Currently approved SAGR for Off-grid DUs to be passed-on to consumers;
 - 4.2.5. Current supply and demand status of the DU; and
 - 4.2.6. Indicative schedule for CSP taking into consideration the required construction period in the case of new generation plants.
- 4.3. Pursuant to the EPIRA and its Implementing Rules and Regulation, the final annual ten-year DDP must be submitted to the DOE not later than 15th of March of each year and must be supported with a Board Resolution and/or notarized Secretary's Certificate.

SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE

- 5.1. Third Party Bids and Awards Committee (TPBAC)
 - 5.1.1. The DU, through its Board of Directors (BOD), shall establish an independent TPBAC to spearhead and manage the CSP. The TPBAC shall comply with the policy and procedures in the conduct of CSP, as provided for in this Policy. The TPBAC shall be accountable to its decision in the conduct of the CSP; Provided however, that the DU shall bear the expenses for any dispute or litigation arising from the CSP.
 - 5.1.2. The DU, through its Board of Directors (BOD), shall designate five (5) members of the TPBAC where three (3) members will come from the DU and the two (2) members will come from the captive customers that are not directly or indirectly related/affiliated to the DU. As such, the TPBAC shall be composed of the following:

- 5.1.2.1. One DU officer or employee knowledgeable in the technical operations of the DU;
- 5.1.2.2. One DU officer or employee with knowledge and/or experience with any local or international competitive bidding procedures;
- 5.1.2.3. One lawyer;
- 5.1.2.4. One finance officer or accountant that has knowledge on electricity pricing; and
- 5.1.2.5. One Technical person, or a person with knowledge and/or experience with any local or international competitive bidding procedures.

One of the last three (3) representatives shall represent the DU.

For all DUs, the selection process of the representatives of the captive customers to the TPBAC shall be submitted to the DOE for approval. For ECs, member-consumers who are not directly or indirectly employed by the EC shall qualify as members of the TPBAC.

- 5.1.3. The BOD of the DU shall only serve as an observer and not as a member of the TPBAC.
 - 5.1.4. The Chair and Vice Chair shall be selected by the members of the TPBAC. The Chairman shall only vote in case of a tie.
 - 5.1.5. A quorum of the TPBAC shall be composed of a simple majority of all voting members of the TPBAC.
 - 5.1.6. A decision on all questions of the TPBAC shall require the majority of all the voting members of the TPBAC.
- 5.2. TPBAC Technical Working Group (TWG) and Secretariat
- 5.2.1. The BOD of the DU shall designate the TPBAC TWG and TPBAC Secretariat, to be headed by a regular or permanent employee of the DU, preferably an officer, to assist the TPBAC in the performance of its functions.
 - 5.2.2. The TPBAC TWG shall be composed of the technical, legal and financial personnel of the DU.
 - 5.2.3. The TPBAC TWG shall assist the TPBAC in the technical components of the CSP, such as development of the PSPP, TOR, eligibility screening, evaluation of bids, and post-qualification.

5.2.4. The TPBAC Secretariat shall provide administrative support to the TPBAC for this purpose and serve as the keeper of all records and documents relating to all CSPs conducted by the DU.

5.2.5. The TPBAC Secretariat shall fully document each step of the CSP and prepare and keep a written minutes of all the TPBAC meetings and proceedings.

5.3. Joint TPBAC of Aggregated DUs

5.3.1. In the case of Aggregated DUs, a Joint TPBAC and its composition including its corresponding TPBAC TWG and TPBAC Secretariat shall be established through a Memorandum of Agreement (MOA). The Joint TPBAC shall have five (5) members, where three (3) members will come from any of the participating DUs and the two (2) members will come from the captive customers of any of the participating DUs that are not directly or indirectly related/affiliated to the DUs. As such, the Joint TPBAC shall be composed of the following:

5.3.1.1. One DU officer or employee of any participating DU who is knowledgeable in the technical operations of DUs;

5.3.1.2. One DU officer or employee of any participating DU with knowledge and/or experience with any local or international competitive bidding procedures;

5.3.1.3. One lawyer;

5.3.1.4. One finance officer or accountant that has knowledge on electricity pricing; and

5.3.1.5. One Technical person, or a person with knowledge and/or experience with any local or international competitive bidding procedures.

