



FEDERATION OF RURAL ELECTRIC COOPERATIVES IN REGION 8

Brgy. San Juan, Sta. Rita, Samar
Email Address: frecor8.secretariat@gmail.com

REFERENCE : **Bid Bulletin No. 2**

ISSUE DATE : **August 10, 2023**

FOR : **All Bidders**

SUBJECT : **Replies and Clarifications of Queries and Concerns Raised During the Pre-Bid Conference**

The FRECOR 8 JTPBAC hereby issues this Bid Bulletin No. 2 to address all the questions and concerns raised by the Bidders during the Pre-Bid Conference held last August 4, 2023 in Tacloban City.

As such, attached herewith are the following:

- a. Summary of queries/comments and the corresponding FRECOR 8 JTPBAC responses
- b. ITB Annex H: Certification of Submission of Original or Certified True Copies of Documents and Authorization for The R8 JCPSP-JTPBAC to Verify Said Documents
- c. ITB Annex I: Confidentiality Agreement
- d. ITB Annex J: Acceptance of Bidding Documents

This Bid Bulletin and all its attachments shall form part of the Bidding Documents.

For further information, please refer to:

Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP)

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For your information and proper guidance.
Kindly acknowledge receipt of this Bid Bulletin through email. Thank you.

By:

ATTY. EDSON G. PICZON
R8 JTPBAC - Chairman

SUMMARY OF QUESTIONS, CLARIFICATIONS, AND RESPONSES

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 1.4	A Bidder may offer its bid for any year within the delivery period. Each year of delivery shall be considered as a separate lot.	<p>If there is only one Bidder, will it be declared a failure? In the event that we will only bid on the third year, and there are no other bidders for that particular year, how will it be resolved? Will it be declared a failure for that particular year?</p> <p>For Baseload, considering that it is treated as a separate lot, please confirm if any delay in the delivery starting December 26, 2023 will not affect the remaining lots.</p>	<p>Yes, according to Section 9 of the DOE CSP Guidelines 2018-02-0003, as amended by DC No. 2021-09-0030, if only one GenCo will submit an offer, then there will be failure of CSP.</p> <p>However, in our case, since each year is considered a separate lot, if only 1 GenCo submitted an offer for that particular lot, then that lot will be declared a failure.</p> <p>It will not affect the other lots.</p>
ITB 3	Transaction Schedule	Submission of comments on or before Aug 8 - when will this be discussed?	<p>Questions after the Pre-bid will be answered in writing through a Bid Bulletin but will not be discussed in a similar forum unless the TPBAC deems it necessary to conduct a second Pre-bid.</p> <p>The deadline for the submission of comments has been moved to August 11, 2023, as agreed during the Pre-Bid conference.</p>
ITB 9.1f	(f) Sworn Statement of the qualified Bidder that it is not "blacklisted" or barred from Bidding by the Government or any of its agencies, offices, corporations or LGUs, including its non-inclusion in the Consolidated Blacklisting Report issued by the Government of the Philippines (GOP); (Annex D)	<p>Can we propose for the deletion of this requirement since we don't have any dealings with the LGU, agencies, offices of the government, especially CSPs?</p> <p>Should we still provide a statement under oath, under this particular eligibility requirement?</p>	We maintain the requirement. This will serve as a reference on the status of the Bidder in so far as government agencies are concerned.
ITB 7.2f	Financial Documents (Audited Financial Statements per EC (2018-2022))	Is MFSR equal to 2018-2022 Audited Financial Statement?	No, the MFSR is a separate document from the 2018-2022 AFS.
ITB 8.1c	Eligibility Requirements for Bidders "xxx Licensed Wholesale Aggregator with (i) existing capacity contracts or has arranged for a capacity contract in response to this tender, or (ii) a firm commitment to supply from WESM at fixed prices."	Can a GenCo Bidder source Contract Capacity thru the WESM and how will this affect the fuel fee pricing?	Yes, the Bidder may source the contract capacity from WESM or any other source, but the rate shall be the PSA rate as offered by the GenCo. The Bidder shall take the risk on the fuel fee pricing and offer a price which they think will minimize their risk from the changes of the fuel cost.

