



*A.B. Fernandez West, Dagupan City  
(075) 522-2782; 522-2940*

# **BIDDING GUIDELINES GOVERNING DECORP'S COMPETITIVE SELECTION PROCESS**

**FOR THE PROCUREMENT OF 20 MW BASELOAD WITH LOAD  
FOLLOWING CONTRACTED CAPACITY POWER  
REQUIREMENT OF DECORP**

## **I. LEGAL BASIS**

### **A. Section 2 of the EPIRA of 2001, Declaration of Policy:**

- b. to ensure the quality, reliability, security and affordability of the supply of electric power;
- c. to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- d. to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- f. to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- k. to encourage the efficient use of energy and other modalities of demand side management.

### **B. DOE Circular No. DC2015-06-0008, “Mandating All Utilities to Undergo Competitive Selection Process in Securing Power Supply Agreements”**

### **C. DOE Circular No. DC2018-02-0003, “Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market.”**

### **D. R.A. 9184 and its Revised Implementing Rules and Regulations.**

## **II. GOVERNING PRINCIPLES OF COMPETITIVE SELECTION PROCESS(CSP)**

The procurement of power supply for the Captive Market shall be governed by the following principles:

- A. transparency in the conduct of CSP through wide dissemination of bid opportunities and participation of all Generation Companies (GenCos);
- B. competitiveness by extending equal opportunity to eligible and qualified GenCos to participate in the CSP;
- C. least cost manner in ensuring that each DU is able to meet the demand for its Captive Market at any given time;
- D. simple, streamlined and efficient procurement process applicable to the specific requirements of each DU in accordance with its Distribution Development Plan (DDP); and
- E. accountability involved in the procurement process and implementation of the Power Supply Agreements (PSAs) awarded under the CSP.

## **III. DEFINITION OF TERMS**

- A. Bid—refers to a signed offer or proposal submitted by a bidder in response to the Bidding Documents.
- B. Bidder—refers to an interested party who submits a bid to DECORP in accordance with the Invitation to Bid and with the intention of participating in the Competitive Bidding.
- C. Bidding Documents—refers to the complete set of documents given to interested bidders, including at the minimum the Terms of Reference (TOR) for technical, legal and financial requirements sufficient to allow such bidders to submit a qualified bid.
- D. Bid Subject—refers to the 10 year Power Supply Agreement involving a supply of 20 MW Baseload with Load Following Contracted Capacity.

- E. Captive Customers—refers to the electricity end-users of DECORP who do not have a choice of a supplier of electricity, as maybe determined by law.
- F. Competitive Bidding—refers to a method of pronouncement which is open to participation by any interested party and consists of the following processes:
- i. Advertisement or Publication;
  - ii. Pre-bid conference;
  - iii. Pre-qualifications;
  - iv. Bid evaluation;
  - v. Post Qualification; and
  - vi. Award of Contract.
- G. Competitive Selection Process or CSP—refers to the process wherein a Generation Company or, in the case of off-grid areas, New Power Provider, is awarded to supply electric power requirements of DU through transparent and competitive bidding undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation criteria adopted by the DUs in accordance with the requirements of DOE Department Circular No. 2018-02-0003. Competitive Bidding and CSP shall have the same meaning in these Guidelines and shall be used interchangeably.
- H. Dagupan Electric Corporation (DECORP)—refers to the procuring entity for the Bid Subject.
- I. DECORP Board of Directors (BOD)—refers to the governing board of DECORP that establish the independent Third Party Bids and Awards Committee (TPBAC), the Technical Working Group (TWG), and the Secretariat which will spearhead and manage the CSP for the procurement of DECORP’s Bid Subject.
- J. Distribution Development Plan or DDP—refers to DECORP’s program for expansion, reinforcement and rehabilitation of its distribution system and submitted to the DOE for integration with Power Development Plan and Philippine Energy Plan.
- K. Guidelines—refers to DECORP’s Bidding Guidelines for the procurement of the Bid Subject.
- L. Lowest Calculated Bid—refers to the lowest bid offer as evaluated based on arithmetical computation reflected in the Financial Bid Form.
- M. Lowest Calculated Responsive Bid—refers to the Lowest Calculated Bid which complies and is responsive to all the requirements and conditions as set forth in Section V (T) (Post-Qualification).
- N. Notice of Award—refers to the notice given to the Bidder with the Lowest Calculated Responsive Bid.
- O. Performance Bond—refers to a bond issued by the Winning Bidder to DECORP to guarantee the performance of its obligation under the Power Supply Agreement.
- P. Power Supply Procurement Plan or PSPP—refers DECORP’s plan for the acquisition of a variety of demand-side and supply-side resources to cost effectively meet the electricity needs of its customers. The PSSP is an integral part of DECORP’s DDP.

- Q. Supplemental Bid Bulletins—refers to the issuance made by the TPBAC pursuant to a request for clarification or interpretation by any interested party.
- R. Third Party Bids and Awards Committee or TPBAC—refers to the third party committee established in accordance with DOE Department Circular No. 2018-02-0003 to spearhead and manage DECORP’s CSP.
- S. Winning Bidder—refers to the Bidder selected for the award of the contract as recommended by the TPBAC and approved by the DECORP BOD.

#### **IV. DECORP CSP STRUCTURE AND RESPONSIBILITIES**

##### **A. BOARD OF DIRECTORS (BOD)**

- i. The DECORP BOD shall designate five (5) members of the TPBAC who will spearhead and manage the conduct of the CSP. Three members will come from DECORP and two (2) members will come from DECORP’S Captive Customers who are not directly or indirectly related/affiliated to DECORP.
- ii. The DECORP BOD shall also designate the TPBAC Technical Working Group (TWG) and Secretariat.
- iii. The DECORP BOD shall bear the expenses for any dispute or litigation arising from CSP.
- iv. The DECORP BOD shall only serve as an observer and not as member of the TPBAC.
- v. The DECORP BOD decides on the protest filed by the bidder.

##### **B. THIRD PARTY BIDS AND AWARDS COMMITTEE (TPBAC)**

- i. The TPBAC shall spearhead and manage the conduct of the CSP and comply with the policy and procedures in the conduct of the CSP, as provided under DOE Circular No. DC2018-02-0003. The TPBAC shall be accountable to its decision in the conduct of the CSP.
- ii. The TPBAC shall be composed of the following:
  - a. one DECORP officer or employee knowledgeable in the technical operations of DECORP;
  - b. one DECORP officer or employee with knowledge and/or experience with any local or international competitive bidding procedures;
  - c. one lawyer;
  - d. one finance officer or accountant that has knowledge on electricity pricing; and
  - e. one technical person, or a person with knowledge and/or experience with any local or international competitive bidding procedures.

One of the last three (3) representatives shall represent DECORP.

