

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

BID BULLETIN No. 5

AMENDED PROVISIONS

LUECO TPBAC is issuing amendments on the following provisions of herein Bid Documents in response to comments raised by interested Bidders during the Pre-Submission of Comments. To wit:

A) Instructions to Prospective Bidders (IPB)

1) Section 1 Bidding Schedule

Submission of Comments *Fri, 05 Feb 2021* ~~*Thu, 11*~~ *Tue, 16 Feb 2021*

Issuance of Bid Bulletins *Tue, 23 Feb 2021* ~~*Tue, 30*~~ *Mon, 22 Mar 2021*

Consequently, Section 2.2.5 is amended to read as follows:

2.2.5. Bidders will then have until ~~Thu, 11-Feb-2021~~ Tue, 16 Feb 2021 within which to submit written queries, or requests for clarifications or revisions to the Bidding Documents. Thereafter, the TPBAC shall respond or issue the necessary notices and bid bulletins to address said queries or comments, which shall be no later than ~~Tue, 30-Mar-2021~~ Mon, 22 Mar 2021.

2) Section 2.2 SUMMARY OF BIDDING

~~*The Winning Bidder shall be determined as one with the lowest resulting LCOE. There will only be one Winning Bidder and such must be able to supply for the entire requirement of LUECO for the duration of the Cooperation Period. Moreover, To be declared as Winning Bidder, the Bidder's Proposed Price (for the first Billing Year) and its LCOE should be equal to or lower than the are both subject to pre-determined reserve price, which will only be revealed by the TPBAC to Qualified Bidders during only after the opening of all the Bids. (hereinafter collectively referred to as the "Reserve Prices.") Moreover, the Winning Bidder should have the lowest Final LCOE.*~~

3) Section 2.2.7 under Summary of Bidding

2.2.7. On the same day xxx . . .

Should there be a tie in the LCOE of the resulting Best Bid, the TPBAC shall give these Bidders a period of time, on the same day, to improve their Proposed Price until the tie is broken. *The submission of improved offer shall not be later than 4:00 PM via email which should be password-protected. The improved offer shall be opened at 4:30PM within the view of the two competing Bidders.*

Apart from ranking the LCOE of the Proposed Price of the Qualified Bidder, *the lowest Bidder shall be the one that meets the following requirements* ~~TPBAC shall also examine:~~ *1) if both the 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.*

After the evaluation xxx . . .

Upon the opening of the Bids, xxx . . .

4) Section 2.10.2 (iii) and (iv) Conflict of Interest

- (iii) A Bidder's Nominated Power Plant or listed portfolio of plants is also a Nominated Power Plant or listed portfolio of plants of another Bidder in this Bidding, in which case, both will be considered in Conflict of Interest, *unless the Bidder can show proof that the offered capacity is solely dedicated to the requirements of LUECO as set forth in the EPPA; or*
- (iv) A Bidder submits more than one Bid in this Bidding *unless it is a result of manifest error duly notified to the BUYER ahead of actual opening of Bids.*

5) Section 2.10.4 (f) Grounds for Disqualification

- (f) *submission of more than one Bid for each Bidder unless it is a result of manifest error duly notified to the BUYER ahead of actual opening of Bids; or*

6) Section 3.1.2

3.1.2. Company Information, using the form in ANNEX 3, with the following attachments;

- (a) copy of its SEC Certificate xxx . . .
- (b) copy of its articles xxx . . .
- (c) copy of its latest General xxx . . .
- (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 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;
- ~~(e) Parent of, the Bidder 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;~~
- ~~(fe)~~ if applicable, copy of its registration xxx . . .
- ~~(gf)~~ if the Bidder is under a partnership xxx . . .
- ~~(hg)~~ a notarized certification, xxx . . .

7) Section 3.3 (c) Bid and Bid Security

(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 ~~in a USB/thumbnail flash-memory drive via email,~~ together with a print out of the said duly accomplished worksheet/s, signed **in all pages** by the Bidder's authorized representative and submitted as part of Envelope 3; and

8) Section 3.3.2 Forfeiture of Bid Security

The Bid Security shall be subject to forfeiture in its entirety in favor of LUECO upon the occurrence of any of the following events:

a) xxx . . .

g)

h) *the Winning Bidder fails to timely submit any 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) days from the signing and execution of the Electric Power Purchase Agreement, **except if the delay is caused any circumstances beyond the control of the Winning Bidder.***

The Bid Security of 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.

