

ANNEX B: BONDS

B.1. Bid Bond

The Bid Bond is a guarantee to prevent the Bidders from withdrawing their bids prior to the end of their bid validity period, or for refusing to sign the GEA Affidavit of Undertaking.

1. The Qualified Bidders participating in the GEA shall post a Bid Bond in the form of managers' checks, cashiers' checks, irrevocable letters of credit in the form prescribed in Annex B2.1 with drawing certificate in the form prescribed in Annex B2.2, or bank guarantees.
 - 1.1. If the Bid Bond is in the form of cashier's/manager's check, the check should be payable to the Department of Energy.
 - 1.2. If in the form of bank draft/guarantee, the Bidder may use the standard format of the issuing Bank, provided that the "Green Energy Auction" and Project Name registered with the DOE as a renewable energy project are indicated therein.
 - 1.3. If in the form of a Standby Letter of Credit, it may be secured through a reputable local or international bank with branches in the Philippines.
 - 1.4. If in the form of a surety bond, it should be issued by a surety or insurance company duly accredited by the Insurance Commission (IC) and has not been issued a cease and desist order by the IC or is currently not included in the list of blacklisted firms.
 - 1.4.1. Surety bonds with conditions/phrases limiting the liability to: *"the difference in the bid price of the winning bidder and that of the next lowest complying bidder or that the amount of liability of the Surety under this bond is limited to the actual loss or damage sustained and duly proven by the Obligee,"* or to any amount lower than the required Bid Bond computed pursuant to Annex D of the TOR shall not be accepted.

2. THE CONDITIONS of the security are:

- 2.1. If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder in the Bid Form; or
- 2.2. If the Bidder, having been notified of the acceptance of its Bid by the GEAC during the period of bid validity:
 - 2.2.1. Fails or refuses to sign the Affidavit of Undertaking as specified in Section 9.8 of the GEAP Guidelines when required; or
 - 2.2.2. Fails or refuses to submit the Performance Bond in accordance with the bidding documents.
3. Bids must be valid for the duration of the auction process and with the corresponding bid bond valid for ninety (90) calendar days to provide a reasonable time for the GEAC to act if the security is to be called.
4. In exceptional circumstances, the GEAC may request that the Qualified Bidders extend the period of Bid Bond validity for a specified additional period. The request and the Qualified Bidders' responses shall be made in writing or by fax.
 - 4.1. A Bidder may refuse the request without forfeiting its Bid Bond. The bid securities of the Bidders who refuse to grant the request for an extension of the validity of their respective bid bonds will have their securities returned to them. However, they are deemed to have waived their right to further participate in the auction.
 - 4.2. A Bidder agreeing to the request will not be required or permitted to modify its bid.
5. Bid Bonds of the Winning Bidder shall be returned only after the Bidder has furnished the Performance Bond as specified but in no case later than the expiration of the bid bond validity period indicated.
6. Bid bonds of losing bidders shall be returned immediately after the declaration of the Winning Bidders.
7. Any bid not accompanied by an acceptable Bid Bond shall be deemed by the GEAC as nonresponsive and thus automatically disqualified.

B.2. Performance Bond

The Performance Bond shall guarantee the Winning Bidder's faithful performance of its obligations under the GEAP Guidelines and related agreements

1. The Winning Bidder shall post a Performance Bond in the form of an Irrevocable Standby Letter of Credit provided in Annex B2.1, issued by a reputable local or international bank with branches in the Philippines.
2. The Performance Bond may be drawn, in full or in part, in case of any of the following:
 - 2.1. Bond drawn in full. For reasons attributable to:
 - 2.1.1. The Winning Bidder and not due to Force Majeure or Fortuitous Event (FM or FE, failed to fulfill all the conditions for the occurrence of the Delivery Commencement Date as provided for under the GEA Affidavit of Undertaking as specified in Section 9.8 of the GEAP Guidelines; or
 - 2.1.2. Winning Bidder failed to deliver for more than one (1) year from the effective date of the REPA under the GEA.
 - 2.2. Bond drawn in part. In case the capacity of the RE Facility indicated in the COE-GET and COC issued in relation to the GEA-1 is less than the Offered Capacity submitted by the Winning Bidder.
 - 2.2.1. In case the capacity of the RE Facility indicated in the COE-GET and COC issued in relation to the GEA-1 is less than the Offered Capacity submitted by the Winning Bidder. The amount to be withdrawn shall be commensurate with the reduction in capacity with respect to the Offered Capacity (*optional: "if such reduction should equal or exceed 10% percent of the Offered Capacity."*)
 - 2.2.2. In case of delay in delivery in respect to the Delivery Commencement Date due to fault of the Winning Bidder the penalty imposed on the Winning Bidder for unperformed commitment to deliver is one tenth (1/10) of one (1) percent of the project cost for every day of delay. The maximum withdrawal from the Bond shall be ten percent (10%) of the project cost.
3. The Winning Bidder shall be allowed an extension to commence supply in case of delay due to FM or FE. The period of extension shall be equivalent to the number of days the FM or FE existed.

