

3 **AMENDING CERTAIN PROVISIONS OF AND SUPPLEMENTING DEPARTMENT**  
4 **CIRCULAR NO. DC2018-02-0003 ON THE COMPETITIVE SELECTION**  
5 **PROCESS IN THE PROCUREMENT BY THE DISTRIBUTION UTILITIES OF**  
6 **POWER SUPPLY AGREEMENT FOR THE CAPTIVE MARKET**  
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8 **WHEREAS**, on 1 February 2018, the Department of Energy (DOE) issued  
9 Department Circular (DC) No.DC2018-02-0003 aimed to ensure transparency and  
10 competitiveness in the conduct of Competitive Selection Process (CSP) through  
11 wide dissemination of bid opportunities to ensure participation of all eligible and  
12 qualified generation companies;  
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14 **WHEREAS**, electric power industry participants have identified and recommended  
15 various improvements in the policy, thereby, necessitating several revisions of the  
16 CSP Policy in order to ensure its efficiency and effectiveness;  
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18 **WHEREAS**, DOE recognizes that there are other CSP modalities in providing  
19 competition and transparency in the procurement of Power Supply Agreements  
20 (PSA);  
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22 **WHEREAS**, Republic Act (RA) No.11234 or the *Energy Virtual One-Stop Shop*  
23 *(EVOSS) Act* established an online platform, under the supervision of the DOE, for  
24 and among others government bureaus, offices, and entities involved in the  
25 permitting process of power generation, transmission, or distribution projects in  
26 accordance with their respective processes and procedures within a strict time frame  
27 using published standards.  
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29 **NOW, THEREFORE**, in consideration of the foregoing, the DOE hereby issues and  
30 promulgates the following amendatory and supplementary provisions to DC2018-02-  
31 0003 in the conduct of CSP.  
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33 **SECTION 1.** Section 2 (*Coverage*) of DC2018-02-0003 shall be revised to read as  
34 follows:  
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36 **“SECTION 2. SCOPE, APPLICATION AND EXEMPTION FROM CSP.**  
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38 **2.1. SCOPE AND APPLICATION.**  
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40 2.1.1. This Circular shall apply to all Distribution Utilities (DUs) and  
41 Generation Companies (GenCos) in the procurement of electric  
42 power supply.  
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44 2.1.2. All PSAs shall be procured through CSP, consistent with the  
45 latest and duly accepted Distribution Development Plan (DDP)  
46 and Power Supply Procurement Plan (PSPP) and consistent with  
47 the principles enshrined in Section 1 of DC2018-02-0003, which  
48 includes technology neutrality.  
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50 **2.2. EXEMPTION FROM CSP.**

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2.2.1 The following instances shall warrant a Certificate of Exemption from the conduct of Competitive Selection Process (COE-CSP) from the DOE:

2.2.1.1. Any generation projects funded by grants or donations, and have become fully-owned, operated, and controlled by the DU within its franchise area, subject to ownership and market-share limitations as provided under relevant laws and issuances. 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 also*, That taxes to be paid by the DU shall not be included in the total project cost; *Provided still*, That the generation project or facility shall be structurally, administratively and financially unbundled from the DU; *Provided further*, That the DU shall prove that the generation rate from such project or facility can clearly be distinguished from the distribution rates of the DU; *Provided finally*, That the generation project shall not be transferred or assigned to an affiliate or subsidiary GenCo of the DU.

2.2.1.2. Negotiated procurement of emergency power supply; *Provided*, That the cooperation period of the corresponding PSA shall not exceed one (1) year and such PSA shall be filed immediately before the ERC, upon the issuance and within the effectivity of the COE-CSP; *Provided also*, That the DU shall prove that it has performed all the necessary and required due diligence to avert the impending or actual *force majeure*/fortuitous events and/or mitigate its consequences; *Provided further*, That the procurement of emergency power supply shall not be entitled to any form of subsidy from the Government. *Provided finally*, That the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology in the area;

2.2.1.3. Any generating plant to be embedded in the DU, with fuel that is indigenous to the franchise area of the DU. The size of the generation plant shall have a maximum capacity of 1 MW.

2.2.1.4. The provision for power supply by the National Power Corporation (NPC) for off-grid areas prior to and until the entry of New Power Providers (NPP) in an area. The DU shall submit to the DOE, and to the National Electrification Administration (NEA), in the case of

100 Electric Cooperatives (ECs), a copy of the PSA  
101 between the DU and the NPC.

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103 2.2.1.5. The provision for power supply by the Power Sector  
104 Assets and Liabilities Management (PSALM)  
105 Corporation or its successors-in-interest through  
106 bilateral contracts for the power produced from the  
107 undisposed generating assets and independent Power  
108 Producer contracts. Request for exemption must be  
109 submitted to the DOE at least three (3) months prior to  
110 the expiration of the Contract of Supply of Electric  
111 Energy (CSEE) or intended cooperation period. Upon  
112 its execution, the DU shall furnish the DOE with a copy  
113 of the CSEE between the DU and the PSALM.

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115 2.2.2 The COE-CSP shall be issued by the DOE subject to complete  
116 submission of requirements as provided in **Annex A**.

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118 2.2.3 For PSAs contemplated under Section 2.2.1.2, the grant of the  
119 COE-CSP authorizes the DU to immediately implement the PSAs  
120 executed by virtue of such certificate, without prejudice to the  
121 evaluation and final decision of the ERC on the application for the  
122 approval of such PSA within sixty (60) working days from the  
123 filling of the application.

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125 2.2.4 The DOE shall furnish the NEA in the case of ECs, the NPC and  
126 the PSALM, as the case may be, with a copy of the COE-CSP  
127 issued in favor of the requesting DU.

