

The Republic of the Philippines

Sale of

**Structures, Plant Equipment,
Auxiliaries and Accessories of
the Decommissioned 850 MW
Sucat Thermal Power Plant
located in Muntinlupa City,
Philippines**



**Data Room and Due Diligence
Procedures**

1 February 2017

Important Notice

This Data Room and Due Diligence Procedures (“Document” or “Due Diligence Procedures”), which forms part of the Bidding Package, is being issued by the Privatization Bids and Awards Committee (“PBAC”) of the Power Sector Assets and Liabilities Management (“PSALM”) Corporation to Bidders who want to participate and bid in the sale of the **Structures, Plant Equipment, Auxiliaries and Accessories of the 850 MW Sucat Thermal Power Plant located in Muntinlupa City, Philippines**. This Document is being distributed to Bidders who have submitted a Letter of Interest in accordance with the Invitation to Bid published on 1, 2 and 3 February 2017 in the Philippine Daily Inquirer, Philippine Star and Manila Times and executed the necessary Confidentiality Agreement and Undertaking both in the form provided by PSALM, and paid the Participation Fee.

The Bidding Procedures dated 1 February 2017 (the “*Bidding Procedures*”), in addition to this Document, shall govern the conduct of due diligence (the “*DD Process*”). As part of the DD Process, the management and representatives of Bidders will be provided access to the following: (i) the place located at a portion of the 5th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City, Philippines where information, data, documents and other papers pertaining to the Asset and the Land which are available for review, examination and assessment of the Bidder are contained (the “*Bankmer DR*” or “*Data Room*”) and physical inspection of the Assets.

Recipients of this Document and the Bidding Procedures (the “Recipients”) acknowledge and agree that all of the information contained therein will be held in complete confidence and the Recipients will not distribute or reproduce the Bidding Package, as well as the documents obtained in the course of the DD Process, in whole or in part, except in accordance with the Confidentiality Agreement in effect between the Recipients and PSALM.

Each Bidder will be required to acknowledge in the Financial Bid Form (BF-1) that it has not been induced to enter into such agreement by any representation or warranty, express or implied, or relied upon any such representation or warranty save as expressly set out in the Final Transaction Documents. Bidders should conduct their own investigation and analysis of the Asset, the Land, the Data Room, the information contained in the Bidding Procedures and Final Transaction Documents and any other information provided to or obtained by the Bidders, including those obtained during the course of its due diligence investigation. In considering an investment in the Asset and the Land, each Bidder should make its own independent assessment and seek its own professional, financial, regulatory, tax, environmental, and legal advice.

While the information in the Bidding Package and the Data Room has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. Neither PSALM, the National Power Corporation (“NPC”), the PBAC nor any of their officers or employees, nor any of their advisers or consultants, accepts any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements, negligent or otherwise, relating to, or makes any representation or warranty, express or implied, with respect to, the information contained in the Data Room or on which such document or information are based or with respect to any written or oral information made or to be made available to any of the Bidders or its professional advisers and, so far as permitted by law and except in the case of gross, willful and fraudulent misrepresentation by the party concerned, any liability thereof is hereby expressly disclaimed.

The information contained in Data Room is selective and is subject to updating, expansion, revision and amendment. It does not, and does not purport to, contain all the information that a Bidder may require. Neither PSALM, NPC, the PBAC nor any of their advisers undertakes

to provide any Bidder with access to any additional information or to update the information in this Document or to correct any inaccuracies therein which may become apparent. Each Bidder must conduct its own analysis of the information contained in the Data Room and all other documents in relation to the proposed Privatization and is advised to carry out its own investigation in relation to Sucat Thermal Power Plant their respective business and operations and regulatory regime which applies to the foregoing and any and all matters pertinent to the proposed Privatization and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed Privatization.

The Data Room may include certain statements, estimates, projections, targets, and forecasts with respect to the Asset and/or the Land. Such statements, estimates, projections, targets and forecasts reflect various assumptions made by the management, officers and employees of PSALM, NPC, and the PBAC, which assumptions (and the base information on which they are made) may or may not prove to be correct. No representation or warranty is given as to the reasonableness of, and no reliance should be placed on, any statements, estimates, projections, targets or forecasts or the assumptions on which they may be based and nothing in this document is, or should be relied on as, a promise, representation or warranty.

The Bidder shall be responsible for the health, safety, security and welfare of its personnel and property during the entire DD Process.