9) Section 3.3.3 (a) Return/Cancellation of Bid Security

(a) *Bidders who (i) are disqualified under Section 2.10.4 (a) **and** (b), ~~or (c)~~; (ii) fail to submit compliant Qualification Documents, Technical Proposal, or Bid; or (iii) fail to post-qualify for reasons other than those provided in Section 3.3.2 (Forfeiture of Bid Security) of this IPB, will have their Bid Security returned or cancelled (through a letter **citing the reason therefor**, addressed to the issuer of the Bid Security **and the concerned Bidder** cancelling the Bid Security within ten (10) days from receipt of written notice of their disqualification or failure to qualify or post-qualify.*

10) Section 3.4.1 letter (e)

(e) Electronic copies of ALL documents submitted in the Bid shall be in PDF format *via email*. ~~In addition, the Financial Evaluation Workbook shall be contained in a USB/thumb flash memory drive in excel format and the Bidder shall submit such electronic copies on a USB/thumb flash memory drive included in the envelopes containing the applicable Documents Submissions.~~ 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. 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.~~

~~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 copy 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) sets of hard copies of Document Submissions to be sent to the TPBAC Secretariat.~~

11) Section 3.4.2 Format of Submission of Qualification Documents, letter (a) Item (ii)

(ii) ~~five (5) sets of photocopies to be sealed in five (5) separate envelopes, clearly marked on each page as "ENVELOPE 1-QUALIFICATION DOCUMENTS-COPY NO. 1, ENVELOPE 1-QUALIFICATION DOCUMENTS-COPY NO.2 and so forth."~~

12) Section 3.4.3 Format of Submission of the Technical Proposal letter (a) Item (ii)

(ii) ~~five (5) sets of photocopies, to be sealed in five (5) separate envelopes, clearly marked on each page as "ENVELOPE 2-TECHNICAL~~

PROPOSAL-COPY NO. 1, ENVELOPE 2 – TECHNICAL PROPOSAL-COPY NO. 2 and so forth. ”

13) Section 3.4.4 Format of Submission of the Bid (a) Item (ii)

- (ii) five (5) sets of photocopies, to be sealed in five (5) separate envelopes, clearly marked on each page as “ENVELOPE 3-BID-COPY NO. 1”, ENVELOPE 3-BID-COPY NO. 2 and so forth.”

14) Section 4.4.3

4.4.3. 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 ~~TPBAC shall also examine:~~ 1) if both the 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 . . .

15) Section 9 Definitions

“Reserve Capacity” as mentioned in the Certification Regarding Technical Proposal shall mean the net of the Maximum Plant Capacity less Total Contracted Capacity and Pending PSAs for Approval by ERC.

16) ANNEX 1 Application to Qualify and Participate in the Bidding Item No. 3

3. (Name of Bidder) authorizes LUECO xxx . . .

(Name of Bidder) acknowledges the right of LUECO to reject its Document Submissions ~~without assigning any reason based on~~ reasonable ground/s, including but not limited to those cited under Section 2.10.3 of the IPB upon due notice ~~and to cancel the Bidding~~ at any time, without incurring any liability to the (name of Bidder).

17) ANNEX 8 Bid Letter Item No. 5

5. (Name of Bidder) acknowledges the right of LUECO to reject its Bid ~~without assigning any reason based on reasonable ground/s, including but not limited to those cited under Section 2.10.3 of the IPB upon due notice and to cancel the Bidding process~~ at any time without incurring any liability to the (name of Bidder).

18) DISCLAIMER 5th Paragraph

The issuance of the Bidding Documents does not imply that TPBAC or LUECO is bound to select a successful Bidder or to appoint any power supplier. The TPBAC expressly reserves the right to: (a) accept or reject all or any application to participate in the Bidding ~~without assigning any reason whatsoever based on reasonable ground/s, including but not limited to those cited under Section 2.10.3 of the IPB upon due notice without incurring any liability to the [name of Bidder]; (b) declare a failed bidding pursuant to Section 7 without incurring any liability to the [name of Bidder].; or (b) cancel this Bidding at any time without any obligation to give any reason therefor; and in all cases, without incurring any liability or without the need to give prior notice.~~

B) Electric Power Purchased Agreement (EPPA)

1) Article 1 Definition of Terms and Interpretation

"Business Day" means any Day from Monday to Friday on which banking institutions are open for the transaction of business, excluding national holidays in the Philippines and local holidays in La Union as the context may require. ~~A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.~~

2) Article 2.3.3 Commencement Date

2.3.3.1 xxx . . .