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129 **SECTION 2.** Section 3 (*Definition of Terms*) of DC2018-02-0003 shall be amended  
130 to read as follows:

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132 **“SECTION 3. DEFINITIONS OF TERMS.**

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136 “3.8. ‘**Competitive Selection Process**’ or ‘**CSP**’ refers to the process  
137 wherein a GenCo or, in the case of off-grid areas, NPP is chosen  
138 to supply electric power requirements of a DU through  
139 transparent and competitive bidding or alternative mode of  
140 procurement undertaken by a DU or by Aggregated DUs to  
141 secure supply of electricity based on the evaluation criteria  
142 adopted by the DUs”;

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144 “3.13. ‘**Emergency Power**’ refers to the power required by the DU in the  
145 event that a DU’s actual power supply fails below its load demand  
146 due to Force Majeure or Fortuitous Events that are beyond the  
147 control of the DU, and such shortfall cannot be addressed  
148 through any reasonable means within a month and cannot be

149 supplied by the Wholesale Electricity Spot Market, subject to the  
150 final determination by the DOE;”

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154 “3.26. **‘Best and Final Offer System’** or **‘BAFO’** refers to a form of  
155 multiple rounds of CSP wherein the original proponent is given  
156 the advantage of automatically participating in the second (2nd)  
157 or final round if the original proponent did not pass the first (1st)  
158 round;”

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160 3.27. **‘Energy Virtual One-Stop Shop’** or **‘EVOSS’** refers to an online  
161 system that allows the coordinated submission and synchronous  
162 processing of all required data and information, and provides a  
163 single decision-making portal for action on applications for  
164 permits and/or certification necessary for, or related to, an  
165 application of a proponent for a new generation, transmission, or  
166 distribution projects;”

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168 “3.28. **‘Force Majeure’** or **‘Fortuitous Event’** refers to any extraordinary  
169 event not foreseeable or avoidable, or to an event that could not  
170 be foreseen, or which, though foreseen, is inevitable on the part  
171 of the DU, and is beyond the will, control, participation and  
172 influence of the DU.

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174 This further refers to an event or circumstance generally caused:  
175 (1) by nature, such as, but not limited to, fires, floods, typhoons or  
176 other catastrophes, or acts of God; and/or (2) by the acts of man,  
177 such as, but not limited to, war, national emergencies, revolution,  
178 riot, insurrection, civil unrest, or any other similar violent or  
179 threatening actions. It may likewise pertain to any analogous  
180 event that may relate to a power system emergency that shall  
181 affect the continuity of delivery of power by the DUs;”

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183 “3.29. **‘Solicited Proposals’** refers to a proposal initiated by a DU  
184 based on its final Terms of Reference (TOR) to any GenCo to  
185 supply electric power for baseload, mid-merit, and/or peaking  
186 requirements.

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188 “3.30. **‘Swiss Challenge’** refers to a form of CSP procurement that  
189 requires a DU that accepted an unsolicited proposal for a PSA  
190 from a GenCo, to publish the unsolicited proposal and invite other  
191 GenCos to offer superior proposal than the original proposal. The  
192 original proponent gets the right to match any superior offers  
193 given by the comparative bidders;”

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195 “3.31. **‘True Cost of Generation Rate’** or **‘TCGR’** refers to the full  
196 efficient cost of generation power in an area;” and

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198 “3.32. **‘Unsolicited Proposals’** refers to a power supply proposal  
199 submitted by a GenCo to a DU, which is not in response to a  
200 solicitation or request issued by the latter, to undertake a PSA  
201 with the DU covering only the indicated uncontracted demand,  
202 pursuant to its final and posted PSPP.”  
203

204 **SECTION 3.** Subsection 4.2 is amended, and additional provisions are included in  
205 Section 4 (*DDP and the PSPP*) of DC2018-02-0003, in this wise:  
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207 “4.1. xxx xxx xxx  
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209 4.2. The PSPP shall contain the following:  
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211 4.2.1. Historical data on peak demand, supply contract, energy  
212 sales and energy purchase;  
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214 4.2.2. 10-year monthly peak demand forecast; energy sales;  
215 existing contracts (expiration);  
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217 4.2.3. Committed energy and demand for CSP and its load factor  
218 computation;  
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220 4.2.4. Currently approved TCGR for Off-Grid DUs;  
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222 4.2.5. Projected Load Factor or Load Profile;  
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224 4.2.6. Distribution Impact Study/ Load Flow Analysis to serve as  
225 basis of the TOR;  
226

227 4.2.7. Current supply and demand status of the DU; and  
228

229 4.2.8. Indicative schedule for CSP taking into consideration the  
230 required construction period in the case of new generation  
231 plants.  
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233 4.3. xxx xxx xxx  
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235 4.4. The Third Party Bids and Awards Committee (TPBAC), Joint  
236 TPBAC or Third Party Auctioneer (TPA), (collectively referred to  
237 as TPBAC/TPA), or its authorized representative shall submit and  
238 upload in the DOE CSP E-based Portal the PSPP consistent with  
239 the current year DDP.  
240

241 4.5. The ERC shall be copy furnished with the DDP for review and  
242 approval of respective PSA applications.  
243

244 **SECTION 4.** Section 5 (*Third Party Bids and Awards Committee*) of DC2018-02-  
245 0003, is revised to read as follows:  
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248 **“SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE**

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250 5.1. Third Party Bids and Awards Committee (TPBAC).

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254 5.1.2.5. One Technical person, or a person with knowledge  
255 and/or experience with any local or international  
256 competitive bidding procedures.

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258 5.1.3. One of the last three (3) representatives mentioned in  
259 Sections 5.1.2.3, 5.1.2.4 and 5.1.2.5 shall represent the  
260 DU.