B2.1. Irrevocable Standby Letter of Credit

(Date)

[Beneficiary]

[Address of Beneficiary]

Upon the request of [Applicant], we hereby issue this Irrevocable Standby Letter of Credit ("Letter of Credit") in your favor, with the details set forth below:

IRREVOCABLE STANDBY LETTER OF CREDIT NO. <>

Applicant : <>
Beneficiary : <>
Stated Amount : <>
Expiry Date : <>
Available at : [Issuer and Address of Issuer]
By Draft on : [Issuer] (the "Issuer")
Payable at : Sight
Reference : Drawn under Irrevocable Standby Letter of Credit No. <>
Issued in connection with : Department Circular No. DC 2021-11-0036 (the "GEAP Guidelines")
Purpose of the Letter of Credit : <>

A drawing under this Letter of Credit is to be made by delivering to the Issuer at [insert address] (Attention: _____), not later than 5:00 pm on the Expiry Date specified above, a Drawing Certificate purportedly signed by a duly authorized representative of the Beneficiary, substantially in the form hereto attached as Annex "A" ("Drawing Certificate"). If the Expiry Date falls on a non-Banking Day, presentation to the Issuer can be made on the Banking Day immediately succeeding the Expiry Date.

If a Drawing Certificate is presented by the Beneficiary before 10:00 a.m. (local time) in accordance with the terms of this Letter of Credit, payment shall be made to the Beneficiary, without proof or condition, of the amount specified therein in immediately available funds, in accordance with the Beneficiary's payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on the Issuer's part, without the Beneficiary having to further substantiate such demand, by 4:00 p.m. (local time) on the same Banking Day. If a Drawing Certificate is presented by the Beneficiary after 10:00 a.m. (local time), payment shall be made to the Beneficiary by 10:00 a.m. (local time) the following Banking Day. As used herein, "Banking Day" shall mean any day on which banks are open for business in the Philippines.

The Drawing Certificate shall attest to the fact that the Applicant has failed to perform its obligations to the Beneficiary under the GEAP Guidelines. The Beneficiary's certification in the Drawing Certificate shall be final and conclusive.

Payment of the amount demanded shall be made to the Beneficiary in immediately available funds by wire transferring the said amount to the address and account designated by the Beneficiary in the Drawing Certificate.

The Beneficiary may make multiple and partial drawings hereunder. Each drawing hereunder shall reduce the amount available for drawing under this Letter of Credit.

This Letter of Credit shall expire at 5:00 p.m. (local time) on the stated Expiry Date (or in the case of a renewed letter of credit, each subsequent twelve (12) month period at 5:00 p.m. (local time)); provided, that this Letter of Credit shall be renewed by the Applicant for a period of one (1) year from the then-effective Expiry Date, at least thirty (30) days prior to the then-effective Expiry Date.

All communications to the Issuer in respect of this Letter of Credit, shall be in writing (by tested telex or authenticated SWIFT transmission) and addressed to the Issuer, care of **<insert contact details of Issuer>** and shall make specific reference to this Letter of Credit by number.

This Letter of Credit sets forth in full the Issuer's undertaking and such undertaking shall not in any way be amended or modified by any other document, instrument, or agreement.

This Letter of Credit will take effect and become operative on <>.

This Letter of Credit is irrevocable and constitutes an obligation of the Issuer to make payments against documents. This Letter of Credit is subject to the International Standby Practices (ISP 98) and shall, as to matters not governed by ISP 98, be governed by, and construed in accordance with, the laws of the Philippines.

SIGNED for and on behalf of <>.

B2.2. Form of Drawing Certificate

[BENEFICIARY'S LETTERHEAD]
DRAWING CERTIFICATE

<Date>
[Bank Address]

Attention: _____

Gentlemen:

The undersigned is the <Insert Position of the Duly Authorized Representative of _____> of _____ (the "Beneficiary"). The Beneficiary is making demand for payment under Standby Letter of Credit No. _____ dated _____ issued by _____ in favor of the Beneficiary (the "Letter of Credit").

The undersigned hereby certifies that an event of default has occurred under the GEAP Guidelines dated November 3, 2021, as a result of which, the Beneficiary is entitled to make the drawing referred to in this Drawing Certificate.

Please direct payment by [wire transfer] of the amount of P_____ to the account of the Beneficiary as follows:

<Beneficiary's Account Details>

Unless otherwise defined herein, defined terms shall have the respective meanings assigned to such terms in the Letter of Credit.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Drawing Certificate on _____.

By: _____
Name:
Title: