



## **Bid Requirements for Contract Period from 26 January 2017 to 25 January 2037**

This is a competitive selection process for the Past Contract Period and Prospective Contract Period of the Panay Energy Development Corporation's power supply agreement with MERALCO dated 26 April 2016 ("**PEDC PSA**"), in compliance with the Supreme Court's Decision in G.R. No. 227670 dated 3 May 2019 and as provided in the Invitation to Bid and/or Terms of Reference Table ("**TOR Table**").

### **Interested Bidders and Qualifying to Bid**

In order to become an Interested Bidder and obtain a copy of the Bidding Documents, a party must submit the Expression of Interest, Confidentiality Undertaking and Acknowledgement and Consent Form for Data Privacy, and pay the Participation Fee, by the Expression of Interest Deadline, following the form, substance and process defined and provided in the Invitation to Bid.

In order to qualify to bid, a Bidder must timely submit to the TPBAC-Secretariat by uploading to the cloud-based online repository/folder assigned to the Interested Bidder, three (3) separate and password-protected zip folders (.zip file) containing the scanned copies (.pdf file) of its Document Submissions, following the form, substance and process defined and provided in the Invitation to Bid and the Instructions to Prospective Bidders ("**IPB**").

An Interested Bidder shall submit a Proposed Price indicating its Levelized Cost of Electricity ("**LCOE**"). The Interested Bidder's Proposed Price and the LCOE are subject to a pre-determined Reserve Price, which will only be revealed by the TPBAC to the Bidders during the Opening of Bid Prices.

The LCOE shall be computed based on the price for the entire Required Contract Period including the Past Contract Period and the Prospective Contract Period.

In case the Bidder formed an unincorporated partnership or consortium for the purpose of this Bidding, each member must, **on or before the Bid Submission Deadline**, provide evidence that their rights and obligations/liabilities in this Bidding and the resulting Power Supply Agreement ("**PSA**") is solidary. In addition, each party to the partnership or consortium must separately submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2) (e.g. especially if each partner/consortium member offers a different Nominated Power Plant), but shall submit (as one) only one Bid Price, including the Bid Security (Envelope 3). For this purpose, in relation to the Qualification Documents and Technical Proposal, each party to a Bidder partnership or consortium shall be construed as the Bidder.

The Bidder must identify its proposed power plant, which for the Past Contract Period must be a single brownfield power plant in commercial operations and with installed and uncontracted capacity of at least 70 MW since 25 January 2017, while for the Prospective Contract Period, must be a baseload (firm and dispatchable for all trading intervals) power plant and with uncontracted capacity of 70 MW for the duration of the Prospective Contract Period (collectively referred to as "**Nominated Power Plant**"). For purposes of this bidding, "brownfield power plant in commercial operations" means the Bidder's Nominated Power Plant must be covered by a Certificate of Compliance ("**COC**") from the Energy Regulatory Commission ("**ERC**") and must be registered as a direct member of the WESM since at least 25 January 2017.

### **Bid Offer Evaluation**

This Bidding is open to all Bidders that meet the financial, technical, commercial, and legal requirements of this TOR. In evaluating the financial offers of the Bidders, the best interests of Meralco's captive customers shall be paramount. As such, and to this end, the principle of least cost in the supply of power to captive customers, as provided in Section 23 of EPIRA, shall prevail and be applied to establish and determine the Best Bid/s.

In this Bidding process, the Qualified Bidders' Proposed Price should be **less than or equal to** the Reserve Price for the Proposed Price and the Qualified Bidders' LCOE should be **less than or equal to** the Reserve Price for the LCOE. Thereafter, the TPBAC shall rank the Bidders' LCOE and shall determine the most advantageous bid ("**Best Bid**"). For this purpose, the TPBAC shall notify the Bidders of the results of its evaluation and/or ranking of the Bids ("**Notification of Best Bid**"). In case of a tie between or among Bidders having the lowest Bids, the TPBAC shall give these Bidders a period of time, on the same day, to improve their Offered Price by submitting a lower LCOE until the tie is broken.

### **Qualification Documents (Envelope 1)**

#### **1. Legal Qualification Requirements**

- (a) The Bidder must have the authority, in form and substance prescribed and made available by Meralco, to participate in this Bidding and execute the PSA;
- (b) The Bidder must be a duly incorporated, validly existing domestic partnership or corporation duly registered with the Securities and Exchange Commission ("**SEC**"). If Bidder formed a partnership or consortium for the purpose of participating in this Bidding, it must be evidenced by an agreement showing that their rights and obligations, including liabilities in this Bidding and the resulting PSA are solidary;

(c) The Bidder and any of its Affiliates engaged in power generation must have no record of Unsatisfactory Performance. For this purpose, **“Unsatisfactory Performance”** means any of the following:

- (i) In relation to any power supply or off take agreements with Meralco and/or its Affiliates engaged in power generation, distribution, and supply (the list of Meralco’s Affiliates are provided in the IPB) that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline (as defined below) by the Bidder –
  - (1) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such power supply or off take agreements within the last five (5) years. It also includes a record of failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said power supply or off take agreements.