One of the last three (3) representatives shall represent any of the participating DUs.

For all DUs, the selection process of the captive customers' representatives to the Joint TPBAC shall be submitted to the DOE for approval. For ECs, member-consumers who are not directly or indirectly employed by the EC shall qualify as members of the Joint TPBAC.

5.3.2. The BOD of any of the participating DUs shall only serve as an observer and not as a member of the Joint TPBAC.

5.3.3. The Chair and Vice Chair shall be selected by the members of the Joint TPBAC. The Chairman shall only vote in case of a tie.

- 5.3.4. A quorum of the Joint TPBAC shall be composed of a simple majority of all voting members of the Joint TPBAC.
- 5.3.5. A decision on all questions of the Joint TPBAC shall require the majority of all the voting members of the Joint TPBAC.
- 5.4. Joint TPBAC Technical Working Group (TWG) and Secretariat
 - 5.4.1. The BOD of the participating DUs shall designate the Joint TPBAC TWG and Joint TPBAC Secretariat, to be headed by a regular or permanent employee of any of the participating DUs, preferably an officer, to assist the Joint TPBAC in the performance of its functions.
 - 5.4.2. The Joint TPBAC TWG shall be composed of the technical, legal and financial personnel of the participating DUs.
 - 5.4.3. The Joint TPBAC TWG shall assist the Joint TPBAC in the technical components of the CSP, such as development of the PSPP, TOR, eligibility screening, evaluation of bids, and post-qualification.
 - 5.4.4. The Joint TPBAC Secretariat shall provide administrative support to the Joint TPBAC for this purpose and serve as the keeper of all records and documents relating to all CSPs conducted by the participating DUs.
 - 5.4.5. The Joint TPBAC Secretariat shall fully document each step of the CSP and prepare and keep a written minutes of all the Joint TPBAC meetings and proceedings.

SECTION 6. THIRD PARTY AUCTIONEER

- 6.1. In lieu of the TPBAC or the Joint TPBAC, the DU may opt to engage a Third Party Auctioneer (TPA) to conduct and manage its CSP in accordance with this Policy.
- 6.2. The TPA shall be a team of private individuals or a private corporation duly recognized in the Philippines with experience in competitive bidding and with sufficient knowledge in the electric power industry: Provided, that the TPA is not in any way connected to any electric power industry players: Provided further, that the TPA shall have representation from the consumers as provided for in this Policy.
- 6.3. The ERC shall provide the guidelines for the accreditation of TPAs within 60 days upon the effectivity of this Policy.

SECTION 7. CSP OBSERVERS

- 7.1. To assure all parties to the CSP for power supply that the process employed is conducted in an open, transparent, effective, efficient, and equitable manner, the TPBAC, Joint TPBAC or TPA shall invite Observers in accordance with this Policy.
- 7.2. For Grid Areas, Observers shall be extended to the DOE, ERC and NEA, in the case of ECs. For Off-Grid Areas, an invitation in writing and e-mail shall also be extended to NPC to act as an Observer in all of the bidding activities provided in this Policy.
- 7.3. CSP Observers shall not participate in the proceedings and have no right to vote. Observers shall be given written and e-mail invitations at least five (5) working days before the date of the procurement stages.
- 7.4. An invitation in writing and e-mail to Observers shall be extended at each of the following stages of the CSP:
 - 7.4.1. Pre-bid Conference;
 - 7.4.2. Pre-qualification, if any;
 - 7.4.3. Submission and Opening of Bids;
 - 7.4.4. Bid Evaluation;
 - 7.4.5. Negotiations;
 - 7.4.6. Post-qualification, if any;
 - 7.4.7. Awarding; and
 - 7.4.8. Contract Signing.
- 7.5. Observers shall be allowed access to the following documents upon their request: (a) minutes of TPBAC, Joint TPBAC or TPA meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) video recording of CSP proceedings; (e) opened proposals; (f) Bid Documents and other related documents.
- 7.6. The DU is required to make and keep, as part of the TPBAC, Joint TPBAC or TPA records, a complete and unedited video record of the proceedings in cases where no Observer is present.
- 7.7. 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 8. COMPETITIVE SELECTION PROCESS