- iii. The following are the functions of the TPBAC:
  - a. advertise the Invitation to Bid (IB) in one newspaper of general nationwide circulation, one weekly for two consecutive weeks;
  - b. post the IB in DECORP’s website, DOE E-based portal and at any conspicuous place within the premises of DECORP;
  - c. conduct the pre-procurement and pre-bid conferences;
  - d. determine the eligibility of prospective bidders;
  - e. receive and open bids;
  - f. conduct the evaluation of bids and undertake post-qualification proceedings;
  - g. recommend award of contract to the DECORP BOD; and
  - h. decide on request for reconsideration.

### **C. TPBAC TECHNICAL WORKING GROUP (TWG)**

- i. The TPBAC TWG shall assist the TPBAC in the performance of its functions.
- ii. The TPBAC TWG shall be composed of technical, legal and financial personnel of DECORP.
- iii. The TPBAC TWG shall assist the TPBAC in the technical components of the CSP, such as development of the Power Supply Procurement Plan (PSPP), Terms of Reference (TOR), eligibility screening, evaluation of bids, and post qualification.

### **D. TPBAC SECRETARIAT**

- i. The TPBAC Secretariat shall assist the TPBAC in the performance of its functions.
- ii. The TPBAC Secretariat shall provide administrative support to the TPBAC and serve as the keeper of all records and documents relating to all CSPs conducted by DECORP.
- iii. The TPBAC Secretariat shall fully document each step of the CSP and prepare and keep a written minutes of all TPBAC meetings and proceedings.

## **V. DECORP TPBAC RULES AND PROCEDURES**

### **A. VOTING AND QUORUM**

- i. The Chair and Vice Chair shall be selected by the members of the TPBAC. The Chairman shall only vote in case of a tie.
- ii. A majority of the total TPBAC composition as designated by the BOD shall constitute a quorum for the transaction of business, provided that the presence of the Chairperson or Vice-Chairperson shall be required.
- iii. For purposes of determining a quorum, a member of the TPBAC, which include the Chairperson or the Vice-Chairperson, may be present, either in person or face-to face through videoconferencing, webcasting or similar technology for procuring entities with such technology.

### **B. MEETINGS AND CSP PROCEEDINGS**

Meetings of the TPBAC and CSP proceedings may be conducted electronically with videoconferencing, webcasting, or similar technology capability. The Chairperson or, in his absence, the Vice-Chairperson, shall preside at all meetings of the TPBAC and CSP proceedings.

The decision of at least a majority of those present, either in person, through videoconferencing, webcasting or similar technology, or a combination thereof, at a meeting at which there is quorum shall be valid and binding as an act of the TPBAC: Provided, however, that the Chairperson or, in his absence, the Vice-Chairperson, shall vote only in case of a tie.

Unless another location is agreed upon by the TPBAC, all TPBAC meetings and proceedings shall be held at DECORP'S main office located at 2/F VFL Building, A.B. Fernandez West, Dagupan City.

In case of face-to-face meeting/proceeding, strict compliance with the existing workplace health protocols implemented to control the spread of COVID-19 shall be observed which include, among others:

- i. wearing of face mask;
- ii. physical distancing;

- iii. hand hygiene;
- iv. cough etiquette;
- v. temperature checking; and
- vi. filling up of the health declaration form.

If meetings/proceedings are done virtually through videoconferencing, webcasting or similar technology, the TPBAC Secretariat shall coordinate and facilitate the same by ensuring that all members and bidders are informed of the schedule and video conference links are sent accordingly.

### **C. CSP OBSERVERS**

To enhance the transparency of the process, the TPBAC shall, during the pre-bid conference, pre-qualification (if any), submission and opening of bids, bid evaluation, negotiations, post-qualification, awarding, and contract signing, invite observers from the Department of Energy (DOE), Energy Regulatory Commission (ERC), as well as the DECORP BOD, who shall not participate and have no the right to vote, to sit in its proceedings.

Observers shall be invited at least five (5) working days before the date of the procurement stages. The absence of observers will not nullify the TPBAC proceedings: Provided, That they have been duly invited in writing and email within the prescribed period. In the event that a procurement activity has to be postponed, the observers shall be notified immediately of the change in schedule.

Observers shall be allowed access to or be provided with the following documents upon their request: (a) minutes of TPBAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) video recording of CSP proceedings; (e) opened proposals; (f) Bidding Documents and other related documents.

### **D. COMPETITIVE BIDDING**

#### **i. Pre-procurement Conference**

Prior to the advertisement or the issuance of the IB, the TPBAC, through its Secretariat, shall call for a pre-procurement conference. The pre-procurement conference shall be attended by the TPBAC, the TWG, and the Secretariat. During this conference, the TPBAC, shall:

- a. confirm the description and scope of the contract, and contract duration;
- b. ensure that the procurement is in accordance with the PSPP and DDP;
- c. determine the readiness of the procurement at hand, including, among other aspects, the following:
  - completeness of the Bidding Documents
  - review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;
  - review and adopt the procurement schedule, including deadlines and time frames, for the different activities; and
  - reiterate and emphasize the importance of confidentiality, in accordance with Section V (S) (Access to Information) of these Guidelines, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.

### **E. ADVERTISEMENT AND POSTING OF IB**

#### **i. Contents of the IB**

The IB shall provide Bidders the following information, among others:

- a. the TOR which contains as a minimum:
    - Cooperation Period with the Gencos/New Power Providers (NPP)
    - Demand and Energy for CSP;
    - Preferred technology, if any, and justification for it;
    - Target Commercial Operation Date (COD) or Target Date of Delivery (new plant);
    - Replacement Power Requirement;
    - enumeration of cost items to be passed-on to the captive customers;
    - Penalty Provisions in case of delay in construction and commercial operations for new plants; and
    - Grounds for termination
  - b. the date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
  - c. the place, time and place where the Bidding Documents may be secured and, where required, the price of the Bidding Documents as indicated the IB;
  - d. the contract duration or delivery schedule;
  - e. the name, address, telephone number, e-mail and website addresses of DECORP, as well as its designated contact person; and
  - f. such other necessary information deemed relevant by DECORP.
- ii. Advertising and Posting of the Invitation to Bid

The IB shall be:

- a. published in one (1) newspaper of general nationwide circulation, once weekly for two (2) consecutive weeks;
- b. posted at any conspicuous place reserved for this purpose in the premises of DECORP for seven (7) calendar days as certified by the head of the TPBAC Secretariat of DECORP; and
- c. posted in the website of DECORP, and in the DOE E-Portal.

## **F. FORM AND CONTENT OF THE BIDDING DOCUMENTS**

The Bidding Documents shall be prepared by the TPBAC in accordance with DOE Circular No. DC2018-02-0003.