The Bidder shall submit notarized certifications issued by Meralco and/or its Affiliates engaged in power generation, distribution, and supply attesting that within the last five (5) years the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such power supply or off take agreements. For this purpose only (i.e. submission of notarized certifications), the financial lender/s of the Bidder or any of its Affiliates engaged in power generation of any such power supply or off take agreements need not issue the said certification but their identities must be declared or disclosed;

- (2) the expulsion of the Bidder or any of its Affiliates engaged in power generation from any such power supply or off take agreements;
- (3) the termination or suspension of any such power supply or off take agreements due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation;
- (4) the material violation of laws and/or regulations by the Bidder or any of its Affiliates engaged in power generation applicable to any such power supply or off take agreements, including but not limited to environmental, health, safety, labor and social welfare laws and

regulations, as evidenced by findings of the relevant competent authority; or

- (ii) Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website ([www.worldbank.org/debarr](http://www.worldbank.org/debarr)), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium;

(d) The Bidder and any of its Affiliates engaged in power generation must not have an Outstanding Dispute **or** any due and demandable financial obligation/s, in each case with Meralco and/or its Affiliates engaged in power generation, distribution, and supply. The Bidder and any of its Affiliates engaged in power generation must also not have any due and demandable energy settlement amounts with the Philippine Electricity Market Corporation ("**PEMC**") and/or Independent Electricity Market Operator of the Philippines ("**IEMOP**").

For this purpose, "**Outstanding Dispute**" refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation, on one hand, and Meralco and/or its Affiliates engaged power generation, distribution, and supply, on the other, provided, that the following pending judicial or administrative cases involving the Bidder or any of its Affiliates engaged in power generation and Meralco are excluded from the definition of Outstanding Dispute:

Case Title and Docket Nos.	Subject Matter
<i>Bayan Muna, et. al. v. Energy Regulatory Commission (ERC), et. al.</i> (G.R. Nos. 210245, 210255 & 210502)	Supreme Court T.R.O. on MERALCO's December 2013 billing rate increase in relation to the generation cost price spike in November 2013 and December 2013
<i>SN Aboitiz-Magat, et. al. v. ERC, et. al.</i> (G.R. No. 246641-50, 246729, 246739-48, 246685-94, 246873-82, 246661-70, 246631-40)	Supreme Court – Legality of ERC Order voiding the Luzon WESM prices during the November and December 2013 supply months
<i>ERC I.U. v. Meralco and TMO</i> (ERC Case No. 2015-025 MC)	ERC Investigating Unit complaint in relation to the generation cost price spike in November 2013 and December 2013
<i>Meralco v. SPPC, et. al.</i> (ERC Case No. 2013-077 MC)	Petition for Dispute Resolution with the ERC in relation to the refund of the 2.98% transmission line losses
<i>In Re: Petition for Dispute Resolution Meralco vs. NPC et. al.</i> (ERC Case No. 2010-002 MC)	Petition for Dispute Resolution with the ERC in relation to the implementation of the Mandated Rate Reduction

(e) The Bidder must be authorized under its articles of incorporation, constitutive or charter documents, or its equivalent, to engage in the business of power generation and supply of electricity as contemplated under the PSA; and

(f) The Bidder must issue a notarized certification that the Offered Contract Capacity from the Nominated Power Plant: (i) for the entire Past Contract Period, had an installed and uncontracted capacity of at least 70 MW since 25 January 2017; and (ii) for the entire Prospective Contract Period, is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) that will conflict with the Bidder's obligation should it be declared the Winning Power Supplier. Since this is a competitive selection process for the Past Contract Period and Prospective Contract Period of the PEDC PSA in compliance with the Supreme Court's Decision in G.R. No. 227670 dated 3 May 2019, the PEDC PSA is excluded from the coverage of the aforesaid certifications.

## 2. Financial Qualification Requirements

(a) The Bidder must show satisfactory evidence that it has the financial capacity to fulfill its obligations with Meralco. This requirement may be complied with by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent. As evidence thereof, the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent, or in case of an unincorporated joint venture or a partnership, each entity or party thereto, must:

- (i) submit its audited (parent and consolidated, if applicable) financial statements for the last three (3) years (the latest of which must not be earlier than for the year ending December 31, 2020) and recent quarterly financial statements; and
- (ii) the consolidated financial statements must show an Unrestricted Net Worth equivalent to Four Hundred Ninety Million Pesos (Php490,000,000.00) ("**Required Unrestricted Net Worth**") based on its submitted financial statements.