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262 5.1.4. In case the DU fails to find any qualified members, as  
263 specified in Sections 5.1.2.3, 5.1.2.4 and 5.1.2.5, after  
264 presenting proof of the unavailability of these  
265 professionals, may designate captive customer members  
266 with knowledge/experience in the fields of accounting,  
267 economics, finance, law, engineering or procurement, as  
268 may be necessary to complete the composition of the  
269 TPBAC;

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271 5.1.5. For all DUs, the selection process of the representatives of  
272 the captive customers to the TPBAC shall be submitted to  
273 the DOE for approval. A registered customer of a DU as  
274 the case maybe, may qualify as a member of the TPBAC;  
275 provided that such person is not directly or indirectly  
276 employed by the DU, or has not been engaged by the DU  
277 in any capacity within one (1) year from the conduct of the  
278 CSP, or is not related, within the fifth degree of  
279 consanguinity or affinity, to any director or officer of the  
280 DU.

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282 5.1.6. The Board of Director (BOD) of the DU shall only serve as  
283 an observer and not as a member of the TPBAC;

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285 5.1.7. The Chair and Vice Chair shall be selected by the  
286 members of the TPBAC. The Chairman shall only vote in  
287 case of a tie;

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289 5.1.8. A quorum of the TPBAC shall be composed of a simple  
290 majority of all voting members of the TPBAC; and

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292 5.1.9. A decision on all questions of the TPBAC shall require the  
293 majority of all the voting members of the TPBAC.

294 5.2. TPBAC Technical Working Group (TWG) and Secretariat

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5.2.6. The Secretariat is required to make and keep, as part of the TPBAC/TPA records, a complete and unedited video record during the Pre-Bid Conference and Bid Opening.

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5.5. EVOSS Application of TPBAC and JOINT TPBAC.

The following shall be submitted to the DOE, via EVOSS, as a requisite for the approval of the selection process of the TPBAC/Joint TPBAC:

5.5.1. Letter of request addressed to the DOE Secretary, attention to the Undersecretary for Power and Director of Electric Power Industry Management Bureau.

5.5.2. Selection process to be adopted by the DU in nominating the two (2) captive customer representatives to the TPBAC/Joint TPBAC to include the following:

5.5.2.1. Criteria in selecting the two (2) captive consumer representatives;

5.5.2.2. Qualification for the two (2) captive consumer representatives; and

5.5.2.3. Documentary requirements to be submitted by interested applicant to captive customer representation in the TPBAC/Joint TPBAC (i.e. Template of Letter of Intent of Applicant, Template of Resume of Applicant and other documents as required by DU).

5.5.3. DU Board Resolution, Secretary's Certificate or any equivalent document approving the selection process of the two (2) captive customer representatives to the TPBAC/Joint TPBAC.

5.5.4. Memorandum of Agreement in case of Aggregated DUs intending to convene a Joint TPBAC.

5.5.5. In any case, clarification or additional documents is deemed necessary, the DU shall have ten (10) days to comply, otherwise the DU's application shall be terminated by EVOSS system. Consequently, the DU shall submit again all relevant and necessary documents for the approval of the selection process being applied for."

**SECTION 5.** Subsection 6.3, Section 6 (*Third Party Auctioneer*) of DC2018-02-0003 is amended to read as follows:

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350 6.3. The DOE shall issue the guidelines for the accreditation of TPA  
351 within one hundred twenty (120) days upon effectivity of this  
352 Circular.

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354 **SECTION 6.** Subsections 7.3 until 7.7 of Section 7 (*CSP Observers*) of DC2018-02-  
355 0003 shall be amended to read as follows:

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357 "xxx xxx xxx

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359 7.3. CSP Observers shall not participate in the proceedings and have  
360 no right to vote.

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362 7.4. Observers shall be given written and email invitations at least five  
363 (5) working days before the date of the procurement stages.

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365 7.5. An invitation in writing and e-mail to Observers shall be extended  
366 at each of the following stages of the CSP.

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368 7.5.1. Pre Bid Conferences;

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370 7.5.2. Submission and Opening of Bids;

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372 7.5.3. Bid Evaluation;

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374 7.5.4. Post-qualification;

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376 7.5.5. Awarding; and

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378 7.5.6. Contract Signing.

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380 7.6. Observers shall be allowed access to the following documents  
381 upon their request (a) minutes of TPBAC/TPA meetings; (b)  
382 abstract of Bids; (c) post-qualification summary report; (d) video  
383 recording of CSP proceedings; (e) opened proposals; (f) draft  
384 PSA template; (g) Bid Documents and other related documents.

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386 7.7. Observers may submit to the TPBAC/TPA their written comments  
387 and recommendations within seven (7) calendar days from the  
388 CSP activity or from receipt of the documentation of the  
389 proceedings, whichever is applicable.

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391 7.8. The absence of Observers will not nullify the CSP proceedings;  
392 *Provided*, That Observers have been duly invited in writing and e-  
393 mail within the prescribed period."

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395 **SECTION 7.** Section 8 (*Competitive Selection Process*) of DC2018-02-0003 is  
396 revised in the following manner:

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**“SECTION 8. COMPETITIVE SELECTION PROCESS**

A PSA shall be awarded to a GenCo that will supply the whole or a portion of the electric power requirements of a DU through (A) **Transparent and Competitive Bidding**; or (B) **Alternative Mode of Procurement**, to be undertaken by a DU or by Aggregated DUs, subject to the conditions and requirements provided in this Circular.

The DUs shall comply with the standard procedures, documents and forms in the procurement of power supply for their Captive Market as provided in this Circular.

**A. COMPETITIVE PUBLIC BIDDING (CSP Proper)**

**8.1 Preparation of Bid Documents**

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

8.1.1. The TOR based on the recent and posted PSPP submission shall, at the minimum, contains the following information as provided in **Annex B**;

8.1.2. The Invitation to Bid shall, at the minimum, indicate the following:

8.1.2.1. Cooperation Period/Contract Year;

8.1.2.2. Demand and Energy for CSP;

8.1.2.3. Eligibility requirements; and

8.1.2.4. Schedule and Deadlines up to the Notice to Proceed (NTP).

8.1.3. The Instruction to Bidders, shall contain, at the least, the following provisions:

8.1.3.1. Corporate Profile of the bidders;

8.1.3.2. Technical Proposal’s requirements;

8.1.3.3. Financial Proposal’s requirements;

8.1.3.4. Method and Criteria for evaluation;

8.1.3.5. Bidding Procedure;

8.1.3.6. Awarding, Signing of Contract, and Notice of Implementation;

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- 8.1.4. Acceptable Form of Bid and Performance Securities;
- 8.1.5. Proposed Timelines or Milestones;
- 8.1.6. PSA Template
- 8.1.7. Notarized Statement attesting to the information submitted for the bid;
- 8.1.8. Protest Mechanism; and
- 8.1.9. Other documents required and mandated by any government agencies.

8.2. Review of the TOR, draft Instruction to Bidders, Supplemental Bid Bulletin and other related documents.

The DOE or NEA, in case of ECs, shall review the following prior to the issuance of a Certificate of Posting or NTP for the publication of Invitation to Bid:

- 8.2.1. The TOR, if consistent with the CSP Policy; and
- 8.2.2. Draft Instruction to Bidders, if consistent with the final TOR.

In the event that agreements are made during the pre-bid conference, the DOE shall review the Supplemental Bid Bulletin, revised TOR, and the CSP schedule, if any, prior to the issuance and publication of such bid bulletin.

8.3. Publication and Posting

The TPBAC/TPA shall cause the publication and posting of the Invitation to Bid for the procurement opportunity in accordance with periods specified in this Circular.

- 8.3.1. The TPBAC/TPA shall post the Invitation to Bid for at least fifteen (15) calendar days in the DU's website, if there is any, in the DOE CSP E-based Portal, and in conspicuous place at the office/s of the DU. The TPBAC/TPA shall continuously update the DOE on the status thereof through their respective E-based portals.
- 8.3.2. The TPBAC/TPA shall likewise ensure that all bid bulletins and related announcements shall be posted at the DOE CSP E-based portal.

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- 8.3.3. In cases where the DUs encounter problems in the posting of the necessary pieces of information in the said CSP E-based portals, the DUs shall inform the DOE for assistance in the required posting.
- 8.3.4. Upon posting of the DU's CSP-TOR in the DOE CSP E-based Portal, the DOE shall issue a Certificate of Posting to the DU.
- 8.3.5. The TPBAC/TPA shall also cause the publication of the Invitation to Bid in a newspaper of general circulation once weekly for two (2) consecutive weeks.
- 8.3.6. The TPBAC/TPA may opt to, in addition to the immediately preceding paragraph, publish the Invitation to Bid in one (1) newspaper of local circulation in the region, province, city or municipality indicating the CSP schedules, among other necessary information for the bidders once every week for two (2) consecutive weeks.
- 8.3.7. In addition to publication, the TPBAC/TPA shall exert its best effort to disseminate its Invitation to Bid to all GenCos.

8.4. Pre-Bid Conference

- 8.4.1. The TPBAC/TPA shall conduct at least one Pre-Bid Conference/s to address the queries of the prospective bidders.
- 8.4.2. 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.
- 8.4.3. Requests for clarification from prospective bidders may be made during the conduct of the Pre-bid Conference, or in writing to be submitted to the TPBAC/TPA within three (3) calendar days from the Pre-bid Conference.
- 8.4.4. Decisions of the TPBAC/TPA, clarifying or amending any provision of the TOR or Bidding Documents shall be issued through a Supplemental/Bid Bulletin, at least seven (7) working days before the deadline for the submission

547 and receipt of bids and shall be posted in the DU's  
548 website, if any, and in the DOE CSP E-based Portal.

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550 8.4.5. Supplemental/Bid Bulletins may be issued in the  
551 following circumstances.

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553 8.4.5.1. Request of the prospective GenCos for  
554 clarification(s) on, or for an  
555 interpretation of any part of the Bid  
556 Documents; and

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558 8.4.5.2. Upon the initiative of the TPBAC/TPA  
559 for purposes of clarifying or modifying  
560 any provision of the Bidding  
561 Documents.

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563 Any modification to the Bid Documents  
564 shall be identified as an amendment.

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566 8.4.6. If the Supplemental Bid Bulletin(s) will change the  
567 substance of the TOR, the TPBAC/TPA shall seek  
568 the confirmation of the DU. Thereafter, the DU shall  
569 seek the concurrence of the DOE on the Revised  
570 TOR.

571  
572 8.4.7. The TPBAC/TPA shall ensure that all clarifications  
573 and queries must be clarified by the issuance of Bid  
574 Bulletins, and shall avoid any delay in the conduct of  
575 the CSP.

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577 8.5. Bid Evaluation Criteria and Process

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579 8.5.1. The TPBAC/TPA and its TWG of the same shall  
580 evaluate the GenCo's legal, technical, and financial  
581 qualifications based on the criteria indicated in the  
582 Bid Documents.

583  
584 8.6. Submission, Receipt and Opening of Bids.

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586 8.6.1. The Bidders shall be required to submit their bids on  
587 or before the deadline stipulated in the Bid  
588 Documents and/or in the Supplemental Bid  
589 Bulletins.

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591 8.6.2. Bidders shall submit their bids through their duly  
592 authorized representative using the forms specified  
593 in the Bidding Documents in two (2) separate sealed  
594 bid envelopes, and which shall be submitted  
595 simultaneously. The first shall contain the technical  
596 component of the bid, including the eligibility

597 requirements, and the second shall contain the  
598 financial component of the bid.

599  
600 8.6.3. The Opening of Bids shall take place in the  
601 presence of all qualified bidders and observers.