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 8.1	Eligibility Requirements for Bidders - RPS	Pending effectivity of the PREM, can the winning bidder for RPS supply from non-eligible RE Plant?	No. The RPS supply should be from eligible RE plants. The purpose of the CSP for RPS is to meet the RPS requirements of the R8 ECs.
ITB 8.5	Additional eligibility requirements may hereafter be prescribed by the R8 JCPSP-JTPBAC.	1. Please clarify the additional eligibility requirements that may be prescribed by the R8 JCPSP-JTPBAC. 2. Will this also be submitted with the Bid or during the Post-Qualification?	Only those in the checklist will be required in the submission of the Bid. Any additional requirement will be stated in the Bid Bulletin.
ITB 9.1b	The Articles of Incorporation and By-Laws or a Memorandum of Association or Partnership duly certified by the relevant authorities, as may be applicable;	Please confirm that the latest Articles of Incorporation and By-Laws will suffice this requirement.	Yes, the latest Articles of Incorporation and By-Laws will suffice the requirement stated in ITB 9.1b.
ITB 9.1e	A certification from ERC that it is authorized to a) sell, broker, market, or aggregate electricity to DUs and/or b) own and operate facilities used in the generation of electricity	Please confirm that the certification pertains to the Certificate of Compliance or Provisional Authority to Operate issued by the ERC.	Yes, the same certification.
ITB 9.1.h.3	A certification under oath from bidder's responsible officers that the Bidder is free and clear of all liabilities with the government.	Please confirm that this is already covered by ITB Annex D.	Yes, it is already covered by ITB Annex D: CERTIFICATION AGAINST BLACKLISTING AND GRAFT & CORRUPT PRACTICES
ITB 9.1.j.7	Number and average duration of scheduled and unscheduled outages for the last five (5) years;	In case of delayed issuance of the said certificate, may we suggest that a letter request submitted to NGCP be accepted for this requirement?	Plant records will suffice for this requirement. Submission shall be duly signed by the plant manager and/or authorized representative.
ITB 9.1.j.8	The statement shall be supported by a valid Certificate of Compliance and/or License as Wholesale Aggregator issued by the ERC and certification issued by NGCP System Operator (regarding plant outages)	1. Please confirm that this is the same requirement in item j.7. 2. If yes, do we need to duplicate the same certification for this requirement?	No, this is not the same as j.7. The letter to NGCP (with proof of receipt by NGCP) will suffice, provided the certification issued by NGCP shall be furnished to the R8 JCPSP TPBAC once available.