- i. The Bidding Documents shall include the following:
  - a. TOR;
  - b. IB;
  - c. Corporate Profile of Bidders;
  - d. Technical Proposal's requirements;
  - e. Financial Proposal's requirements;
  - f. Method and Criteria for evaluation;
  - g. Bidding Procedure;
  - h. Awarding, Signing of Contract, and Notice of Implementation;
  - i. Acceptable form of Bid and Performance Securities;
  - j. Proposed Timelines or Milestones;
  - k. Power Supply Agreement Template;
  - l. Notarized Statement attesting to the Information submitted for the bid;
  - m. Protest Mechanism; and
  - n. Other documents required and mandated by any government agencies.
- ii. TPBAC shall give provide the Bidders ample time to examine the Bidding

Documents and to prepare their respective bids. The TPBAC shall make the Bidding Documents available from the time the IB is first advertised/posted until the deadline for the submission and receipt of bids.

- iii. Bidders will be asked to pay a non-refundable Bidding Documents Fee in an amount indicated in the IB to recover the cost for the preparation and development of the Bidding Documents.
- iv. The TPBAC shall post the complete Bidding Documents at DECORP's website and shall also cause the same to be posted in the DOE-portal from the time the IB is first advertised. The Bidding Documents may be downloaded from any of the said websites: Provided, That the Bidders shall have paid the applicable fee. The Bidding Documents may also be secured from the TPBAC Secretariat upon payment of the corresponding fee.

## **G. ACCESS TO INFORMATION**

In all stages of the preparation of the Bidding Documents, the DECORP TPBAC shall ensure equal access to information. Prior to their official release to Bidders, no aspect or part of the Bidding Documents shall be divulged or released to any Bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the documents.

## **H. PRE-QUALIFICATION REQUIREMENTS**

- i. Prior to the release of the Bidding Documents, the TPBAC shall require all Bidders to comply with/submit the following documents to the TPBAC Secretariat either by hand or electronically through the email indicated in the IB:
  - a. Notarized Letter of Intent (**Annex A**) to participate, signed by a duly authorized representative, addressed to the TPBAC Chairperson, indicating the following:
    - full name of the company;
    - complete address of the principal office;
    - contact numbers;
    - name of principal contact; and
    - email address and mobile number of principal contact.
  - b. Confidentiality Undertaking (**Annex B**)
- ii. The TPBAC Secretariat shall either stamped received the required documents or send an acknowledgment reply depending on the manner the said documents were submitted.
- iii. Pre-qualified PB shall be notified electronically three (3) working days after the submission of the pre-qualification documents.
- iv. Only Bidders who comply with the above requirements will be allowed to participate in the CSP and be issued the Bidding Documents subject to the payment of the non-refundable Bidding Documents Fee in an amount indicated in the IB.

## **I. SUBMISSION OF COMMENTS/CLARIFICATIONS ON THE BIDDING DOCUMENTS**

- i. All Bidders shall be given ample time to comment or clarify on the Bidding Documents and submit the same not later than ten (10) calendar days before the pre-bid conference.
- ii. All comments and request for clarifications shall be included in the discussion during the pre-bid conference and any resulting change in the Bidding



Documents, shall be provided to the Bidders in the form of Supplemental/Bid Bulletin in accordance with Section V (K) of this Guidelines.

#### **J. PRE-BID CONFERENCE**

A pre-bid conference shall be conducted at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not earlier than seven (7) calendar days from the advertisement and posting of the IB considering the method, nature, or complexity of the contract.

The pre-bid conference shall discuss, clarify and explain, among other things, the eligibility requirements and the technical and financial components of the contract to be bid including questions and clarifications raised by the prospective bidders before and during the pre-bid conference.

Pre-bid conference may be conducted in person or face-to-face through videoconferencing, webcasting, or similar technology, or a combination thereof. The minutes of the pre-bid conference shall be recorded and prepared not later than five (5) calendar days after the pre-bid conference, and shall be made available to bidders not later than five (5) calendar days upon written request.

Decisions of the TPBAC amending any provision of the Bidding Documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) working days before the deadline for the submission and receipt of bids.

#### **K. SUPPLEMENTAL/BID BULLETINS**

Additional requests for clarification(s) on any part of the Bidding Documents or for an interpretation must be in writing and submitted to the TPBAC on or before the date indicated in the IB. The TPBAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the TPBAC Chairperson, to be made available to all those who have properly secured the Bidding Documents.

For purposes of clarifying or modifying any provision of the Bidding Documents, Supplemental/Bid Bulletins may be issued upon DECORP's initiative.

Any modification to the Bidding Documents shall be identified as an amendment. Any Supplemental/Bid Bulletin issued by the TPBAC shall be sent through email and shall also be posted in the website of DECORP, in the DOE E-Portal, and at any conspicuous place within the premises of DECORP. It shall be the responsibility of all those who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the TPBAC. However, bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and shall be allowed to modify or withdraw their bids.

#### **L. ELIGIBILITY CRITERIA**

For purposes of determining the eligibility of bidders, only the following documents shall be required by the TPBAC:

##### **i. Qualifications Bid Component (First Envelope)**

### a. Legal Qualification

- DTI Business Name Registration/SEC Registration certificate, whichever is appropriate under the laws of the Philippines;
- Articles of Incorporation and By-Laws of the Generation Company;
- Latest GIS of GenCo - SEC Form;
- Document showing information related to the Ultimate Parent Company, its Subsidiaries and all its affiliates; if applicable;
- Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR);
- Valid and Current Mayor's Permit/ Municipal License (principal place of business);
- BIR Certificate of Registration;
- Omnibus Sworn Statement (Affidavit) **(Annex C)**;
- The bidder must not have an Outstanding Dispute with DECORP. For this purpose, “*Outstanding Dispute*” refers to any pending judicial, administrative or alternative dispute resolution proceeding between the bidder or any of its Affiliates on one hand and DECORP on the other;
  
- In connection with these requirements, the bidder must submit a Statement of Qualification (“SOQ”), which shall include the following sections:
  - Executive Summary
    - Brief description of the bidder’s company history and structure, including relevant capabilities in the construction, operation and maintenance of a power plant.
  - Organizational Structure-basic information of the bidder’s legal status
- Statement of disclosure of detailed information regarding any existing, potential or future conflict of interest that a bidder may have with the TPBAC and DECORP.
- Other documents:
  - Original or Certified True Copies of all corporate/ legal documents (e.g. Board Resolution, Powers of Attorney) evidencing grant of authority invested in the individual submitting the Bid and making representation on behalf of the bidder.
  - A certification issued by Bidder or its authorized representative that each of the documents submitted in satisfaction of the Instructions to Bidders is an original or a true and faithful reproduction or copy of the original **(Annex D)**.
  - Statement that the Bidder is not banned or blacklisted from bidding by the government or any of its agencies and other private corporations or electric cooperatives and LGUs including its non-inclusion in the Consolidated Blacklisting Report issued by the Government of the Philippines **(Annex E)**.
  - Sworn Affidavit of the Bidder’s officers, directors, and controlling stockholders that they are not related to the members of DECORP’s Board of Directors, Managers and Officers, Members of DECORP TPBAC, members of DECORP TPBAC-TWG, members of DECORP TPBAC Secretariat, and DECORP captive customers for this CSP, by consanguinity or affinity up to the third civil degree (Annex F). Such relationships will result in the automatic disqualification of a Bidder.