2.3.3.2 *It shall be on August 26, 2021 or upon approval by the ERC, (whether provisional or final), whichever is later but to coincide with NGCP Billing every 26th day of the month.*

3) Article 4.2 Failure of Power Plant to Generate Electricity

*In case SELLER is unable to source electricity from Power Plant for whatever reason **except cases of Force Majeure**, SELLER shall undertake alternative sourcing arrangements to compensate for the failure or shortfall, provided that, BUYER shall pay to SELLER the prevailing Electricity Fee or from the alternative source, whichever, is lower. In case SELLER fails to supply BUYER electricity due to unavailability of supply from its Power Plant, WESM, and any other source, SELLER shall pay a fine calculated as follows:*

Fine = ~~20%~~ 5% x GENRATE from the previous Billing Month x Unsupplied Energy

Where:

Unsupplied Energy = the average of the last 4 same day, same hour of the Trading Intervals affected by the loss of supply from Power Plant, WESM, and any other source

which shall be used to reduce the generation charge to the consumers. For avoidance of doubt, in case SELLER fails to supply electricity despite availability thereof, then Section 14.1 shall apply.

4) **Article 5.1 Electricity Fees.** ~~*SELLER shall render to BUYER an itemized Invoice for each Billing Month in accordance with the provisions of this Agreement and SCHEDULE 5. BUYER shall pay Invoices when due and payable in accordance with this Agreement and SCHEDULE 5.*~~

5.1.1 SELLER shall render to BUYER an itemized Invoice for each Billing Month in accordance with the provisions of this Agreement and SCHEDULE 5. BUYER shall pay Invoices when due and payable in accordance with this Agreement and SCHEDULE 5.

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

5) Article 5.2 Payment Procedure

~~5.2.1~~ BUYER shall pay the entire xxx . . .

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 ~~fifteen (15)~~ **ten (10)** Business Days from receipt of each billing, provided that such amount is not manifestly error, apparently invalid, or not in the form or substance contemplated in this Agreement.

~~5.2.3 BUYER shall be entitled to Power Act Reduction discount of Php 0.30/kWh, applicable to BUYER's energy supplied to residential customers only.~~

~~5.2.4~~ 5.2.3 If BUYER disputes xxx . . .

~~5.2.5~~ 5.2.4 If applicable, BUYER xxx . . .

~~5.2.6~~ 5.2.5 For the avoidance of doubt, xxx . . .

~~5.2.7~~ 5.2.6 If any Party fails to make payment to another Party of any amount due under this Agreement, where such amount is not the subject of a Dispute, including but not limited to the award or settlement amount due under **Section 5.2.5** interest thereon from the date when payment was originally due until payment thereof is received shall be calculated at a rate per annum equal to the T- Bill Rate as of the due date, plus two percent (2%) from the Day in which the sum was due and payable accruing from the date the disputed Invoice amount was paid ~~by BUYER~~ until the time the award is **paid settled**.

~~5.2.8~~ 5.2.7 Any reference to a "payment" xxx . . .

6) Article 8.2 Instances of Force Majeure

Subject to the provisions of Sections 8.1 and 8.5, Events of Force Majeure shall include, but not be limited to:

a) xxx

.

i) xxx

For the avoidance of doubt, xxx . . . this Agreement as an Event of Force Majeure and not as a scheduled outage or a forced outage.

In the case of Force Majeure Event affecting Power Supplier, and there is available supply from other sources, Power Supplier shall continue to supply LUECO at BER or WESM Price at LUECO's Market Trading Node, whichever is lower.

For reference, "System Emergency" refers xxx . . . 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 any of its act or omission as Force Majeure.

7) Article 8.3.1 Effect of Force Majeure

8.3.1 Except as provided in Section 8.2 and 8.5, the affected Party shall be excused from performance to the extent affected and shall not be considered to be in default in respect of any obligation under this Agreement (including any obligation of BUYER to pay the Electricity Fees) for so long as failure to perform such obligation shall be due to an Event of Force Majeure.

8) Article 8.6.1

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 (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 after BUYER becomes aware of such Event of Force Majeure.

9) Article 13.1.2.2

13.1.2.2 ~~SELLER~~ Both parties shall fully cooperate ~~with BUYER~~ with respect to the ERC Application and ~~either party~~ shall furnish ~~BUYER the other party~~ those documents that the ERC may require in connection with the ERC Application and any other review or examination conducted by the ERC with respect to this Agreement promptly upon request by ~~BUYER the other party~~, provided that ~~SELLER either party~~ shall submit directly to the ERC any information which it deems to be confidential and shall give written notice to ~~BUYER the other party~~ of such direct filing.