602  
603 8.6.4. The TPBAC/TPA shall proceed to determine the  
604 lowest calculated bid or the highest rated bid, using  
605 the valuation criteria prescribed in the Bid  
606 Documents.

607  
608 8.6.5. The lowest calculated bidder shall undergo a post-  
609 qualification process to determine its compliance  
610 with all the requirements and conditions, as  
611 specified in the TOR and other pertinent bidding  
612 documents.

613  
614 8.6.6. The TPBAC/TPA may delegate to the TWG the  
615 conduct of the post-qualification. The TWG of the  
616 TPBAC/TPA shall submit the evaluation report to  
617 the TPBAC/TPA. The TPBAC/TPA, through a  
618 Resolution, shall recommend the award of the  
619 contract to the BOD of the DU within five (5) working  
620 days from the receipt of the TWG's Resolution.

621  
622 8.7. Within five (5) working days upon signing of the PSA, the DU and  
623 the winning bidder shall jointly file the PSA to the ERC, copy  
624 furnished the DOE and NEA, in case of ECs.

625  
626 8.8. Each CSP shall be completed within five (5) months from the time  
627 of publication of Invitation to Bid until the filing of the PSA to the  
628 ERC.

629  
630 8.9. All expenses incurred in the conduct of the CSP shall be  
631 shouldered by the DUs. The DUs may, however, recover these  
632 expenses from the costs in the acquisition of the bid documents  
633 by prospective bidders.

634  
635 **B. ALTERNATIVE MODE OF PROCUREMENT**

636  
637 As a general rule, the DUs shall adopt the Competitive Public Bidding  
638 (*CSP Proper*) prescribed in Section 8 (A) of this Circular in the  
639 procurement of PSAs. However, alternative methods of procurement  
640 shall be resorted to only in highly exceptional cases provided for in this  
641 Circular.

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643 8.10. UNSOLICITED PROPOSAL

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8.10.1. *REQUISITES FOR UNSOLICITED PROPOSAL.* A DU shall consider an unsolicited proposal by a GenCo only when all of the following conditions exist:

8.10.1.1. The proposal is in accordance with the DU's latest and accepted PSPP for the current year duly reviewed by the DOE and posted at the DOE CSP E-based Portal;

8.10.1.2. There is no on-going CSP, commencing with the publication of Invitation to Bid by the DU;

8.10.1.3. The resulting PSA will not result to over contracting on the part of the DU in terms of both capacity and energy requirements as indicated in the current-year DDP, taking into consideration its existing PSAs, PSAs for approval at the ERC, and the ensuing PSA from its on-going CSP activity, if any;

8.10.1.4. The contracted capacity shall not exceed ten (10) percent of the DU's peak demand;

8.10.1.5. The proposed generation cost must not be higher than the lowest ERC approved generation tariff for same or similar technology in the area;

8.10.1.6. The unsolicited proposal shall deliver significant benefits to the captive consumers of the DU both in terms of reliability improvement and no increase in the average TCGR to the DU; and

8.10.1.7. The unsolicited proposal involves no subsidy for the resultant PSA.

8.10.2. All unsolicited proposal shall be subjected to the selection process as provided in this Circular.

8.10.3. *ACCEPTANCE OF THE UNSOLICITED PROPOSAL(S)*

8.10.3.1. The DU shall acknowledge the Unsolicited Proposal within seven (7) days upon receipt. The evaluation of the unsolicited proposal shall commence within fourteen (14) days from such acknowledgement. The DU shall then, through the TPBAC/TPA and its TWG, evaluate the unsolicited proposal, including its merits, the qualifications of the Genco, appropriateness of the contractual arrangements, and the completeness of the submission within sixty (60) days therefrom.

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8.10.3.2. Unsolicited proposal shall include a company profile registration with the Securities and Exchange Commission; a feasibility study which should indicate relevant assumptions; generation cost; the draft PSA and other documents that are deemed necessary by the proponent, among others;

8.10.3.3. The TPBAC/TPA, through a Resolution, shall submit its evaluation and recommendation to the DU on the Unsolicited Proposal, with justification based on the review on the merits of the proposal, within the sixty (60) day period as provided in Section 8.11.3.1.

8.10.3.4. If the unsolicited proposal is accepted, the DU shall submit to the DOE a report on the evaluation made on the proposal, with corresponding affidavit from the evaluators, that includes, but not limited to the following:

8.10.3.4.1. Company Profile;

8.10.3.4.2. Cooperation Period;

8.10.3.4.3. Rate offered (PhP/kWh); and

8.10.3.5. The TPBAC/TPA concerned shall subsequently declare the Genco and its accepted unsolicited proposal as the Original Proponent and the Original Proposal, respectively, and shall prepare the TOR and the corresponding Bid Documents.

#### 8.10.4 PREPARATION OF BID DOCUMENTS

The TWG of the TPBAC/TPA shall prepare the Bid Documents, in accordance with Section 8.1 of this Circular.

##### 8.10.4.1 Review of TOR

The DOE shall review the TOR prepared by the TPBAC/TPA based on the offer of the original proponent. The DOE may seek the assistance of affiliate and other government agencies in the review of the TOR.