### b. Financial Qualification

- Details of financial and operating background for the two (2) recent full financial years demonstrating the bidder's financial viability.
- Details of equity and financing plan indicating the capital structure and source of funds with supporting documents.

- Must have proof of funding availability or support from funders;
- Certificate of Good performance/track record with other customers;
- The bidder's latest audited financial statements, showing, among others, the bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year.
- Complete set of financial statement which includes the following:
  - Balance Sheet;
  - Income Statement;
  - Statement of Changes in Equity;
  - Notes to Financial Statement; and
- Statement of Management Responsibility for Financial Statement
- Any other relevant information regarding financial track record and capabilities of the bidder that it believes would be helpful to the TPBAC.

### **c. Technical Qualification**

- The bidder shall submit the following to demonstrate compliance with the technical criteria established in the TOR:
  - List of projects undertaken over the last five (5) years.
  - List of electricity generation plants that the bidder has operated for the last five (5) years.
  - Track records for the last five (5) years in operating the power plant.
  - Other relevant information showing proof of the technical capabilities specified in the TOR that would be helpful to the TPBAC.
- The bidder shall likewise submit a statement of all its existing contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid.
- Technology of the nominated Power Plant.
- In relation to the nominated Power Plant, the bidder must provide evidence of the following:
  - Land titles, lease agreements and/or call option contracts to ensure a secure site;
  - Status of Engineering Procurement Contract (EPC) arrangements, if any;
  - Financing Commitment of Investors as evidenced by Board Resolution/ Commitment Letters of Developers, Investors and Partners; and
  - The Power Plant must be compliant with existing WESM, ERC, DOE and other applicable rules and regulations;
  - Conceptual Engineering Designs and Drawings;
  - Project Cost Estimates;
  - Any other technical documents, which are deemed necessary to be submitted by the bidder in accordance with this instruction to Bidders.

### **ii. Financial Bid Component and Bid Security (Second Envelope)**

- a. The bidder shall submit two (2) copies of the duly executed Financial Bid, containing the following:
  - Currency for the offer in Php/kWh; and
  - Financial model containing the derivation of rates
- b. The Financial Bid must contain the signature on each page of the Bidder or his authorized representative which must be acknowledged before Philippine Notary Public.
- c. Together with the financial bid is the original copy of the Bid Security which shall be in the form of cash or manager's/cashier's check, bank draft/guarantee or irrevocable letter of credit or surety bond. The Bid

Security must be in the correct amount as indicated in the TOR.

The First and Second Bid Envelopes shall be submitted in accordance with Section V (M) (Submission of Bids). Furthermore, both the First and Second Envelope must be signed by the Bidder or his duly authorized representative on the envelope flap, or the tape binding the envelopes, should several envelopes be used.

#### **M. SUBMISSION AND RECEIPT OF BIDS**

Bidders shall enclose their original Legal, Financial and Technical Qualification Documents described in Section V (L) (Eligibility Criteria) in one sealed envelope marked "ORIGINAL QUALIFICATIONS BID COMPONENT", and the original of their Financial Bid and Bid Security in another sealed envelope marked as "ORIGINAL FINANCIAL BID COMPONENT AND BID SECURITY".

Bidders shall also submit two (2) copies of the Qualifications Bid and Financial Bid. Each copy shall be similarly sealed and duly marked as "COPY NO. \_\_ OF QUALIFICATIONS BID COMPONENT" and "COPY NO. \_\_ FINANCIAL BID COMPONENT AND BID SECURITY".

The Bids shall be submitted in one (1) sealed main Bid envelope (or box) bearing the signature of the authorized representative/s to secure the seal and labeled as follows:

<p>[Name of Bidder] [Address of Bidder]</p> <p>THE THIRD-PARTY BIDS AND AWARDS COMMITTEE (TPBAC) Dagupan Electric Corporation (DECORP)</p> <p><b>BID FOR THE PROCUREMENT OF 20 MW BASELOAD WITH LOAD FOLLOWING CONTRACTED CAPACITY REQUIREMENT OF DECOR</b></p> <p>DECORP Main Office, VFL Bldg. A.B. Fernandez West Ave., Dagupan City</p> <p>WARNING: DO NOT OPEN BEFORE [Date of Opening of Bids]</p>
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Bids shall be received by the TPBAC on or before the date, time, and place specified in the IB.

Bids, including all the eligibility requirements under Section V (L) (Eligibility Criteria) of this Guidelines, submitted after the deadline shall not be accepted by the TPBAC. The TPBAC shall record in the minutes of bid submission and opening, the bidder's name, its representative and the time the late bid was submitted.

The original copy of the bid form shall be typewritten and shall be signed by the bidder or its duly authorized representative. Unsealed or unmarked bid envelopes shall be rejected. The TPBAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid or for its premature opening.

#### **N. MODIFICATION AND WITHDRAWAL OF BIDS**

A bidder may modify its bid, provided that this is done before the deadline for the

submission and receipt of bids. A Bidder who modifies its bid shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid, marked as a “modification,” thereof, and stamped “received” by the TPBAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

A bidder may, through a Letter of Withdrawal, withdraw its bid before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

A bidder may also express its intention not to participate in the bidding through a letter which should be stamped received by the TPBAC before the deadline for the receipt of bids.

## **O. BID SECURITY**

- i. Each Bidder shall submit as part of the Second Bid Envelope, a Bid Security amounting to Fifty Million Pesos (Php50,000,000.00) which shall:
  - a. be in the form of:
    - cash or cashier’s/ manager’s check issued by a Universal or Commercial Bank or any other bank certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument;
    - Bank draft/ guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;
    - in case the bid security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP; or
    - Surety Bond;
  - b. be issued in favor of DECORP; and
  - c. shall provide for a contact person and address, and contact numbers of the issuing bank for notification and demand.
- ii. The Bid Security shall guarantee that each Bidder complies with its obligation under the Bidding Procedures during the Bid Validity Period, or any extension thereof. Refusal of the Winning Bidder to accept the award shall cause the forfeiture of his Bid Security. However, the Bid Security shall not be forfeited should the failure of the Winning Bidder to accept the award and enter into a contract be caused by force majeure or through no fault of its own.
- iii. Bid submitted without the required Bid Security, or in an amount less than the required amount, and whose effectivity will expire prior to the Bid Validity Period shall be rejected outright and returned to the Bidder.
- iv. The required bid security shall be valid for a period of one hundred twenty (120) days following the submission of the bids. The execution of the contract shall be made within the period of the validity of the bid security. Bid securities shall be returned to the unsuccessful bidders as soon as the Notice of Award is issued by

DECORP.