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 9.1k	<p>Statement in matrix form of all wholesale customers/buyers (DUs and Contestable Customers) for the last three (3) years;</p> <p>The statement shall include the following:</p> <ol style="list-style-type: none"> 1. name and address of company 2. telephone, cellphone and fax numbers, website URL, and e-mail address of the company; 3. name and position of contact person(s); 4. telephone and cellphone number and e-mail address of contact person(s) 	<ol style="list-style-type: none"> 1. Please confirm that this refers to existing customers only. 2. May we suggest limiting the list to regulated distribution utility customers only. 3. Details of customers information might be subject to Data Privacy issues and Bidder cannot commit to obtain consent of customers. Available customer information in their respective official websites should be sufficient. 	<ol style="list-style-type: none"> 1. Submit customers for the last 3 years. 2. For contestable customers, submit at least the names of the customers. 3. For DU customers, submit the detailed information as specified in the list.
ITB 9.1u	<p>(RPS) Fuel Supply Plan indicating:</p> <ol style="list-style-type: none"> 1. Long-term availability; 2. Contingency supply; and 3. Key terms of the Fuel Supply Agreement; 	Please clarify the applicability of this requirement for RPS.	Indicate N/A if not applicable.
ITB 9.1.x.4	Convincing evidence that Bidder has been arranging with prospective fuel supplier for long-term fuel supply for the project. Bidder shall have received sufficient assurances that a reliable supply of fuel will be available under competitive price and supply terms as evidenced by letters from prospective fuel suppliers;	Please clarify the applicability of this requirement for RPS.	Indicate N/A if not applicable.
ITB 9.1 "Class B"	<ol style="list-style-type: none"> b. A notarized certification issued by the Bidder or his authorized representative that each of the documents submitted in accordance with the Instructions to Bidders (ITB) is the original or faithful reproduction of the original; c. A letter authorizing the RB JCSPS-JTPBAC or its duly authorized representative/s to review or verify submitted documents; 	<ol style="list-style-type: none"> 1. Please provide template. 2. It is suggested that the template should already cover the requirement under item b and c. 	Template is attached as Annex H.
ITB 9.1 "Class B"	e. Confidentiality Agreement	Please provide template.	Template is attached as Annex I.
ITB 9.1 "Class B"	f. Acceptance of the Bidding Documents; and	Please provide template.	Template is attached as Annex J.

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 14.1 & 14.2	<p>All Bid prices shall be quoted in Philippine Peso (PHP).</p> <p>If there are foreign denominated components of the Bid prices, these must be quoted in United States Dollar (US\$) only. Price components denominated in foreign currency other than USD shall be rejected outright.</p>	<p>1. Please clarify if Bidders are allowed to propose a combination of PhP/kWh and USD/kWh Bid Prices.</p> <p>2. For USD/kWh Bid Prices, what would be the ForEx index to be used in the actual implementation of the PSA?</p>	<p>For RPS: Php/kWh only. For Baseload: Php/kWh and/or USD/kWh is allowed. For evaluation purposes, ForEx index is P56.26 (ITB 23.2)</p>
ITB 17.2	<p>The R8 JCPSP-JTPBAC shall prescribe the acceptable forms of Bid Security from among the following, from which acceptable forms the Bidder may choose:</p> <p>a. Cash; b. Cashier's or certified check; c. Irrevocable Letter of Credit; d. Bank Guarantee.</p>	<p>1. Kindly include "Manager's Check" and "Stand By Letter of Credit" in the acceptable forms of Bid Security.</p> <p>2. Please provide list of acceptable banks.</p>	<ul style="list-style-type: none"> • The R8 JCPSP-JTPBAC shall prescribe the acceptable forms of Bid Security from among the following, from which acceptable forms the Bidder may choose: <ul style="list-style-type: none"> a. Cash; b. Cashier's or certified check; c. Irrevocable Letter of Credit; d. Bank Guarantee. e. Manager's Check • Standby Letter of Credit falls under Irrevocable Letter of Credit. • All banks will be accepted.
ITB 17.3	<p>The Bid Security should be valid up to the signing of the PSA.</p>	<p>Does this mean that the Bid Security should be valid until October 10, 2023 based on ITB Table 3. Transaction Schedule as we need to indicate until when will the Bid Security be effective?</p>	<p>Bid security should be valid until the execution of the PSA or until January 20, 2024, whichever comes earlier.</p>
ITB 17.7	<p>The Bid Security may be forfeited:</p> <p>a. If the Bidder withdraws the Bid after Bid opening during the period of Bid validity; or b. In the case of a successful Bidder, if the Bidder fails within the specified time limit to sign the PSA; or c. Any other reason prescribed by the R8 JCPSP-JTPBAC.</p>	<p>Please confirm that the forfeiture of the Bid Security will only happen if Bidder fails to sign the PSA within the specified time at its own fault.</p>	<p>Yes, the forfeiture of the Bid Security will only happen if Bidder fails to sign the PSA within the specified time at its own fault or for a reason attributable to the Bidder.</p>