##### 8.10.4.2. Publication and Posting

745 The TPBAC/TPA shall comply with the  
746 publication and posting requirements, as  
747 provided in Section 8.3 of this Circular.  
748

#### 749 8.10.4.3. Pre-Bid Conference

750  
751 The TPBAC/TPA shall conduct the Pre-Bid  
752 Conference in the manner prescribed in Section  
753 8.4 of this Circular.  
754

#### 755 8.10.4.4. Bid Evaluation Criteria and Process

756  
757 8.10.4.4.1. The TPBAC/TPA and the TWG of the  
758 same shall undergo a qualification  
759 evaluation of the legal, technical, and  
760 financial requirements submitted by  
761 GenCos using the criteria indicated in  
762 the Bid Documents.  
763

### 764 **8.11. SELECTION PROCESS FOR UNSOLICITED PROPOSALS**

765  
766 If an Unsolicited Proposal is accepted, it shall be subjected to any  
767 of the following processes: (1) **Swiss Challenge** or (2) **Best and**  
768 **Final Offer System.**  
769

#### 770 **8.11.1 SWISS CHALLENGE**

771  
772 8.11.1.1 Upon issuance of Invitation to Bid, other GenCos  
773 shall have sixty (60) days to offer superior bids  
774 than the original proposal.  
775

776 8.11.1.2 The Invitation to Bid shall, at the minimum,  
777 indicate the following:

778 8.11.1.2.1 Cost of Power (PhP/kWh) as  
779 contained in the original proposal;  
780

781 8.11.1.2.2 Cooperation Period/Contract Year  
782 information contained in the original  
783 proposal;  
784

785 8.11.1.2.3 Demand and Energy offered information  
786 contained in the original proposal;

787 8.11.1.2.4 Eligibility requirements; and

788 8.11.1.2.5 Schedule and Deadlines up to the NTP.

789  
790 8.11.1.3 At the end of the solicitation period, the opening  
791 of comparative bids shall take place in the

792 presence of all qualified bidders, the original  
793 proponent and observers.

794  
795 8.11.1.4 The TPBAC/TPA and its TWG shall evaluate the  
796 Comparative Proposals based on the following  
797 criteria:

798  
799 8.11.1.4.1 Technical and Legal Proposal's  
800 requirements; and

801  
802 8.11.1.4.2 Financial Proposal's requirements;

803  
804 8.11.1.5 The TWG of the TPBAC/TPA shall submit the  
805 evaluation report to the TPBAC with  
806 corresponding TWG Resolution.

807  
808 8.11.1.6 If a comparative bid/proposal is superior than  
809 the proposal submitted by the original  
810 proponent, the original proponent shall have the  
811 right to match such price proposal within thirty  
812 (30) working days from receipt of a notification  
813 from the TPBAC/TPA of the result of the  
814 comparative bid.

815  
816 8.11.1.7 In case, the original proponent fails to match the  
817 price proposal of the comparative proponent  
818 within the specified period, the PSA shall be  
819 awarded to the comparative proponent. On the  
820 other hand, if the original proponent matches  
821 the price proposal of the comparative proponent  
822 within the specified period, the PSA shall  
823 immediately be awarded to the original  
824 proponent.

825  
826 8.11.1.8 The winning bidder shall undergo a post-  
827 qualification process in order to determine  
828 whether such bidder complies with and is  
829 responsive to all the requirements and  
830 conditions as specified in the TOR and other  
831 pertinent bid documents. The BOD will issue the  
832 Resolution of Notice of Award to the winning  
833 bidder.

834  
835 8.11.1.9 All costs incurred in preparing and submitting an  
836 unsolicited proposal shall be deemed as part of  
837 the risks of the Original Proponent, and shall not  
838 be refunded through pass-on rate to the  
839 consumers.

840

841 8.11.1.10 In the case where the DU receives more than  
842 one Unsolicited Proposal involving the same or  
843 similar period of demand/energy requirement,  
844 prior to acceptance of the proposal as the  
845 “original proponent”, the DU may either reject all  
846 the proposals, or bid out the requirement as a  
847 solicited proposal.

848  
849 In case of the second option, the DU shall  
850 observe the procedure under Section 8 (A) of  
851 this Circular.

852  
853 8.11.1.11 In the case where the TPBAC/TPA, prior to the  
854 declaration of an Original Proponent and  
855 Original Proposal, considers multiple  
856 Unsolicited Proposals, the TPBAC/TPA shall  
857 evaluate the proposals using a *First-In-Time*  
858 approach.

859  
860 8.11.1.11.1 Under the *First-In-Time*  
861 approach, the complete unsolicited  
862 proposal first received by the DU shall  
863 primarily be evaluated and decided  
864 upon. Subsequent complete  
865 unsolicited proposals will only be  
866 deliberated if the first one is not  
867 accepted, based in the order of their  
868 submission.

869  
870 8.11.1.11.2 The DU shall acknowledge the  
871 unsolicited proposal submissions of  
872 other Gencos with similar proposal for  
873 electric power supply, and advise the  
874 said Gencos of the existence of  
875 similar proposal and its rank/position  
876 based on date of receipt of unsolicited  
877 proposals. If a PSA has been  
878 awarded to an original proponent,  
879 other proposal shall be returned to  
880 the respective proponents unopened.

881  
882 **8.11.2 BEST AND FINAL OFFER SYSTEM (BAFO)**

883  
884 This is characterized by multiple rounds of tendering, in  
885 which the original proponent is given the advantage of  
886 automatically participating in the final round.

887  
888 8.11.2.1 At the commencement of the CSP, the  
889 Invitation to Bid shall, at the minimum, indicate  
890 the following:

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8.11.2.1.1 Cooperation Period/Contract Year information contained in the original proposal;

8.11.2.1.2 Demand and Energy offered information contained in the original proposal;

8.11.2.1.3 Eligibility requirements; and

8.11.2.1.4 Schedule and Deadlines up to the Notice to Proceed

8.11.2.2 Information about the bid price of the original proposal will not be disclosed to the other bidders in the Invitation to Bid.

8.11.2.3 At the end of the solicitation period, the opening of comparative bids shall take place in the presence of all qualified bidders, the original proponent, and observers.

8.11.2.4 The TPBAC/TPA and its TWG shall evaluate the Comparative Proposals based on the following eligibility requirements:

8.11.2.4.1 Technical and Legal Proposal; and

8.11.2.4.2 Financial Proposal;

8.11.2.5 In the first round, bids will be evaluated and ranked. Information about the bid price of the bidders will not be disclosed. In case the original proponent has the lowest responsive bid, the PSA shall be awarded correspondingly to the original proponent.