- 8.1. The DUs shall comply with the standard procurement procedures, documents and forms in the procurement of power supply for their Captive Market under this Policy.
- 8.2. The TPBAC, Joint TPBAC or TPA shall submit to the DOE, and, in the case of the ECs, through the NEA, the following:
 - 8.2.1. PSPP as incorporated in the current year DDP;
 - 8.2.2. Distribution Impact Study (DIS)/ Load Flow Analysis conducted that serves as the basis of the TOR; and
 - 8.2.3. Due diligence report on the existing generation plants.
- 8.3. The NEA shall review the submitted PSPP within ten (10) working days upon receipt prior to its submission to the DOE.
- 8.4. Preparation of Bid Documents

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

- 8.4.1. The TOR based on the recent PSPP submission shall which, at the minimum, contains the following information:
 - 8.4.1.1. Cooperation Period with the Generation Company or the NPP;
 - 8.4.1.2. Demand and Energy for CSP;
 - 8.4.1.3. Preferred technology, if any, and justification for such preference;
 - 8.4.1.4. Target Commercial Operation Date (COD), in the case of new generating capacities and the target date of delivery;
 - 8.4.1.5. Replacement Power Requirement;
 - 8.4.1.6. Enumeration of cost items to be passed-on to the captive customers;
 - 8.4.1.7. Penalty provisions in cases of delay in construction and commercial operations for new generating capacities; and
 - 8.4.1.8. Grounds for termination of the PSA during the cooperation period.
- 8.4.2. The Invitation to Bid shall, at the minimum, indicate the following:

- 8.4.2.1. Cooperation Period/ Contract Year;
 - 8.4.2.2. Demand and Energy for CSP;
 - 8.4.2.3. Eligibility requirements;
 - 8.4.2.4. Information Memorandum;
 - 8.4.2.5. Instruction to Bidders; and
 - 8.4.2.6. Schedule and Deadlines up to the Notice to Proceed
- 8.4.3. Corporate Profile of the bidders;
 - 8.4.4. Technical Proposal's requirements;
 - 8.4.5. Financial Proposal's requirements;
 - 8.4.6. Method and Criteria for evaluation;
 - 8.4.7. Bidding Procedure;
 - 8.4.8. Awarding, Signing of Contract, and Notice of Implementation;
 - 8.4.9. Acceptable Form of Bid and Performance Securities;
 - 8.4.10. Proposed Timelines or Milestones;
 - 8.4.11. Power Supply Agreement Template;
 - 8.4.12. Notarized Statement attesting to the information submitted for the bid;
 - 8.4.13. Protest Mechanism; and
 - 8.4.14. Other documents required and mandated by any government agencies.

8.5. Publication and Posting

The TPBAC, Joint TPBAC or TPA shall cause the publication and posting of the Invitation to Bid for the procurement opportunity in accordance with this Policy for the period specified therein.

- 8.5.1. The TPBAC, Joint TPBAC or TPA shall post the Invitation to bid in its website, if there is any, and in the DOE E-based portal and in the NEA website, in the case of ECs. The TPBAC, Joint TPBAC or TPA shall continuously update the DOE and NEA on the status thereof through their respective E-based portals.

The TPBAC, Joint TPBAC or TPA shall likewise ensure that all bid bulletins and related announcements shall be posted at the DOE E-based portal and NEA website, in the case of ECs.

In cases where the DUs encounter problems in the posting of the necessary pieces of information in the respective E-based portal, the DUs shall inform the DOE and NEA for assistance in the required posting.