- v. Should the Bidder violate the Bidding Procedures in a material way, the Bid Security may be forfeited in favor of DECORP. The Committee may draw on the instances of a violation of the Bidding Procedures as follows:
  - a. refusal of the Winning Bidder to accept the award;
  - b. Bidder withdraws its Bid after bid opening during the period
  - c. Bidder submits eligibility requirements containing false information or falsified documents
  - d. Bidder submits Bids that contain false information or falsified documents, or conceals such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the CSP.
  - e. Bidder allows the use of one's name, or used the name of another for the purposes of this CSP.
  - f. Bidder withdraws a Bid, or refuses to accept an award, or enter into the PSA with DECORP, after the Bidder had been adjudged as having submitted the LCRB
  - g. Winning Bidder refuses or fails to post the required Performance Security within the prescribed time.
  - h. Bidder refuses to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification
  - i. Bidder attempts to unduly influence the outcome of the CSP in his favor

In addition to Bid Security, each Bidder is required to execute an undertaking (Undertaking to Post Performance Bond) wherein the Bidder undertakes to post a Performance Bond in favor of DECORP to guarantee prompt faithful and complete performance of its obligations under the Power Supply Agreement.

#### **P. BID VALIDITY**

Bids and bid securities shall be valid for a period of one hundred twenty (120) calendar days following the submission of the bids. Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, DECORP shall request in writing all those who submitted bids for such extension before the expiration date therefor.

#### **Q. BID OPENING**

The TPBAC shall open the bids in the presence of all qualified bidders and observers immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be as specified in this Guidelines.

In case the bids cannot be opened as scheduled due to justifiable reasons, the TPBAC shall take custody of the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the DOE E-Portal and the website of DECORP.

The TPBAC shall ensure the integrity, security, and confidentiality of all submitted bids. The abstract of bids as read and the minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

#### **R. EVALUATION OF BIDS**

The TPBAC shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the first envelope, using a non-discretionary pass / fail criteria, as stated in the IB. If a Bidder submits the required document, it shall be rated “passed” for that particular requirement. On the other hand, in case one or more of the above required documents in the first envelope is missing, incomplete, or patently insufficient, the TPBAC shall rate the Bid concerned as “failed” and immediately return to the Bidder its second Bid envelope unopened.

Immediately after determining compliance with the requirements in the Technical Bid Component (First Bid Envelope), the TPBAC shall forthwith open the Financial Bid and Bid Security Component (Second Bid Envelope) and modifications, if any, of each remaining Eligible Bidder whose First Bid Envelope was rated “passed” and announce the total Bid price. The Second Bid Envelope of each complying Bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular Bid is missing, incomplete or patently insufficient, the TPBAC shall rate the Bid concerned as “failed.” Only Bids that are determined to contain all the Bid requirements for both components shall be rated “passed” and shall immediately be considered for evaluation and comparison.

In case of discrepancies between bid prices in figures and in words, the latter shall prevail. Bids shall be ranked in the ascending order of their Total Calculated Bid as evaluated and corrected for computational errors to identify the Lowest Calculated Bid.

After all bids have been received, opened, examined, evaluated, and ranked, the TPBAC shall prepare the corresponding Abstract of Bids. All members of the TPBAC shall sign the Abstract of Bids and attached thereto all the bids with their corresponding bid securities and the minutes of proceedings of the Bidding. The Abstract of Bids shall contain the following:

- i. name of the contract and its location;
- ii. time, date and place of opening; and
- iii. name of Bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

In case the lowest calculated bid is disqualified, the next lowest calculated bid will be reconsidered as long as the bidder is qualified and compliant with all the requirements.

## **S. ACCESS TO INFORMATION**

In all stages of the preparation of the Bidding Documents, the DECORP TPBAC shall ensure equal access to information. Prior to their official release to Bidders, no aspect or part of the Bidding Documents shall be divulged or released to any Bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the

## **T. POST QUALIFICATION**

The TPBAC shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid is qualified to perform the Contract satisfactorily. The determination shall use non-discretionary pass / fail criteria. In this case, the said Bidder's Bid shall be considered and declared the Lowest Calculated Responsive Bid (LCRB)

The determination shall take into account the Bidder's legal, financial, technical, and production capabilities. It shall be based upon an examination of the documentary requirements of the Bidder's qualifications submitted by the Bidder as well as such other information as the TPBAC deems necessary and appropriate.

An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in rejection of the Bidder's Bid, in which event the TPBAC shall proceed to the next Lowest Calculated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post-qualification, the procedure for Post-Qualification shall be repeated for the Bidder with the next Lowest Calculated Bid, and so on until the Lowest Calculated Responsive Bid is determined for Contract award.

The post-qualification process shall be completed in not more than fifteen (15) days from determination of the Lowest Calculated Responsive Bid. In exceptional cases, the post-qualification period may be extended by the TPBAC, but in no case shall the aggregate period exceed thirty (30) days.

## **U. AWARD TO THE WINNING BIDDER**

The TPBAC shall award the contract to the Bidder with the Lowest Calculated Responsive Bid after the post-qualification has been completed.

Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

- i. posting of Performance Security in accordance Section V (V)(Performance Security); and
- ii. signing of the contract provided in Section V (X) (Contract Signing);

Contract award shall be made within the Bid validity period provided in Section V (P) (Bid Validity).

## **V. PERFORMANCE SECURITY**

The Winning Bidder is required to post a Performance Security in the amount Two Hundred Fifty Million (Php250,000,000.00) Pesos directly to DECORP in the form of cash, manager's/cashier's check, Letter of Credit, or Bank Guarantee.

## **W. NOTICE TO PROCEED**

The Winning Bidder shall post the required Performance Security and enter into contract with DECORP, within twenty (20) calendar days from receipt by the Winning Bidder of the Notice of Award.

Upon determining the compliance of the winning bidder to the conditions set forth in the Notice of Award, the TPBAC shall issue a Notice to Proceed stating therein that all conditions stated in the Notice of Award have been complied with.



## **X. CONTRACT SIGNING**

DECORP shall enter into contract with the winning bidder within the same twenty (20) day period provided that all the documentary requirements are complied with.