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 23.2	<p>Price Components</p> <p>(a) Capacity Fee</p> <p>The Capacity Fee at 70% to 100% Capacity Utilization Factor</p>	<p>Please clarify if Minimum CUF committed by R8 is at 70% (per ITB) and not at 65% as defined in Article 29 of PSA.</p>	<p>The 65% CUF is a typographical error. The correct CUF is 70%.</p> <p>The following phrase has been deleted: "... which shall be increased to eighty three percent (83%)..."</p>
ITB 23.2	<p>Evaluation item (b) Energy Fee</p> <p>In preparing the Bid, the following reference fuel prices in December 2022 shall be used for the Energy Fee component:</p>	<p>Please reconcile that the various base indices for fuel fee escalation as follows:</p> <p>December 2022, April 2023, May 2023, July 2023</p>	<p>May 2023: ForEx for Bid Security (ITB 14)</p> <p>For Evaluation Purposes:</p> <p>December 2022: Fuel Price Index (ITB 23.2)</p> <p>July 2023: Offer Base Price to be stated in the Bid (ITB 23.3)</p>
ITB 23.3	<p>Baseload</p> <p>Bidders shall offer either (a) Firm Price for each Contract Year, or (b) Indexed Price (Base Price for April 2023).</p>	<p>Please reconcile that the various base indices for fuel fee escalation as follows:</p> <p>December 2022, April 2023, May 2023, July 2023</p>	<p>May 2023: ForEx for Bid Security (ITB 14)</p> <p>For Evaluation Purposes:</p> <p>December 2022: Fuel Price Index (ITB 23.2)</p> <p>July 2023: Offer Base Price to be stated in the Bid (ITB 23.3)</p>
ITB 23.3	Table 7	Please clarify the basis for Fuel Price Index specified in Table 7.	Reference is World Bank Commodities Price Forecast, 2022
ITB 23.5	<p>Discounts</p> <p>Discounts, such as Prompt Payment Discount (PPD) incentive for advance payments, shall be treated as "Other Revenue" in accordance with EPIRA Law which prescribes that 50% of "Other Revenue" be returned to consumers. For Bids evaluation, any discount offered will not affect the calculated Bid Price.</p>	<p>We suggest that any discount(s) offered by the Bidders should be considered in the determination of LCRB.</p>	<p>The Bidder shall specify its offer of prompt payment discount and other incentives to the Distribution Utility (DU) in its bid proposal.</p> <p>However, discounts and incentives specified by the bidder shall only be utilized in the event of a tie between two or more bids. In such instances, where the total bid prices are identical, the discounts and incentives offered by the tied bids shall be considered to break the tie. The discounts shall be applied to the respective bid prices, and the lowest bid after applying the offered discount and incentives shall be considered the Lowest Calculated Bid (LCB).</p> <p>The application of discounts and other incentives to resolve ties shall be conducted transparently and in accordance with the method indicated in the evaluation form.</p>