For this purpose, "**Unrestricted Net Worth**" means the sum of subscribed and paid up equity, including additional paid-in capital, and unrestricted retained earnings, preferred shares, perpetual shares less treasury shares of common, preferred, and perpetual shares. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not

covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingences (as defined in SEC Memorandum Circular No. 11-08 dated December 5, 2008); and (4) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of the company to distribute or otherwise apply its equity.

### **Technical Proposal (Envelope 2)**

In relation to the Nominated Power Plant, which must be located in Luzon or Visayas, the Bidder must provide:

- (a) Technical characteristics of the Plant showing evidence of compliance to the technical requirements stated in the TOR Table;
- (b) The Nominated Power Plant must be covered by a Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) from the ERC, as submitted by the Bidder as a certified true copy by (i) the ERC; or (ii) the corporate secretary, in which case it must be under oath and notarized. For the Past Contract Period, the Nominated Power Plant's COC or PAO should be since at least 25 January 2017;
- (c) The Nominated Power Plant must be registered as a direct member of the WESM and a copy of its Market Participation Agreement for the Nominated Power Plant, which shall be certified as a true copy by (i) the PEMC and/or IEMOP; or (ii) the corporate secretary, in which case it must be under oath and notarized, must be submitted. For the Past Contract Period, the Nominated Power Plant's registration as a direct member of the WESM should be since at least 25 January 2017; and
- (d) The Nominated Power Plant must be covered by a valid Transmission Service Agreement and Fuel Supply Plan or Agreement, if applicable, which shall be duly certified by the National Grid Corporation of the Philippines (NGCP) or the corporate secretary, in which case it must be under oath and notarized; and
- (e) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized.

### **Bid Price and Bid Security (Envelope 3)**

- (a) Using the relevant forms prescribed in the IPB, the Bidder must submit its Bid Letter, Bid Security (as defined below), and Proposed Price (in hard copy form and in the **Financial Evaluation Workbook** encoded in a USB/thumb flash memory drive), uploaded to the cloud-based online repository/folder assigned

to the Bidder in a password-protected zip folder [.zip file], and a signed Letter of Acknowledgement and Acceptance of the Power Supply Agreement template (collectively referred to as the "**Bid Price**"). For clarity, in accomplishing the Financial Evaluation Workbook, the Bidder shall consider the following:

1. For the Past Contract Period: The Proposed Price shall not be higher than the tariff paid by Meralco under the PEDC PSA. For clarity, only the Proposed Price as stated by the Bidder shall be considered in the LCOE evaluation of the Past Contract Period, which Proposed Price shall not include the value added tax (VAT) rate, Line Rental cap, and Ancillary Services (AS) Cost recovery cap. The LCOE evaluation for the Past Contract Period shall be dependent on the actual dispatch of the PEDC PSA.
2. For the Prospective Contract Period: The Proposed Price shall comply with the following requirements:
  - a) For the straight energy price (PhP/kWh), it should have the following bandwidths:
    - i. Proposed Minimum Energy Off-Take ("MEOT"), reckoned annually, should not exceed seventy-five percent (75%) of Plant Capacity Factor (PCF) with respect to the contracted capacity. Bidder has an option to indicate discount on Proposed Price which shall be applied on excess energy above MEOT.
    - ii. Only up to sixty percent (60%) of the annual Proposed Price can be escalated at a rate not greater than 3.5% annually.
  - b) Separate line item proposal for Bidder's VAT rate that is applicable to its Proposed Price.
  - c) Separate line item proposal for Bidder's annual Line Rental cap, which shall not exceed PhP0.10/kWh.
  - d) In view of DOE Circular No. DC2019-012-0018, an AS Cost recovery cap, as proposed by Bidder, with a floor value of PhP0.28/kWh, will be considered in computing the LCOE. However, the lower between actual AS cost and the AS Cost Recovery cap will be implemented only upon the effectivity of regulations that mandate a proportionate allocation of AS charges among affected generation companies, which is considered pass-through cost pursuant to existing government regulations. For clarity and consistent with the existing government regulations, the AS Cost for the Past Contract Period shall be set at PhP0.00/kWh.
  - e) LCOE evaluation for the Prospective Contract Period shall be at 100% PCF.

3. Bidder's LCOE shall be computed based on the price for the entire Required Contract Period including the Past Contract Period and the Prospective Contract Period.
  4. Bidder's Proposed Price and its LCOE are both subject to a pre-determined Reserve Price, which will only be revealed by the TPBAC to Qualified Bidders during the opening of the Bids.
- (b) The Bid Security equivalent to Two Hundred Ten Million Pesos (PhP210,000,000.00) should be in the form of an irrevocable standby letter of credit, which must be issued by one or more Allowed Bank listed in the IPB and in the form required of the Bidders in the IPB, or in the form of manager's or cashier's check issued by one or more Allowed Bank listed in the IPB (the "**Bid Security**"). No combination of forms of the Bid Security (i.e. combination of irrevocable standby letters of credit and manager's check) will be allowed. The Bid Security requirement may be complied with by the Bidder directly, or, through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.