8.11.2.6 In case the original proponent does not possess the lowest responsive bid, the lowest bidder is selected in the first round. The lowest responsive bidder and the original proponent shall then proceed to the second round of bidding where they are requested to provide their best and final offers.

8.11.2.7 Bidders are given the opportunity to improve their Bids in the second round. However, bidders may opt not to revise their bids.

- 941 8.11.2.8 In the second and final round, bids will be  
942 evaluated and ranked. The bidder with the  
943 lowest offer shall be awarded the PSA.  
944  
945 8.11.2.9 At the conclusion of the second and final  
946 round, all bids in all rounds shall be made  
947 public to ensure transparency.  
948  
949 8.11.2.10 BAFO shall be concluded in one (1) day.

950  
951 **8.11.3 DIRECT NEGOTIATION IN FAILED SELECTION**  
952 **PROCESS OF UNSOLICITED PORPOSALS**  
953

954 8.11.3.1 Direct negotiation may be made by the DUs  
955 after one (1) failed comparative bidding and  
956 there is no outstanding dispute on the  
957 conducted Comparative Bidding Proposal  
958 (CBP).  
959

960 8.11.3.2 A CBP is considered failed only when, during  
961 its conduct, any of the following circumstances  
962 exists;

963  
964 8.11.3.2.1 No comparative bid was received  
965 by the TPBAC/TPA; or

966 8.11.3.2.2 Comparative bids failed to meet the  
967 requirements prescribed in the bid  
968 documents.  
969

970  
971 8.11.3.3 The TPBAC/TPA, with the concurrence of the  
972 DU shall reserve the right to declare the CBP  
973 failed, *provided* that any of the parameters  
974 mentioned in the preceding paragraph is  
975 present. The DU, through the TPBAC/TPA,  
976 may pursue another round of CBP to ensure  
977 competitiveness of the bidding process.  
978

979 **SECTION 8.** Section 10 (*Compliance to Renewable Energy Law*) of DC2018-02-  
980 0003 is amended to read as follows:

981  
982 **“SECTION 10. COMPLIANCE TO RENEWABLE ENERGY LAW**

983  
984 Pursuant to RA No. 9513 or the ‘Renewable Energy (RE) Act of 2008’,  
985 DUs and Retail Electricity Supplier shall comply with the DOE issuances  
986 pertaining to the RE Act.  
987  
988  
989

990 **SECTION 9.** Section 12 (*Regulatory Support*) of DC2018-02-0003 is revised to read  
991 as follows:

992  
993 **“SECTION 12. REGULATORY SUPPORT**

994  
995 12.1. The ERC, in the exercise of its powers and functions under the  
996 Electric Power Industry Reform Act shall establish and impose  
997 existing fines and or penalties for non-compliance of electric  
998 power industry participants to support the enforcement of this  
999 Policy.

1000  
1001 12.2. The ERC shall have the power to review and determine whether  
1002 the parties have complied with the requirements of CSP and shall  
1003 issue appropriate regulations upon as may be necessary.

1004  
1005 12.3. The ERC shall develop rules and procedures to address dispute  
1006 arising from the conduct of the CSP within 120 days upon the  
1007 effectivity of this Policy.

1008  
1009 12.4. The ERC shall develop rules and procedures to review and  
1010 approve PSAs from the outcome of COE-CSP granted by the  
1011 DOE within 120 days upon the effectivity of this Policy.

1012  
1013 12.5. The ERC shall provide the PSA Template to be used by electric  
1014 power industry participants within 120 days upon the effectivity of  
1015 this Policy.

1016  
1017 12.6. The ERC shall ensure that generation facilities owned, operated,  
1018 controlled by DU that were funded by grants and donations  
1019 should not form part of the electricity rate applications by the DUs.

1020  
1021 12.7. The NEA shall develop rules and procedure to support this  
1022 Circular within 60 days upon its effectivity.

1023  
1024 **SECTION 10. TRANSITORY PROVISION**

1025  
1026 Upon the effectivity of this Policy, all prospective PSAs shall hereafter be procured in  
1027 accordance with DC2018-02-0003 and this Circular.

1028  
1029 All PSAs that have been procured and executed, including those to be filed and  
1030 pending before the ERC, prior to this Circular and in line with DC2018-02-0003 shall  
1031 be honored and recognized. All DUs with on-going CSP activities prior to the  
1032 effectivity of this Circular shall continue to observe the 2018 CSP Policy.

1033  
1034 **SECTION 11. REPEALING CLAUSE**

1035  
1036 11.1 Any issuance made by any GOCCs regarding CSP that is inconsistent with  
1037 this Circular is hereby repealed.

1039 11.2 Nothing in this Circular shall be construed as to amend, supersede, or repeal  
1040 any of the mechanism or institutions already existing or responsibilities  
1041 already allocated or provided for under any existing law, rule, or contract.  
1042

1043 **SECTION 12. SEPARABILITY CLAUSE**

1044  
1045 If for any reason that any section of this Circular is declared unconstitutional or  
1046 invalid, such parts not affected shall remain in full force and effect.  
1047

1048 **SECTION 13. EFFECTIVITY**

1049  
1050 This Circular shall take effect fifteen (15) days upon its publication in at least two (2)  
1051 newspapers of general circulation. Copies thereof shall be filed with the University of  
1052 the Philippines Law Center – Office of National Administrative Register (UPLC-  
1053 ONAR).  
1054

1055  
1056 Issued on \_\_\_\_\_ at Energy Center, Bonifacio Global City, Taguig  
1057 City.  
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1060  
1061 **ALFONSO G. CUSI**  
1062 Secretary  
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1089 ANNEX A  
1090 MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF  
1091 EXEMPTION  
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1094 **A. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF**  
1095 **EXEMPTION**  
1096