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
ITB 28	<p>Signing of Contract</p> <p>Within thirty (30) calendar days upon the signing of the respective PSAs, the EC and the Winning Bidders shall jointly file the PSA to the Energy Regulatory Commission (ERC), copies of which are provided to the Department of Energy (DOE) and National Electrification Administration (NEA).</p>	<p>We suggest to consider the 30 days as the minimum period from signing of PSA to filing with ERC due to the voluminous requirements for Pre-filing.</p>	<p>We cannot consider the suggestion because the 30-day requirement is prescribed under the DOE Circular.</p>
Annex A	<p>Checklist of Eligibility and Bid Requirements</p>	<p>Please confirm that this Checklist of Eligibility and Bid Requirements (Annex A) is the final list to be followed to be able to comply with ALL the requirements of this bidding.</p>	<p>Yes, the Checklist of Eligibility and Bid Requirements in Annex A is the final list to be followed to be able to comply with all the requirements of this bidding.</p>
Annex D	<p>Certification Against Blacklisting and Graft and Corrupt Practices</p>	<p>Please confirm that that Bidders are free to replace the word "Board Resolution No." to "Secretary's Certificate"</p>	<p>Yes, Bidders may replace "Board Resolution No." to "Secretary's Certificate".</p>
Annex F	<p>Affidavit of Disclosure of Relations</p>	<p>Please confirm that that Bidders are free to replace the word "Board Resolution No." to "Secretary's Certificate"</p>	<p>Yes, Bidders may replace "Board Resolution No." to "Secretary's Certificate".</p>
PSA Art. 2	<p>Conditions before the Start of Supply</p> <p>"xxx The obligations of the Parties under this Agreement shall commence upon the approval of this Agreement by the Energy Regulatory Commission (ERC) or the issuance of a Provisional Authority by the ERC, whichever comes first. The Parties agree that they will undertake all necessary actions and comply with all applicable laws, rules and regulations to ensure the timely implementation of this Agreement."</p>	<p>We proposed to reword as follows:</p> <p>The obligations of the SELLER to supply and the BUYER to purchase the Contract Capacity shall commence on December 26, 2023 (Baseload) and September 26, 2023 (RPS) or upon receipt of an ERC Approval, whichever comes later.</p>	<p>We maintain the provision under the PSA template.</p>
PSA Art. 4.2	<p>Seller's Technical Obligations</p> <p>"xxx The Seller shall guarantee supply and provide the Buyer with Replacement Power sourced from other generating facilities or third parties, including the WESM, during Outages of the Plant or Facility."</p>	<p>Include in the following phrase:</p> <p>"... during outages of the Plant or facility, except during Force Majeure Events.</p>	<p>We maintain the provision under the PSA template. There is a provision on Force Majeure.</p>

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
PSA Art. 5.3	<p>Buyer's Technical Obligations</p> <p>"xxx The BUYER shall pay the SELLER a Replacement Power Charge for the total energy consumed that is associated with the Outages of the Plant in every Billing Period as specified in Annex;"</p>	Please clarify.	Will be determined during Negotiation/ Finalization of the PSA.
PSA Art. 10.3	<p>Billing Payment and Procedure</p> <p>"xxx Without necessity of demand, the Buyer shall pay the Seller the Electricity Fee as stated in such a billing statement, not later than the twenty-fifth (25th) of the calendar month following the close of a Billing Period ("Due Date"). Should the seller deliver the bill beyond the allowable period, the due date shall also be extended equivalent to the number of days of the delay. Moreover, the Seller shall issue the corresponding Official Receipt upon the receipt of the payment."</p>	It is suggested that in such cases, what to be adjusted is the period for the availment of discounts and not the due date for settlement.	We maintain the provision under the PSA template.
PSA Art. 11.1	<p>Non-Payment</p> <p>"xxx If the Buyer and the Seller has agreed to enter into a restructuring of accounts, in any circumstances other than the force majeure, the succeeding payment of the restructured account shall not bear any interest. In the event when the Buyer has fail to pay the restructured account in accordance to the restructuring agreement made, the amount unpaid shall bear a daily interest, at a rate of six percent (6%) per annum, computed on a 360-day basis;"</p>	<p>We proposed to reword as follows:</p> <p>11.1 - xxx - . For the avoidance of doubt, any discount under this Agreement will not be applicable on any restructuring of accounts.</p>	We maintain the provision under the PSA template.