The following documents shall form part of the contract:

- i. Power Supply Agreement;
- ii. Bidding Documents;
- iii. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- iv. Performance Security;
- v. Notice of Award of Contract; and
- vi. other contract documents that may be required by existing laws and/or DECORP

## **Y. FAILURE TO ENTER INTO CONTRACT AND POST PERFORMANCE SECURITY**

If the bidder with the LCRB fails, refuses or is unable to submit the documents required under Section V (X) (Contract Signing) of these Guidelines or to make good its bid by entering into a contract with DECORP or post the required Performance Security within the period stipulated in the Bidding Documents, the bid security shall be forfeited, except where such failure, refusal or inability is through no fault of the said bidder.

In the case of the failure, refusal or inability of the bidder with LCRB submit the documents required under Section V (X) of these Guidelines or to enter into contract and post the required Performance Security, the TPBAC shall disqualify the said bidder, and shall initiate and complete the post-qualification process on the bidder with the second Lowest Calculated Bid. This procedure shall be repeated until the LCRB is determined for award. However, if no bidder passes post-qualification, the TPBAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the DECORP may enter into a negotiated procurement.

## **Z. FAILURE OF BIDDING**

There shall be failure of the Competitive Selection Process if:

- i. no proposal/bids received;
- ii. only one (1) GenCo submitted an offer; or
- iii. competitive offers of prospective Gencos failed to meet the requirements prescribed in these Guidelines and in the Bidding Documents.

In order to determine the reason for the failed bidding, the TPBAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its tariff structure.

Based on its findings, the TPBAC shall revise the terms, conditions, and specifications, and if necessary subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for Section V (Y) (Failure to Enter into a Contract) of this Rules.

All bidders who have initially responded to the ITB and have been declared eligible in the previous bidding shall be allowed to submit new bids.

The TPBAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding. Should there occur a second failure of bidding, DECORP may resort to negotiated procurement as provided for in Section V (Y) (Failure to Enter into a Contract) of these Rules.

#### **AA. RESERVATION CLAUSE**

The DECORP BOD reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract if there is prima facie evidence of collusion between the officers or employees of DECORP, or between the TPBAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition; and if the TPBAC is found to have failed in following the prescribed bidding rules.

#### **AB. DIRECT NEGOTIATION DUE TO FAILED BIDDING**

DECORP may directly negotiate a contract with a technically, legally and financially capable supplier after two failed bidding as provided under Section V (Z) (Failure of Bidding) and of this Bid Document and provided there is no outstanding dispute on the conducted CSP.

#### **AC. PROTEST MECHANISM AND DISPUTE RESOLUTION PROTEST MECHANISM AND DISPUTE RESOLUTION**

Decision of the TPBAC at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) calendar days upon receipt of written notice. The TPBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof.

In the event, that the request for reconsideration is denied, decisions of the TPBAC may be protested in writing to the DECORP BOD or its duly authorized officer/s.

The protest must be filed within seven (7) calendar days from receipt of the resolution denying its request for reconsideration. A protest shall be made by filing a verified position with the DECORP BOD or its duly authorized officer/s accompanied by the payment of a non-refundable protest fee as determined by the TPBAC.

The verified position paper shall contain the following information:

- i. Name of the Bidder;
- ii. Address of the Bidder;
- iii. Name of the Project;
- iv. Brief Statement of Facts;
- v. Issue to be resolved; and
- vi. Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect and non-payment of protest fee will result to the outright dismissal of the protest.

The protest fee shall be paid in cash in accordance with the following schedule:

<b>RANGE</b>	<b>PROTEST FEE</b>
₱50 million and below	0.75% of the Range
More than ₱50 million to ₱100 million	₱500,000.000
More than ₱100 million to ₱500 million	0.5% of the Range
More than ₱500 million to ₱1 billion	₱2,500,000.00
More than ₱1 billion to ₱2 billion	0.25% of the Range
More than ₱2 billion to ₱5 billion	₱5,000,000.00
More than ₱5 billion	0.1 % of the Range

Protests shall be resolved within seven (7) calendar days from receipt thereof. Decision of the DECORP BOD or its duly authorized officer/s shall be final. Court action may be resorted to after protests have been resolved with finality.

Any conflict or dispute of any kind between the parties in connection with the implementation of the contract, the parties shall make every effort to first resolve amicably by mutual consultation or shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876 (Arbitration Law) and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) or by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

#### **VI. SEPARABILITY CLAUSE**

Should any provision in these Guidelines be subsequently declared unconstitutional, the same shall not affect the validity or the legality of the other provisions.

#### **VII. EFFECTIVITY**

This Guidelines shall take effect upon its approval by the Department of Energy.

**Annex A**  
(Letterhead of Bidder)

**LETTER OF INTENT**

I, (Name of Affiant), of legal age, (Civil Status) with office address at (Address), as the (Position/Designation) of (Name of Bidder), a company organized and existing under and by virtue of the laws of the Philippines hereby declare for and on behalf of (name of Bidder) that (Name of Bidder) is willing to participate in the Bidding for the 20 MW BASELOAD WITH LOAD FOLLOWING CONTRACTED CAPACITY WITH 50% MINIMUM NOMINATION for the required Contract Period to DECORP under the terms and conditions set forth in the Bidding Documents in accordance with the Invitation to Bid.

The contact person(s) and authorized representative(s) for the (name of Bidder) (is/are):

Contact Person 1	Name of Contact Person: Title/Designation: Address: Email Address:
Contact Person 2	Name of Contact Person: Title/Designation: Address: Email Address:

In addition, (name of Bidder) undertakes to provide the TPBAC Secretariat the list of names of no more than one (1) additional authorized representative no later than three (3) days prior to the Pre-Bid Conference and the Opening of Bids. Only the names provided to the TPBAC Secretariat in this Letter of Intent shall be allowed to attend the Pre-Bid Conference and the Opening of Bids, whether conducted physically or through virtual video/audio conferencing.

**CERTIFICATION**

I, the (position/designation) of (name of Bidder), and the (name of Bidder) hereby represent and undertake that:

1. The digital signature/s which are affixed or will be affixed to the documents submitted or will be submitted in relation to the Bidding are or will be placed with the express consent of the signatory/ies involved;
2. Such express consent of the signatory/ies will not be withdrawn at any time from and after submission of the documents bearing their digital signature/s;
3. The TPBAC, TPBAC Secretariat, TPBAC TWG, and any of its members, representatives and agents are entitled to rely on said digital signatures without being required to determine the authenticity thereof; and
4. Any breach of the representations and undertakings provided herein shall be a ground for the disqualification of a Bidder in accordance with the Invitation to Bid and Instructions to Prospective Bidders.

IN WITNESS WHEREOF, Recipient has executed this Undertaking in \_\_\_\_\_  
City on \_\_\_\_ day of \_\_\_\_\_.

