

LUECO Third Party Bids and Awards Committee (TPBAC)
Quezon Avenue, San Fernando City

BID BULLETIN No. 8

AMENDED PROVISIONS

LUECO TPBAC is issuing amendments on the following provisions of herein Bid Documents in response to additional queries/comments raised by interested Bidders. To wit:

A) Instructions to Prospective Bidders (IPB)

- 1) Section 3.1.2 (c) and (d) is amended to read as follows:

xxx

c) copy of its latest General Information Sheet **in case of a Corporation**, stamped "received" by the SEC, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized;

(d) a diagram of the corporate structure of the Bidder with an indication of which entity has Controlling interest over, or is the Affiliate or Ultimate Parent of, the Bidder **engaged in Power Generation** and a copy of the shareholders' agreement, pooling agreement, voting trust agreement or equivalent document if the Bidder is a partnership or consortium, which shall be certified as a true copy by the corporate secretary (or its equivalent), which certification must be under oath and notarized;

- 2) Section 3.2 (c) Technical Proposal is amended to read as follows:

c) Details of the interconnection, operation, and maintenance of the Nominated Power Plant or portfolio of plants, including but not limited to general information on the Nominated Power Plant or portfolio of plants and key components thereof, plant site/s, and interconnection site/s, for at least three (3) years.~~and~~

If the Nominated Power Plant has been in Commercial Operation for less than 3 years then Bidder may submit less than 3 years of

data together with proof that such Power Plant has only been operating for less than 3 years. Proof can be Certificate of Commercial Operations; and

xxx

- 3) Section 3.3.2 (h) and last paragraph are further amended to read as follows:

(h) the Winning Bidder fails to timely submit any **additional** document that the ERC may require for the successful filing of the relevant ERC application for approval of the Electric Power Purchase Agreement, within five (5) **business** days from the signing and execution of the Electric Power Purchase Agreement, except if the delay is caused **by** any circumstances beyond the control of the Winning Bidder.

The Bid Security of **a Bidder and/or** the Winning Bidder who committed any of the above violations will be forfeited through a letter citing the reason therefor, addressed to the issuer of the Bid Security and the concerned Bidder forfeiting the Bid Security within ten (10) days from receipt of written notice of forfeiture.

- 4) Section 3.3 (c) Bid and Bid Security is further amended to read as follows:

(c) Proposed Price for each Billing Year throughout the Cooperation Period beginning on the Commencement Date, as reflected in the Financial Evaluation Workbook. A soft copy of the Financial Evaluation Workbook (this includes worksheets on LCOE Result and Annual Esc; Base Rates Table; in the forms shown below) shall be submitted via email, together with a print out of the said duly accomplished worksheet/s, signed in all pages **of the original set** by the Bidder's authorized representative and submitted as part of Envelope 3; and

- 5) Section 3.4.1 (b) is amended to read as follows:

(b) Whenever possible, the Qualification Documents, Technical Proposal and Bid must be printed in A4-size paper and in its absence, in letter size (8 ½ x 11") and bound together in

ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 14-font size, Times **New** Roman font.

6) Section 3.4.1 letter (e) is further amended as follows:

(e) Electronic copies of ALL documents submitted in the Bid shall be in PDF format via email. There shall be one password per envelope. Hence, there shall be three different passwords for the three envelopes.

There shall be only one email bid submission **per envelope**. Should there be more than one email submission in case of errors, only the latest submission shall be considered within the deadline set for the purpose. **Envelopes 1 and 2 shall be sent via Google drive due to the volume of the documents and should be password-protected; while envelope 3 shall be sent via email and password-protected. In addition to the PDF format of the LCOE worksheet, its Excel format shall also be provided. In case of conflict in the LCOE worksheet, the PDF format shall prevail.**

Participating Bidders are required to submit the soft copy of their documents and must be password-protected on April 12, 2021, on or before 9 o'clock in the morning and its hard **copies** on or before 12 noon of the same date at the address to be posted through a Bid Bulletin on the DOE CSP Portal and LUECO website.

This being the case, the contents on the soft copy (in PDF file) shall prevail over those contained in the hard copy in case of conflict. The hard copy will be used to facilitate easy evaluation and assessment. There shall be ~~five (5)~~ **six (6)** sets of hard copies, **(one set of signed original copy and five photo copies of the signed original copy)**, of Document Submissions to be sent to the TPBAC Secretariat.

7) Section 4.4.3. is further amended to read as follows:

The TPBAC shall proceed to rank xxx . . .