- 8.5.2. The TPBAC, Joint TPBAC or TPA shall also cause the publication of the Invitation to Bid in a newspaper of general circulation once weekly for two (2) consecutive weeks.
- 8.5.3. The TPBAC, Joint TPBAC or TPA may opt to, in addition to Section 8.5.2, published the invitation to bid in one (1) local newspaper of local circulation in the region, province, city or municipality indicating the CSP schedules, among other necessary information for the bidders, once weekly for two (2) consecutive weeks.
- 8.5.4. In addition to publication, the TPBAC, Joint TPBAC or TPA shall exert its best effort to disseminate its Invitation to Bid to all GenCos.
- 8.5.5. For transparency, all stages and updates on the CSP that coincides with its CSP schedule must be provided to the DOE and NEA in case of ECs, for posting on the DOE E-based portal and NEA website, respectively, including but not limited to the Bid Bulletins relating to the following:
 - 8.5.5.1. Invitation to Bid;
 - 8.5.5.2. Pre-qualification, if any;
 - 8.5.5.3. Pre-bid Conference;
 - 8.5.5.4. Submission and Opening of Bids;
 - 8.5.5.5. Bid Evaluation;
 - 8.5.5.6. Post-qualification, if any;
 - 8.5.5.7. Awarding and Contract Signing; and
 - 8.5.5.8. Joint filing before the ERC.

8.6. Pre-Bid Conference

- 8.6.1. The TPBAC, Joint TPBAC or TPA shall conduct a pre-bid conference to address the queries from the prospective bidders.

- 8.6.2. 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.
- 8.6.3. The TPBAC, Joint TPBAC or TPA shall reply to the written queries or clarifications of the GenCos who have purchased the Bid Documents in the form of Bid Bulletins.
- 8.6.4. Decisions of the TPBAC, Joint TPBAC or TPA amending any provision of the Bidding Documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) working days before the deadline for the submission and receipt of bids.
- 8.6.5. Supplemental/Bid Bulletins may be issued in the following circumstances:
 - 8.6.5.1. Request of the prospective GenCos for clarification(s) on or for an interpretation of any part of the Bid Documents; and
 - 8.6.5.2. Upon the initiative of the TPBAC, Joint TPBAC or TPA for purposes of clarifying or modifying any provision of the Bidding Documents. Any modification to the Bid Documents shall be identified as an amendment.

8.7. Bid Evaluation Criteria and Process

- 8.7.1. The TPBAC, Joint TPBAC or TPA shall undergo a qualification evaluation of the legal, technical, and financial requirements submitted by GenCos using the criteria indicated in the Bid Documents.

8.8. Receipt and Opening of Bids

- 8.8.1. The bidders shall be required to submit their bids on or before the deadline stipulated in the Bid Documents and the supplemental Bid Bulletins.
- 8.8.2. The opening of bids shall take place in the presence of all qualified bidders and the TPBAC, Joint TPBAC or TPA.
- 8.8.3. The TPBAC, Joint TPBAC or TPA shall proceed to determine the winning bidder using the evaluation criteria prescribed in the Bid Documents.
- 8.8.4. The winning bidder should undergo a pre-/post-qualification process in order to determine whether the concerned bidder complies with and is responsive to all the requirements and conditions as specified in the TOR and other pertinent bidding documents.

- 8.9. Within five (5) working 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.
- 8.10. Each CSP shall be completed within five (5) months from the time of publication of invitation to bid until submission of the PSA to the ERC.
- 8.11. All expenses incurred in the conduct of the CSP shall be shouldered by the DUs. The DUs may, however, recover these expenses through the TOR.

SECTION 9. DIRECT NEGOTIATION IN FAILED CSPs

- 9.1. Direct negotiation may be made by the DUs after at least two (2) failed CSPs and there is no outstanding dispute on the conducted CSP.
- 9.2. A CSP, after following the process as contemplated in this Policy, is considered failed only when, during its conduct, any of the following circumstances exists:
 - 9.2.1. No proposal was received by the DU;
 - 9.2.2. Only one GenCo submitted an offer; or
 - 9.2.3. Competitive offers of prospective GenCos failed to meet the requirements prescribed in the bid documents.