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:  
\_\_\_\_\_

Bidder's Authorized Representative/Signatory

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 at (Place of Execution), Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her (insert type of government identification card used), with his/her photograph and signature appearing thereon, with No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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## **ANNEX B**

### **CONFIDENTIALITY UNDERTAKING**

This Confidentiality Undertaking (the “**Undertaking**”) is executed in favor of the Dagupan Electric Corporation (“**DECORP**”) by [Bidder] (the “**Recipient**”).

#### **1. CONFIDENTIAL INFORMATION**

Recipient is interested in obtaining information from DECORP, in furtherance of the Competitive Selection Process (“CSP”) for the Procurement of 20 MW BASELOAD WITH LOAD FOLLOWING CONTRACTED CAPACITY Power Requirement for the Required Contract Period to DECORP under the terms and conditions set out in the Invitation to Bid and Bid Documents (the “Project”). The selection process shall be undertaken through CSP in accordance with the Instructions to Prospective Bidders issued by DECORP’s Third Party Bids and Awards Committee (“TPBAC”). By reason of such interest of the Recipient, DECORP proposes to disclose certain Confidential Information (as defined below) to the Recipient. Recipient acknowledges that DECORP has the exclusive right to determine what information it may furnish to the Recipient, and how it may be furnished to the Recipient, which may be through transmission of either hard copies or electronic copies of documents containing such Confidential Information.

As used herein, “**Confidential Information**” means all information concerning DECORP or its assets, liabilities or obligations furnished to the Recipient directly or indirectly by any of DECORP’s officials, employees, and legal, technical, financial advisors, agents or other representatives, including:

- (a) information obtained by the Recipient and/or its Representative/s:
  - i. through site visits to DECORP or its offices and facilities; and
  - ii. through any management presentation by DECORP;
- (b) information contained in any other written material furnished or otherwise made available to the Recipient and/or its Representative/s;
- (c) information furnished to the Recipient and/or its Representative/s electronically;
- (d) information presented to the Recipient, its Representatives and/or its advisors orally, whether presented in a management presentation or another forum; and
- (e) all analyses, compilations, forecasts, studies or other documents prepared by the Recipient and/or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

Notwithstanding the foregoing, information disclosed by DECORP which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written or electronic records that said information is part of the public domain without violation of this Undertaking or disclosed pursuant to administrative or judicial action; provided, that, the Recipient and/or its Representative/s shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify DECORP thereof and give DECORP the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Undertaking.

#### **2. NO REPRESENTATION**

Recipient acknowledges and agrees that DECORP is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases DECORP or any of its official and employees of any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to the Recipient in a definitive agreement issued by DECORP in connection with the Project, as, and if it is executed by DECORP, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

### **3. RECIPIENT'S OBLIGATIONS**

Unless DECORP gives its prior written authorization, the Recipient and/or its Representative/s shall:

- (a) not use the Confidential Information for any other purpose than for the Project;
- (b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
- (c) limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, the "Representatives") who need to know such Confidential Information only for the purpose of evaluating the Project, and who have executed and delivered a confidentiality undertaking in favor of DECORP covering the Confidential Information.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated, and/or recorded in any manner, by the Recipient and/or its Representative/s except for purposes of evaluating the Project. Upon the request of DECORP, the Recipient shall either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same, and certify that it has been destroyed, as requested by DECORP, within ten (10) days of such request; provided, however, that the Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to the Recipient providing DECORP written notification of such regulatory purpose with details satisfactory to DECORP. Without limiting the generality of the foregoing, in the event that the Project is not consummated with the Recipient for any reason whatsoever, including but not limited to the Recipient not (i) submitting Qualification Documents or Financial Proposal, or (ii) being declared the Winning Power Supplier), neither the Recipient nor its Representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Undertaking by its Representatives.

During the course of the Recipient's evaluation, the Recipient and/or its Representative/s shall make all inquiries and other communications directly to DECORP in writing or through email and addressed to DECORP's TPBAC, through the TPBAC Secretariat, as indicated in the Invitation to Bid. Recipient and/or its Representative/s agree not to directly or indirectly contact or communicate with any other official or other employee of DECORP concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of DECORP.

### **4. COMMUNICATIONS WITH OTHER BIDDERS**

Except as may be required by applicable law, the Recipient shall refrain from communicating, and cause its Representatives to refrain from communicating, directly

or indirectly, with any Bidder about the Project, or about any subject related to the Project; provided, however, that the Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with DECORP covering the Confidential Information.

**5. GOVERNING LAW AND VENUE**

This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and the Recipient consents to the exclusive jurisdiction of the courts of Dagupan City (to the exclusion of all others) for any dispute arising out of this Undertaking.

**6. NO IMPLIED WAIVER**

Failure of DECORP to insist in any one or more instances upon strict performance by the Recipient of any of the terms of this Undertaking shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

**7. NO COMMITMENT**

- (a) Recipient acknowledges that DECORP has reserved the right to terminate or suspend, at any time, further participation by the Recipient and to refuse to disclose any further Confidential Information to the Recipient.
- (b) This Undertaking does not constitute a solicitation of bids for the Project.
- (c) Recipient also acknowledges and agrees that no contract or agreement providing for the Project shall be deemed to exist between the Recipient and DECORP, as applicable, unless and until a definitive agreement has been executed and delivered by the Recipient and DECORP.

**8. SEVERABILITY**

If any term of this Undertaking is held by a court of competent jurisdiction to be invalid or unenforceable, then this Undertaking, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

IN WITNESS WHEREOF, Recipient has executed this Undertaking in \_\_\_\_\_  
on \_\_\_\_ day of \_\_\_\_\_, 2021

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:

\_\_\_\_\_  
Bidder's Authorized Representative/Signatory

Signed in the Presence of:

\_\_\_\_\_



**ACKNOWLEDGMENT**

Before me, a Notary Public in and for \_\_\_\_\_ City, personally appeared:

<b>Name</b>	<b>Competent Evidence of Identity</b>	<b>Issuing Authority and Date of Expiration</b>

who were identified by me through competent evidence of identity to be the same persons who presented the foregoing instrument, and who acknowledged to me that their signatures on the instrument were voluntarily affixed by them for the purposes stated therein, and that this instrument represents their free and voluntary act and deed.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

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**ANNEX C**

**AFFIDAVIT**

I, (Name of Affiant), of legal age, (Civil Status), (Nationality), and residing at (Address of Affiant), after having been duly sworn in accordance with law, do hereby depose and state that:

1. I am the duly authorized and designated representative of (Name of Bidder) with office address at (Address of Bidder);
2. I am granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the Bid, and to sign and execute the ensuing Power Supply Agreement (PSA) with Dagupan Electric Corporation (DECORP) for the provision of 20 MW Baseload with Load Following Contracted Capacity Power Requirement, accompanied by the duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary's Certificate, whichever is applicable;
3. Each of the documents submitted in satisfaction of the requirements of the Competitive Selection Process is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
4. (Name of Bidder) is authorizing DECORP Third Party Bids and Awards Committee (TPBAC) to verify all the documents submitted;
5. None of the officers, directors, and controlling stockholders of (Name of Bidder) are related to the members of DECORP's Board of Directors and Management, members of the TPBAC, members of TPBAC-Technical Working Group (TWG), members of TPBAC Secretariat, and project consultants, by consanguinity or affinity up to the third civil degree;
6. (Name of Bidder) complies with existing labor laws and standards; and
7. (Name of Bidder) is aware of and has undertaken the following responsibilities as a Bidder:
  - a) Carefully examine all of the Bidding Documents;
  - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the PSA;
  - c) Make an estimate of the facilities available and needed for the PSA to be bid, if any; and
  - d) Inquire about or secure Supplemental/Bid Bulletin(s).
8. (Name of Bidder) did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government and or DECORP in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 2021  
at \_\_\_\_\_.

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:

\_\_\_\_\_  
(Bidder's Authorized Representative/Signatory)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_ 2021 at (Place of Execution), Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her (insert type of government identification card used), with his/her photograph and signature appearing thereon, with No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

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**ANNEX D**

**CERTIFICATION OF SUBMISSION OF ORIGINAL OR CERTIFIED TRUE COPIES OF DOCUMENTS AND AUTHORIZATION FOR THIRD PARTY BIDS AND AWARDS COMMITTEE (TPBAC) TO VERIFY SAID DOCUMENTS**

I, (Name of Authorized Representative/Signatory), (Position) of (Name of Bidder) with office address at \_\_\_\_\_ after having been sworn to according to law, hereby depose and state that:

1. I am the authorized representative of (Bidder's name) as per Board Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, submitted in accordance with this Transaction;
2. (Bidder's name) is a company organized and existing under the laws of the Republic of the Philippines and is participating as a Bidder in this Transaction;
3. All of the documents submitted by (Bidder's name) in satisfaction of the Instructions to Bidders and submitted as part of this Transaction are originals or certified true and correct copies of the original document(s).
4. (Bidder's name) hereby authorizes TPBAC or its duly authorized representative/s to verify all of the documents submitted by (Bidder's name).

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_.

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:

\_\_\_\_\_

(Bidder's Authorized Representative/Signatory)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 at (Place of Execution), Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her (insert type of government identification card used), with his/her photograph and signature appearing thereon, with No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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**ANNEX E**

**CERTIFICATION AGAINST BLACKLISTING AND GRAFT AND CORRUPT PRACTICES**

I, (Name of Authorized Representative/Signatory), (Position) of (Bidder's Name) with office address at \_\_\_\_\_ after having been sworn to according to law, hereby depose and state that:

1. I am the authorized representative of (Bidder's name) as per Board Resolution No.\_\_\_\_, dated \_\_\_\_\_, submitted in accordance with this Transaction;
2. (Bidder's name) is a company organized and existing under the laws of the Republic of the Philippines and is participating as a Bidder in this Transaction;
3. (Bidder's name) is:
  - a) Free and clear of all liabilities (including taxes, customs duties, among others) with the government.
  - b) Not "blacklisted" or barred from Bidding by the Government or any of its agencies, offices, corporations or Local Government Units, including its non-inclusion in the Consolidated Blacklisting Report issued by the Government of the Philippines (GOP).
4. (Bidder's name) has never been engaged in nor will it at any time engage in corrupt, fraudulent, coercive and/or collusive practices in competing for contracts including, but not limited to, Power Supply Agreements (PSAs) beginning from the commencement of the transaction until the complete execution of all agreements, when applicable.
5. In accordance herewith, (Bidder's name) acknowledges and accepts the applicability to it of Section IV (B) (Warranty Against Corrupt and Fraudulent Practices) of the Bidding Documents.
6. (Bidder's name) further understands and accepts that the Third Party Bid and Awards Committee (TPBAC) will reject any Bidder and/or refuse to award the PSA to such Bidder which it determines to have engaged in corrupt, fraudulent, coercive and/or collusive practices in any stage of this Transaction.
7. Finally, (Bidder's name) understands and accepts that the TPBAC may also declare a Bidder ineligible, either indefinitely or for a stated period of time, and may disqualify the Bidder outright if it determines that the said Bidder has engaged in corrupt or fraudulent practices at any time in the past.
9. IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_.

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:

---

(Bidder's Authorized Representative/Signatory)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 at  
(Place of Execution), Philippines. Affiant/s is/are personally known to me and was/were  
identified by me through competent evidence of identity as defined in the 2004 Rules on  
Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her (insert type  
of government identification card used), with his/her photograph and signature  
appearing thereon, with No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_  
.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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**ANNEX F**

**CERTIFICATION REGARDING RELATIONSHIP AND AGAINST CONFLICT OF INTEREST**

I, (Name of Authorized Representative/Signatory), (Position) of (Name of Bidder) with office address at \_\_\_\_\_ after having been sworn to according to law, hereby depose and state that:

1. I am the authorized representative of (Bidder's name) as per Board Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, submitted in accordance with this Transaction;
2. (Bidder's name) is a company organized and existing under the laws of the Republic of the Philippines and is participating as a Bidder in this Transaction;
3. (Bidder's name) will not submit more than one Bid in this bidding process;
4. (Bidder's Name):
  - a) does not have the same legal representative as any other Bidder in this Transaction for purposes of this Bid;
  - b) has not participated as a consultant in the preparation of the design or technical specifications of the subject of the Bid; and
  - c) does not lend, or temporarily second, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
5. Further, none of (Bidder's name)'s officers is related to the management of Dagupan Electric Corporation (DECORP) by consanguinity or affinity up to the third civil degree or any of their officers or employees having direct access to information that may substantially affect the result of the Bidding, such as, but not limited to, the members of the Third Party Bids and Awards Committee (TPBAC), the members of the TPBAC-Technical Working Group (TWG), the members of the TPBAC Secretariat and DECORP Board of Directors and Management; and
6. (Bidder's name) acknowledges and accepts that relationship of the nature described above or failure to comply with the foregoing provisions will result in the rejection of (Bidder's name) Bid.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_.

For and in behalf of:

\_\_\_\_\_  
(Name of Bidder)

By:

\_\_\_\_\_  
(Bidder's Authorized Representative/Signatory)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2021 at  
(Place of Execution), Philippines. Affiant/s is/are personally known to me and was/were  
identified by me through competent evidence of identity as defined in the 2004 Rules on  
Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her (insert type  
of government identification card used), with his/her photograph and signature  
appearing thereon, with No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_  
.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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