Apart from ranking the LCOE of the Proposed Price of the Qualified Bidders, the lowest Bidder shall be the one that meets the following requirements: 1) if both the **Final** LCOE and the Proposed Price (for

the first Billing Year) are equal to or lower than the respective Reserve Price, and 2) it has the lowest Final LCOE.

In additional, xxx . . .

- 8) Section 8.1 is amended to read as follows:

8.1 A decision of the TPBAC at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) **business** days upon receipt of written notice or upon verbal notification. The TPBAC shall decide on the request for reconsideration within seven (7) **business** days from receipt thereof.

- 9) Section 8.2 is amended to read as follows:

8.2. In the event that the request for reconsideration is denied, decisions of the TPBAC may be protested in writing to the governing board of LUECO. The protest must be filed within seven (7) **business** days from receipt of the resolution denying the request for reconsideration. xxx

- 10) Section 9 Definitions (Bidder) is amended to read as follows:

“Bidder” means any partnership, consortium, or corporation that participates in the Bidding process **that owns the Nominated Power Plant or portfolio of plants, or exercises control, management, or administration over the output or capacity of the Nominated Power Plant or portfolio of plants, or is the off-taker of the capacity of another supplier.**

- 11) ANNEX 2 AUTHORITY TO PARTICIPATE IN THE BIDDING AND DESIGNATION OF AUTHORIZED REPRESENTATIVE is amended to read as follows:

xxx

2. I am the duly elected (corporate secretary) of (*name of owner of the Nominated Power Plant or name of the Bidder that exercises control, management, or administration over the output or capacity of the Nominated Power Plant or portfolio of plants, or is the off-taker of the capacity of other suppliers*) (the “~~Company~~”

“Bidder”), a (partnership/corporation) organized and existing under and by virtue of the laws of the Republic of the Philippines.

3. The **Company Bidder** owns, and/or operates and maintains, **administers, manages, or is the off-taker or purchases the capacity or output a** (specify details of the Nominated Power Plant, such as capacity and plant type) located in (specify location).

4. At a (regular/special) meeting of the board of directors/**partners** of the **Company Bidder**, held on (date) at (place), in which meeting a quorum was present and acting throughout the following resolutions were unanimously passed and approved:

xxx

- 12) ANNEX 4 CERTIFICATION OF UNCONTRACTED CAPACITY OF THE NOMINATED POWER PLANT is amended to read as follows:

xxx

"I further certify that any offtake agreement of the Nominated Power Plant or each of the plants in our portfolio that **will render the Bidder incapable of supplying the Offered Capacity and** is the subject of an application for approval pending before the ERC shall be withdrawn and the relevant offtake agreement terminated no later than the Commencement Date. "

- 13) ANNEX 5 Item No. 1 is amended to read as follows:

1. (*Insert name of Bidder*) and its Affiliates **engaged in power generation and/or Supply** do not have any record of Unsatisfactory Performance on any of their projects and contracts.

- 14) ANNEX 7 TECHNICAL PROPOSAL (NOMINATED POWER PLANT)

Required attachments:

1. xxx
2. Copy of Certificate/s of Compliance (COC) from the ERC for the Nominated Power Plant and/or portfolio of plants, **and/or documented Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; for**

management of Plant, Independent Power Producer Administration Agreement (IPPAA), which shall be certified as a true copy by (i) the ERC; or (ii) the corporate secretary, in which case it must be under oath and notarized;

3. xxx

4. Details of the interconnection, operation and maintenance of the Nominated Power Plant or portfolio of plants, including but not limited to general information on the Nominated Power Plants or portfolio of Plants and key components thereof, plants site/s and interconnection site/s, for at least three (3) years. If the operation of Nominated Plants or portfolio of Plants is less than three (3) years, the details of the interconnection, operation and maintenance of the Nominated Power Plant shall correspond to the number of year of its operation; and

5. xxx

15) ANNEX 9 BID SECURITY is amended to read as follows:

xxx

We, [●], a corporation organized and existing under the laws of the (insert place of incorporation/registration) and licensed by the Bangko Sentral ng Pilipinas as a bank, (the "Issuer"), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the "Letter of Credit") in your favor relating to the obligations of [insert name of Bidder] (the "Bidder") under the IPB for the supply of the Contract Capacity and associated energy for the Cooperation Period beginning on the Commencement Date to LA UNION ELECTRIC COMPANY, INC ("LUECO") (the "Project"), which shall be valid and effective ~~until ERC approval of the Electricity Power Purchase Agreement. [date that is~~ sixty (60) days after Bid Submission Date. ~~In the case of the Winning Bidder, this Bid Security shall be kept valid until Commencement Date as defined in the Electric Power Purchase Agreement template.~~

Capitalized terms used in this Letter of Credit shall have the meanings given to them in the IPB except as otherwise expressly defined herein.