SECTION 10. COMPLIANCE TO RENEWABLE ENERGY LAW

Pursuant to Republic Act No. 9513, or the "Renewable Energy Act of 2008," DUs and Retail Electricity Supplier (RES) shall comply with the DOE Department Circulars to be issued pertaining to non-fiscal incentives.

SECTION 11. NEA'S ASSISTANCE TO ECs

- 11.1. NEA shall be responsible to determine the technical and institutional capability of TPBAC or Joint TPBAC of the ECs and the qualifications of its officers and members in conducting a fair and transparent CSP in accordance with this Policy.
- 11.2. For ECs with limited capability to undertake CSP, NEA shall provide the necessary assistance and resources including, but not limited to, the mobilization of competent manpower, which shall be at no expense to the EC.

SECTION 12. REGULATORY SUPPORT

- 12.1. The ERC, in the exercise of its powers and functions under the EPIRA shall establish and impose existing fines/ and or penalties for non-compliance of electric power industry participants to support the enforcement of this Policy.

- 12.2. The ERC shall have the power to review 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 a PSA template that shall be used by electric power industry participants within 60 days upon the effectivity of this Policy.
- 12.4. The ERC shall develop rules and procedures to address dispute arising from the conduct of the CSP within 60 days upon the effectivity of this Policy.
- 12.5. The NEA shall develop rules and procedure to support this Policy within 60 days upon its effectivity.

SECTION 13. PROTEST MECHANISM AND DISPUTE RESOLUTION

- 13.1. Decision of the TPBAC, Joint TPBAC or TPA at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The TPBAC, Joint TPBAC or TPA shall decide on the request for reconsideration within seven (7) days from receipt thereof.

In the event, that the request for reconsideration is denied, decisions of the TPBAC, Joint TPBAC or TPA may be protested in writing to the governing board of the DU or its duly authorized officer/s.

The protest must be filed within seven (7) calendar days from receipt of the resolution denying its request for reconsideration. A protest shall be made by filing a verified position with the governing board of the DU or its duly authorized officer/s, accompanied by the payment of a non-refundable protest fee which shall be determined by the concerned TPBAC, Joint TPBAC or TPA.

The verified position paper shall contain the following information: name of bidder, address, name of project, brief statement of facts, issue to be resolved and such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect and non-payment of protest fee will result to the outright dismissal of the protest.

Protests shall be resolved within seven (7) calendar days from receipt thereof. Decision of the governing board of the DU or its duly authorized officer/s shall be final. Court action may be resorted to after protests have been resolved with finality.

- 13.2. Any conflict or dispute of any kind between the parties in connection with the implementation of the contract, the parties shall make every effort to first resolve amicably by mutual consultation or shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876 (Arbitration Law) and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) or by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

SECTION 14. FINES AND PENALTIES

- 14.1. Without prejudice to criminal liability, non-compliance with any provision of this Policy shall, after due process, subject to the non-complying party to administrative sanctions following the ERC's Amendment on the Policy to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136, such as but not limited to:
- 14.1.1. Failure to comply with the conduct of CSP;
 - 14.1.2. Failure to submit reportorial requirements relative to CSP and/or PSA;
 - 14.1.3. Disclosing confidential classified information;
 - 14.1.4. Soliciting or accepting, directly or indirectly, any gift, gratuity, favor, or any monetary value from prospective CSP participants; and
 - 14.1.5. Gross negligence or serious misconduct of TPBAC, Joint TPBAC or TPA members.

SECTION 15. TRANSITORY PROVISION

Upon the effectivity of this Policy, all prospective PSAs shall hereafter be procured in accordance with this Policy.

SECTION 16. REPEALING CLAUSE

- 16.1. Sections 3 and 4 of DOE Department Circular No. DC2015-06-0008 are hereby repealed. All other parts of Department Circular No. DC2015-06-0008, which are not affected thereby, shall continue to be in full force and effect.
- 16.2. Any issuance made by any GOCCs regarding CSP inconsistent with this Policy is hereby repealed.
- 16.3. Nothing in this Policy 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.

SECTION 17. SEPARABILITY CLAUSE

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