REFERENCE	PROVISION	QUESTIONS/COMMENTS	REPLIES
PSA Art. 22	<p>Security Deposit</p> <p>There shall be no security deposit requirement on the part of the Buyer.</p>	<p>We suggest to include a provision as follows:</p> <p>"The BUYER shall not be required by the SELLER to post a Security Deposit upon the execution of this Agreement. In any case that the BUYER should fail to pay in full its current power bill on or before its Due Date, it shall be required to post a Security Deposit at the immediately succeeding Billing Period after the Due Date equivalent to one hundred percent (100%) of the average monthly power bill for the Billing Periods from Supply Effective Date (SED) up to the current Billing Period."</p>	We maintain the provision under the PSA template.
PSA Art. 23	Termination of Agreement	<p>BUYER's Event of Default</p> <p>We suggest to indicate the same period which is five (5) business days within a failure should be remedied.</p>	Subject to negotiation with the winning bidder.
PSA Art. 24	<p>ERC Rate Approval</p> <p>In the event that the Energy Regulatory Commission (ERC) approves a final rate for power supply that is lower than the rate agreed upon in this Agreement, such approval shall not be a valid ground for the termination of this Agreement by either Party. The Buyer shall not be held liable for any difference between the PSA rate and the ERC approved final rate.</p>	<p>We suggest to reword as follows:</p> <p>"In the event that the Parties obtained an ERC Approval that is lower than the rate agreed upon this Agreement, such ERC Approval..."</p>	We maintain the provision under the PSA template.
PSA Art. 29	Definitions and Interpretations	<p>We suggest to include the following defined terms:</p> <p>ERC Approval shall refer to either a Provisional Authority, Interim Relief or Final Approval issued by the Energy Regulatory Commission.</p>	Denied.
PSA Art. 33	<p>Suppletory Clause</p> <p>"xxx In the event of any conflict or inconsistency between the provisions of this Agreement and the incorporated documents, the provisions of this Agreement shall prevail."</p>	Please clarify "incorporated documents" under this provision.	Please refer to Art. 33 paragraph 1.

Other Concerns	
QUESTIONS/COMMENTS	REPLIES
Where should the Winning Bidder include in the PSA the rate schedule showing each components of the Contract Price as well as the adjustment formula of such indexed based pricing?	To be included in the Annexes of the PSA with the winning bidder.
Please confirm that the Authorized Representative is allowed to certify the documents as true copy of the original.	Yes, as long as the Authorized Representative is likewise authorized to certify such documents.
In case there would be inconsistencies between the Bid Documents and the signed PSA which shall prevail.	The first thing to do is to harmonize. If the inconsistency is irreconcilable, the PSA shall prevail.
We suggest to separate the Bidding for RPS.	We maintain our bidding process.
Request for extension for submission of written question	The TPBAC grants the extension for the deadline of clarification until August 11, 2023.
Can we request for a walkthrough of the input of the bid form?	Yes. The walkthrough will be conducted virtually on August 14, 2023 at 2:00PM . Zoom link will be provided.
According to your Transactional Schedule, the issuance of bid docs is until Aug 31, will you still accept bidders until the said date?	Yes, we will accept until August 31, 2023 before the opening of the bids.
We take note that discounts are not considered in the evaluation of bidders. However, are we required to offer PPD, CUD, and other discounts as required in the PSA section 14?	Discounts are required, as per TOR Sec. 4.4.
Clarification on the foreign exchange to be used. 56.26? 56.12? 56.25?	The foreign exchange price to be used for evaluation is 56.2600. Please refer to ITB 23.2
What will be the basis for the determination of the LCRB in terms of Fuel Price? Why would you use the December 2022 base price? It is very high compared to the actual price per metric ton now. That evaluation would result to an evaluated price that is not relective of the actual cost. How do we do it? We want to know what you want us to place there.	We will be using the December 2022 fuel price as basis. We will index your July 2023 actual price using the December 2022 basis, which was the highest last year. We just want to make sure that we still get the lowest bid price if ever the same thing with the fuel prices from last year happens again. This is only for our internal evaluation. All bidders will be evaluated using the same reference prices.
Are the bidders allowed to submit multiple bids on one lot? Does purchasing multiple bid documents allow the bidder to multiple bids on the same lot?	No. Bidders are not allowed to purchase multiple bid documents for one lot.