1. xxx

2. Subject to the other provisions of this Letter of Credit, LUECO is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment to LUECO in substantially the form **to be provided by the Bank, attached as ANNEX 9**, duly completed, and is in the form of a letter on LUECO's letterhead signed by any of its authorized signatories.

16) ANNEX 11 is amended to read as follows:

LIST OF ALLOWED BANKS

No.	Institution
1.	Bank of the Philippines Islands
2.	BDO Unibank, Inc,
3.	Development Bank of the Philippines
4.	Land Bank of the Philippines
5.	Metropolitan Bank & trust Company
6.	Philippine National Bank
7.	China Banking Corporation
8.	Rizal Commercial Banking Corporation

B) Electric Power Purchase Agreement (EPPA)

1) Article 2.1 Purpose. The purpose ("Purpose") of this Agreement is to set out the rights and obligations of each Party with regards to the sale and purchase of electricity from the Power ~~Plant~~ **Supplier**.

2) Article 4.1 SUPPLY OF ELECTRICITY is amended to read as follows:

4.1 Supply of Electricity. Subject to the terms and conditions of this Agreement, from the Commencement Date until the expiration of the Cooperation Period or earlier termination of this Agreement, **SELLER shall make available to LUECO the Contract Capacity to be sourced from the Power Plant, the WESM at prevailing Electricity Fee, or any other source.** xxx . . .

- 3) Article 5.1.2 is further amended to read as follows:

5.1.2 **If applicable**, BUYER shall be entitled to Power Act Reduction discount of Php 0.30/kWh, applicable to BUYER's energy supplied to residential customers only.

- 4) Article 5.2.2 Payment Procedure is further amended to read as follows:

5.2.2 BUYER shall be entitled to a Prompt Payment Discount equivalent to [2]% of the Electricity Fee upon full payment of amount reflected in Final Invoice within ten (10) Business Days from receipt of each billing, provided that such amount is not manifestly ~~error~~ **erroneous**, apparently invalid, or not in the form or substance contemplated in this Agreement.

In case of any error on the face of the invoice, BUYER is still entitled to the PPD if paid within ten (10) business days from receipt of the corrected Billing, for as long as the error is not due to the fault of the BUYER.

- 5) Article 8.2 Instances of Force Majeure is further amended to read as follows:

xxx . . .

In the case of Force Majeure Event affecting Power Supplier, and there is available supply from another source, Power Supplier shall continue to supply LUECO at **BER prevailing Electricity Fee** or WESM Price at LUECO's Market Trading Node, whichever is lower. **Power Supplier shall guarantee 100% availability of supply at prevailing Electricity Fee regardless of source plant's availability or unavailability whether due to a Planned or Unplanned Outage.**

For reference, "System Emergency" refers to any unforeseeable condition affecting the System (as defined in the Grid Code), which may cause (i) the **grid-wide unavailability of Supply ~~disconnection of the Power Plant from the Luzon Grid~~**, or any disruption in the supply of electric energy from the Power Plant for reasons other than a forced outage, or (ii) suspension of electric energy off-take from SELLER in order to prevent or avoid significant disruption of service to BUYER or danger to life or property.

For the avoidance of doubt, the Power Supplier shall ~~not~~ be entitled to ~~claim~~ declare any of ~~its the above cited~~ act or omission as Force Majeure.

- 6) Article 8.6.1 is further amended to read as follows:

8.6.1 As soon as possible following the occurrence of any Event of Force Majeure (or, if known in advance of the Event of Force Majeure, promptly upon such knowledge), if either Party desires to invoke such Event of Force Majeure as a cause to excuse or delay performance of any obligation (other than the payment of money) hereunder, it shall advise the other Party in writing via email and SMS of the date, nature and expected duration of such Event of Force Majeure; provided that such notice must be sent by the party who becomes aware of such event to the other party (a) by SELLER to BUYER immediately and in any event within twenty-four (24) hours after SELLER becomes aware of such Event of Force Majeure and (b) by BUYER to SELLER as soon as reasonably possible and in any event within twenty-four (24) hours thereof. after BUYER becomes aware of such Event of Force Majeure.