- 1097 1. Letter of Distribution Utility (DU) to the Department of Energy (DOE),  
1098 requesting for Certificate of Exemption (COE) from the conduct of  
1099 Competitive Selection Process (CSP);
- 1100 2. Resolution from the Board of Directors (BOD) of the DU requesting for  
1101 COE-CSP. At a minimum, the Resolution should indicate the following:  
1102 (a) Capacity to be procured; and  
1103 (b) Duration of the Power Supply Agreement (PSA).
- 1104 3. Justification for the request of COE-CSP;
- 1105 4. One (1) year projection of supply-demand profile indicating power  
1106 shortage in the next twelve (12) months;
- 1107 5. Distribution or System Impact Study for the existing capacity;
- 1108 6. Current Power Supply Agreements (PSAs) of DUs; and
- 1109 7. Draft PSA or Terms of Reference (TOR) for the procurement of  
1110 emergency power supply.  
1111

1112  
1113 **B. MINIMUM REQUIREMENTS FOR APPLICATION OF CERTIFICATE OF**  
1114 **EXEMPTION – POWER SECTOR ASSETS AND LIABILITIES**  
1115 **MANAGEMENT (PSALM) CORPORATION**  
1116

- 1117 1. Letter of DU to DOE, requesting for COE-CSP;
- 1118 2. Resolution from the BOD of the DU requesting for COE-CSP. At a  
1119 minimum, the Resolution should indicate the following:  
1120 (a) Capacity to be procured; and  
1121 (b) Duration of the Contract for the Supply of Electric Energy  
1122 (CSEE);
- 1123 3. Letter of DU to PSALM Corporation, requesting provision of power  
1124 supply; and
- 1125 4. Letter of PSALM Corporation to DU, granting/approving the request of  
1126 the DU for the provision of power supply.  
1127



- 6.2 For on-grid area, if the outage is within the maximum allowance, the cost of Replacement Power at the relevant period shall be paid by the DU based on the WESM prices.
- 6.3 For on-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, the cost of Replacement Power provided by the Power Supplier shall be paid by the DU during the relevant period equal to WESM price or the ERC-approved rate under the PSA, which ever is lower.
- 6.4 For off-grid area, in case of unexcused delay in the COD or any outage beyond the maximum allowance, cost of the Replacement Power shall be paid by the DU during the relevant period equal to the ERC-approved rate under the PSA.
- 6.5 If the Power Supplier cannot deliver Replacement Power, the DU shall charge the Power Supplier during the relevant period using the following formula (*please specify*): \_\_\_\_\_

**7. FORCE MAJEURE**

- 7.1 The events that shall be deemed as Forced Majeure and analogous circumstances shall be in accordance to DOE CSP Policies.
- 7.2 Arrangements in case of any force majeure shall be agreed upon by parties and shall form part of the PSA.
- 7.3 There will be no payment of any capacity fee in case of outage during any force majeure.

**8. GROUNDS FOR CONTRACT TERMINATION**

- 8.1 Valid ground for terminations are (*please check as applicable*):
  - a. Event of Default
  - b. Expiration of cooperation period
  - c. Failure to achieve COD
  - d. Mutual agreement by both parties
  - e. Extended Force Majeure as agreed under the PSA.
  - f. Changes in the circumstances as agreed under the PSA.
  - g. Others, please specify. \_\_\_\_\_
- 8.2 Rate deductions made by the ERC shall not be a valid ground for the termination of the contract. DU shall not pay for the said rate reduction or adjustments.

**9. LIQUIDATED DAMAGES**

- 9.1 Liquidated damages in case of default shall be equal to the present value of the Capacity Payment computed on a 365-day basis for the remaining term of the PSA.
- 9.2 The discount rate to be used shall be (*please specify*): \_\_\_\_\_ percent.

**10. TRANSFER OF CONTRACT CAPACITY**

- 10.1 The transfer of contract capacity shall be allowed in case of (*please check if applicable*):
  - Loss of captive customers due to Retail competition and Open Access (for on-grid areas only)
  - Reduction of demand of the DU due to special circumstances beyond its control.
- 10.2 Customer may assign, transfer, designate or allocate its rights and obligations to purchase a portion of Contract if no longer requires to:
  - a) Any of its business segments without the prior consent of Power Supplier; or
  - b) Any affiliate or third party subject to the consent of Power Supplier
- 10.3 The consent by the Power Supplier shall not be unreasonably delayed or conditioned at the disadvantage of the DU.
- 10.4 Any assignment or transfer shall require approval of the ERC and must comply with applicable rules of competition set by the Government.

**11. OBLIGATIONS OF THE DU**

- 11.1 The DU shall provide assistance to the successful bidder in the processing of permits and similar requirements from all national agencies and local government units especially if the resulting PSA involves the construction of a new power plant.

**12. PROPOSED RESERVE PRICE**

- 12.1 Is there a Benchmark Rate?  Yes  No
- 12.2 Basis or source of the Reserve Price (if not ERC): \_\_\_\_\_
- 12.3 The Reserve Price shall be revealed to the bidders only during the opening of the financial bids.
- 12.4 The DU-TPBAC reserves its right to accept or reject offers above the Benchmark Rate.

**13. BIDDER'S QUALIFICATIONS**

- 13.1 All forms of business organizations including Joint Ventures are encouraged to participate in the bidding process subject to applicable government licenses and permits.
- 13.2 For bidders using indigenous and RE power plants, the bidder must comply with the constitutional requirement for ownership.
- 13.3 The capacity offer of the bidder must be compliant with all the ownership limitations prescribed under EPIRA.
- 13.4 For new power suppliers, the qualification shall be based on : (i) the experience and competence of its proposed personnel to manage and operate the plant; and, (ii) acceptability of its proposed operational management plan.