10) Article 13.2 SELLER Conditions Precedent

13.2.1 xxx

(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~~ of the SELLER;

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

11) Article 12 Confidentiality

12.1 Each Party agrees that it will, and will ensure that its employees, officers and directors will, and will use best efforts to ensure that its agents will, hold in confidence this Agreement and all information, documentation, data or know-how disclosed to it by the other Party and designated in writing as confidential (the "Confidential Information"), and will not disclose to any third party or use Confidential Information or any part thereof without the other Party's prior written approval, provided that Confidential Information, ~~subject to Data Privacy Act of 2012, as amended~~, may be disclosed to (i) a Governmental Authority pursuant to Legal Requirements or

a stock exchange when required by it, and (ii) financial institutions, bona fide potential purchasers, insurers and consultants and contractors whose duties reasonably require such disclosure; provided that, except for a bona fide disclosure to independent legal advisors and to the ERC in view of an ERC Application, such Party intending to make a disclosure of Confidential Information shall first have obtained an agreement in writing pursuant to which the person or entity to which Confidential Information is proposed to be disclosed agrees not to disclose the relevant Confidential Information to any other person for any purposes other than as contemplated in ARTICLE 12..

12) Article 14.2 Buyer Event of Default letter (a)

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 of a written notice of ~~BUYER-SELLER~~ Event Default.

13) Article 14.2 Buyer Event of Default letter (f)

f) BUYER fails to make any payment of a Final Invoice when such invoice becomes due and payable in accordance with ARTICLE 5 of this Agreement and such payment is not made within ~~one hundred twenty (120)~~ ~~Ninety (90)~~ Days after the due date of the relevant Final Invoice.

14) SCHEDULE 1

SCHEDULE 1

SCHEDULE OF ANNUAL CONTRACTED CAPACITY ~~DEMAND~~ AND ENERGY REQUIREMENTS

CONTRACT PERIOD	CONTRACTED CAPACITY- DEMAND (MW)	CONTRACTED ENERGY (MWH)
August 26, 2021 - August 25, 2022	42.61	224,962
August 26, 2022 - August 25, 2023	44.58	235,432

August 26, 2023 - August 25, 2024	46.64	245,989
August 26, 2024 - August 25, 2025	48.79	257,057
August 26, 2025 - August 25, 2026	51.07	268,758
August 26, 2026 - August 25, 2027	53.46	281,348
August 26, 2027 - August 25, 2028	55.96	294,345
August 26, 2028 - August 25, 2029	58.58	307,991
August 26, 2029 - August 25, 2030	61.33	322,621
August 26, 2030 - August 25, 2031	64.21	337,349
August 26, 2031 - February 25, 2032	52.42	158,659

C) Terms of Reference (TOR)

1) Item No. 5 Commencement Date of Supply

**August 26, 2021 or upon approval by the ERC (~~whether provisional or final~~), whichever is later but to coincide with NGCP Billing every 26th day of the month.*

2) Item No. 17 Penalty for Non-supply due to Unavailability of Power from the Grid

"Power Supplier shall pay a penalty equivalent to: ~~20%~~ 5% x GENRATE from the previous Billing Month x Unsupplied Energy

Where:

Unsupplied Energy = the average of the last 4 same day, same hour of the Trading Intervals affected by the loss of supply from Power Plant, WESM, and any other source which shall be used to reduce the generation charge to the consumers."

3) ANNEX A

ANNEX A

SCHEDULE OF ANNUAL ~~CONTRACTED CAPACITY DEMAND~~ AND ENERGY REQUIREMENTS

CONTRACT PERIOD	DEMAND CONTRACTED CAPACITY (MW)	CONTRACTED ENERGY (MWH)
August 26, 2021 - August 25, 2022	42.61	224,962
August 26, 2022 - August 25, 2023	44.58	235,432
August 26, 2023 - August 25, 2024	46.64	245,989
August 26, 2024 - August 25, 2025	48.79	257,057
August 26, 2025 - August 25, 2026	51.07	268,758
August 26, 2026 - August 25, 2027	53.46	281,348
August 26, 2027 - August 25, 2028	55.96	294,345
August 26, 2028 - August 25, 2029	58.58	307,991
August 26, 2029 - August 25, 2030	61.33	322,621
August 26, 2030 - August 25, 2031	64.21	337,349
August 26, 2031 - February 25, 2032	52.42	158,659

Please be guided accordingly.

For TPBAC:


Elnora Z. Balagot
Secretariat