ANNEX H.

**CERTIFICATION OF SUBMISSION OF ORIGINAL
OR CERTIFIED TRUE COPIES OF DOCUMENTS
AND AUTHORIZATION FOR THE R8 JCPSP-JTPBAC
TO VERIFY SAID DOCUMENTS**

I, **[NAME OF AUTHORIZED REPRESENTATIVE]**, of **[Bidder's Name]**, with the office address at after having been sworn to according to law, hereby depose and state that:

- 1 I am the authorized representative of **[Bidder's name]** as per Board Resolution No. **[BR. No.]** , dated submitted in accordance with this Transaction;
- 2 **[Bidder's name]** is a company organized and existing under the laws of Republic of the Philippines and is participating as a Bidder in this Transaction;
- 3 All of the documents submitted by **[Bidder's name]** in satisfaction of the Instructions to Bidders and submitted as part of this Transaction are originals or certified true and correct copies of the original document(s).
- 4 **[Bidder's name]** hereby authorizes the R8 JCPSP-JTPBAC or its duly authorized representative/s to verify all of the documents submitted by (Bidder's Name).
- 5 This is being executed without force or under duress. This is voluntary and with consent.

[Bidder's name]

By:

[Name of Authorized Representative]

(Signature/Printed Name/Title/Designation)

SUBSCRIBED AND SWORN to before me, this _____ day of _____ at _____, Philippines, affiant exhibiting to me his/her **[Competent Evidence of Identity]** issued on _____ at _____, Philippines.

Doc No. _____

Page No. _____

Book No. _____

Series of _____

ANNEX I.

CONFIDENTIALITY AGREEMENT

Date : _____

THE CHAIRMAN

R8 JCPSP

Joint Third Party Bids and Awards Committee (JTBC)

Subject : **R8 JCPSP POWER SUPPLY PROCUREMENT PROCESS**

Sir/Madam:

We refer to the Bidding Documents issued in relation to the above subject. Capitalized terms used but not defined herein shall have the meaning given in the Bidding Documents.

“Confidential Information” as referred herein shall mean and include any and all information, whether written, oral or otherwise, concerning the business, operations, prospects, finances, or other affairs of member ECs and the Bidders, their affiliates, associates, and/or subsidiaries. Said information includes, without limitation, documents, product specifications, data, know-how, compositions, designs, sketches, photographs, graphs, past, current, and planned and research development, current and anticipated customer requirements, price lists, market studies, computer software and programs, database technologies, systems, structures and architectures, historical financial statements, business plans, current or prospective financing sources, the names and backgrounds of personnel, personnel training techniques and materials, and any portion or section, of attachment to, the Bidding Documents, or other documents and materials prepared in connection with this Transaction however such information is documented, that has been or may hereafter be provided, made available to [Bidder’s name] or is otherwise obtained from the review of the documents or properties of, and discussions with, member ECs and the Bidder’s, their affiliates, associates and/or subsidiaries, by [Bidder’s name]. Irrespective of the form of the communication or reproduction or storage, and also includes all notes, analyses, completion’s, studies, summaries, and other materials prepared by [Bidder’s name] containing or based, in whole or in part, on any information included in the foregoing.

The following information will not constitute ***“Confidential Information”*** for purposes of this Agreement:

- a. Information which [Bidder’s name] can prove was already in its possession and was available to it on a non-confidential basis prior to disclosure by FRECOR8 member ECs and/or disclosing the Bidders;
- b. Information which is obtained by [Bidder’s name] from a third person which, insofar as is known to Bidder’s name] , is not prohibited from disclosing the information under a contractual, legal or fiduciary obligation to [Bidder’s name]; and
- c. Information which is or becomes generally available to the public other than as a result of a breach of this Undertaking by [Bidder’s name].