- 7) Article 13.2.1 SELLER Conditions Precedent is further amended to read as follows:

(i) copies of the SEC Certificate of Registration, Articles of Incorporation/Partnership and By-Laws of the SELLER, each certified by the corporate secretary/~~Managing Partner~~ any responsible officer of the Partnership of the SELLER;

In case of Unincorporated Partnership/Consortium, evidence that the rights and obligations/liabilities in this Bidding and resulting EPPA are solidary.

(ii) xxx

(iii) copy of the ERC approval, whether interim relief, provisional or final.

- 8) Article 14.1 SELLER Events of Default is amended to read as follows:
xxx..

f) SELLER breaches any of its material representations and warranties under this Agreement and such breach is not remedied

within ~~one hundred twenty (120)~~ ninety (90) Days after written notice from BUYER to SELLER stating that such a breach has occurred.

- 9) ARTICLE 14.2 (a) BUYER Events of Default is further amended to read as follows:

a) BUYER fails to perform any material obligation under this Agreement, excluding the making of any payment which is due, which failure has not been remedied within sixty (60) Days after receipt from ~~BUYER SELLER~~ of a written notice of ~~SELLER-BUYER~~ Event Default.

- 10) Article 20.1.2 is amended to read as follows:

... In case of inconsistency between the text of the Articles of this Agreement and the Terms of Reference (TOR), the ~~latter~~ former shall prevail.

- 11) SCHEDULE 4 Electricity Formula is amended to read as follows:

Electricity Fee = {[(E x GENERATE) - PAR Discount] x (1+ VAT)} + [(EFM x EFM RATE) x (1+Effective VAT)]

xxx

- 12) Schedule 5, Item No. 3 Payment Date is amended to read as follows:

*Provided that BUYER receives the Final Invoice within the time set forth in Section 2 of this SCHEDULE 5, each Final Invoice shall be due and payable thirty (30) Days from receipt of the approved **Electronic Copy** of Invoice, provided that if the 30th Day is not a Business Day then the payment shall be due and payable on the immediately next Business Day ("**Payment Date**").*

C) Terms of Reference (TOR)

- 1) Item 4 Required Contracted Energy is amended to read as follows:
Power Supplier shall be responsible for providing for the full energy requirements of LUECO, **from the Plant, the WESM, or any other source at prevailing Electricity Fee**, net of any reduction by reason of the enforcement of Retail Competition and Open Access and the Renewable Energy Law. This is projected to be between 224,962 MWH - 337,349 MWH per year
- 2) Item No. 5 Commencement Date of Supply is further amended to read as follows:
"August 26, 2021 or upon approval by the ERC (whether **interim relief**, provisional or final), whichever is later but to coincide with NGCP Billing every 26th day of the month".
- 3) ITEM 9: Outage Allowance is amended to read as follows:
Power Supplier shall guarantee 100% availability of supply at **BER prevailing Electricity Fee** regardless of source plant's availability or unavailability whether due to a Planned or Unplanned Outage.

In the case of Force Majeure Event affecting Power Supplier, Power Supplier shall continue to supply LUECO at **BER prevailing Electricity Fee** or WESM Price at LUECO's Market Trading Node, *whichever is lower*.
- 4) Item No. 14 Eligibility Requirements of Power Supplier (3rd bullet) is amended to read as follows:
 - sufficient available capacity to supply LUECO's requirements from Commencement date, to be evidenced by a notarized certification in the form and substance provided **in IPB ANNEX 7. together with this TOR.**

5) ANNEX B LCOE CALCULATION SHEET is amended to read as follows:

xxx

A Contract Price (GENRATE)

xxx

Now there exist an annual "Contract Price (GENRATE)" X, such that:

xxx

Where X = same "Contract Price (GENRATE)" (Php/kWH) for each Year

xxx

6) ANNEX C is amended to read as follows:


ANNEX C

ACCEPTABLE BANKS FOR THE ISSUANCE OF SBLC

1. Bank of the Philippine Islands
2. BDO Unibank, Inc.
3. Development Bank of the Philippine
4. Land Bank of the Philippines
5. Metropolitan Bank and Trust Company
6. Philippine National Bank
7. China Banking Corporation
8. Rizal Commercial Banking Corporation

Please be guided accordingly.

For TPBAC:


Elnora Z. Balagot
Secretariat