[Bidder's name] hereby declares, represent and warrants that:

1. [Bidder's name] acknowledge that, in connection with its receipt and acceptance of the Bidding Documents, including the supplemental Bulletins, and its participation in the Transaction, it will have access to Confidential Information.
2. In consideration of its receipt of Confidential Information, [Bidder's name] warrants and undertakes all Confidential Information shall be held in strict confidence, and shall not communicate, publish, sell, trade or otherwise disclose to anyone, except to its officers, directors, employees, advisors, and consultants who need to know the Confidential Information for purposes of preparation and evaluation of the [Bidder's name] shall obtain an undertaking of confidentiality, substantially in the same form and content as this Confidentiality Agreement from such person.
3. [Bidder's name] further warns and undertakes that it will use the Confidential Information only to prepare and evaluate its Bid and to decide whether or not it will proceed with and participate in Transaction.
4. [Bidder's name] acknowledges that the confidentiality obligations set forth in this document shall terminate three (3) years after date hereof or on the date on which disclosure is no longer restricted either under the applicable Philippine Law or under the terms and conditions specified in the Bidding Documents and the Power Supply Agreement.

[Bidder's name]

By:

(Signature/Printed Name/Title/Designation)

Signed in the presence of:

Republic of the Philippines)
_____) S.S

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, for and in the above jurisdiction, personally appeared the following:

<i>Name</i>	<i>Competent Evidence of Identity/Date and Place Issued</i>
_____	_____
_____	_____

known to me and known to be the same persons who executed the foregoing Acceptance of the Bidding Documents consisting of _____(____) pages including this page where the acknowledgement is written and they acknowledged to me that the same is their own free and voluntary act and deed and the corporation represented.

WITNESS MY HAND SEAL, on the date and at the place first above written.

Doc No. _____
Page No. _____
Book No. _____
Series of _____

ANNEX J.

ACCEPTANCE OF BIDDING DOCUMENTS

Date : _____

THE CHAIRMAN

R8 JCPSP

Joint Third Party Bids and Awards Committee (JTBAAC)

Subject : **R8 JCPSP POWER SUPPLY PROCUREMENT PROCESS**

Sir/Madam:

We refer to the Bidding Documents issued in relation to the above subject.

1. [Bidder's name] has read and understood each and every section and page of the Bidding Documents, the provisions, terms and conditions thereof and any amendment, supplement or modification thereto, including the supplemental Bid Bulletins, and accepts and agrees to be bound and to fully abide by and comply with the terms and conditions thereof and any amendment, supplement or modification as well as the decisions of the TPBAC;
2. [Bidder's name] waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against R8 JCPSP-JTPBAC to prevent or restrain this Transaction or any proceeding related thereto, the holding of any other bidding or any proceeding related thereto, the selection of the Winning Bidder and the execution of the Power Supply Agreement. Such waiver shall, however be without prejudice to the right of the undersigned questioned to the lawfulness of any disqualification or the rejection of their Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order;
3. [Bidder's name] shall, at all times, comply with Philippine Law; and
4. [Bidder's name] unconditionally and irrevocably waives any defect, deviation, fault or infirmity in this Transaction and the whole process conducted by R8 JCPSP-JTPBAC.

[Bidder's name]

By:

(Signature/Printed Name/Title/Designation)

Signed in the presence of:

Republic of the Philippines)
_____) S.S

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, for and in the above jurisdiction, personally appeared the following:

<i>Name</i>	<i>Competent Evidence of Identity/Date and Place Issued</i>
_____	_____
_____	_____

known to me and known to be the same persons who executed the foregoing Acceptance of the Bidding Documents consisting of _____(____) pages including this page where the acknowledgement is written and they acknowledged to me that the same is their own free and voluntary act and deed and the corporation represented.

WITNESS MY HAND SEAL, on the date and at the place first above written.

Doc No. _____
Page No. _____
Book No. _____
Series of _____