Capitalized terms used but not otherwise defined in this Data Room and Due Diligence Procedures shall have the meaning ascribed to such terms in the Bidding Procedures.

THE PBAC, AT ITS OWN DISCRETION, RESERVES THE RIGHT TO: (I) ACCEPT OR REJECT ANY OR ALL BIDS OR ANY PART THEREOF; (II) WITHDRAW FROM THE PROPOSED PRIVATIZATION OR ANY PART OF THE BIDDING PROCESS OR TO VARY ANY OF ITS TERMS AT ANY TIME WITHOUT GIVING ANY REASON THEREFOR; (III) WAIVE ANY DEFECT CONTAINED THEREIN; (IV) ACCEPT THE BID WHICH THE PBAC DEEMS MOST ADVANTAGEOUS TO THE GOVERNMENT; (V) DRAW AND FORFEIT THE FULL AMOUNT OF THE BID SECURITY UPON THE OCCURRENCE OF A BID SECURITY DRAWING EVENT; (VI) ADD TO, MODIFY, SUPPLEMENT, OR CHANGE THE BIDDING PACKAGE OR ANY PORTION THEREOF AND ANY OTHER ASPECT OF THE BIDDING AT ANY TIME, FOR ANY REASON WHATSOEVER AND WITHOUT GIVING PRIOR NOTICE, PROVIDED THAT THE BIDDERS WILL BE NOTIFIED SUBSEQUENTLY OF SUCH ADDITIONS, MODIFICATIONS, SUPPLEMENTS, OR CHANGES; AND (VII) EXERCISE ANY OTHER REMEDY GRANTED BY PHILIPPINE LAW OR THE BIDDING PROCEDURES.

NEITHER PSALM, NPC NOR THE PBAC ASSUMES ANY OBLIGATION WHATSOEVER TO COMPENSATE OR INDEMNIFY A BIDDER FOR ANY EXPENSE, FEE OR LOSS THAT IT MAY INCUR IN PARTICIPATING IN THE PROPOSED PRIVATIZATION, INCLUDING THE DD PROCESS, NOR DOES IT GUARANTEE THAT AN AWARD WILL BE MADE.

1. Introduction

The Proposed Sale of the Asset is being carried out in accordance with the provisions of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.

This Document sets out the data room and due diligence procedures and process including guidelines on due diligence and site visits that will apply to Bidders.

This Document will be implemented and enforced by the PBAC, which will be assisted by a Technical Working Group (“TWG”) designated by the PBAC.

PSALM invites Recipients of this Document to participate in the DD Process to be carried out in accordance with this Document and the Bidding Procedures.

All questions and correspondence with respect to this Document and the DD Process shall be directed in writing to the person designated by the PBAC as the Due Diligence Coordinator. Under no circumstances should PSALM or NPC or any representatives, management or other employees thereof be contacted directly.

The documents and information contained in the Data Room and any other documents or information or any oral or written communication given or transmitted to Bidders (collectively, the “Data”) during the course of the DD Process (including any further documents and information added to the Data Room) are governed by the terms of the Confidentiality Agreement executed by each Bidder.

No representation is given and no liability is accepted by PSALM, NPC, the PBAC, the TWG, their advisors and consultants as to the accuracy or completeness of the Data, and none of them shall be held liable for any losses resulting from the use of the Data.

Before proceeding with the DD Process, all Bidders are required to submit Form 1: “Conformity” to the Chairman of the PBAC.

This Document and any amendment, supplement or clarification (“*Addenda*”) will be those, and only those, that will be followed in connection with the DD Process to be conducted by Bidders in connection with the proposed Privatization. While this Document sets out the Due Diligence Procedures designed to govern the DD Process, issues may arise that will require modifications to existing procedures or new procedures to be established. The PBAC reserves the right to vary this Document and/or the DD Process, the Bidding Package and any portion thereof, at any time, without prior notice. Bidders will be advised within a reasonable time of any changes. Should there be any conflict between these Due Diligence Procedures and the Bidding Procedures, the Bidding Procedures shall govern.

2. Data Room Procedures

2.1 Data Room Organization

Coordination, Manager and Administrators

Data Room Due Diligence will be coordinated by the Due Diligence Coordinator or Data Room Manager, the contact details are as follows:

The Data Room Manager
PSALM Corporation
5th Floor, Bankmer Building
6756 Ayala Avenue
Makati City, Philippines

Office Telefax: (632) 848-0253; Telephone: (632) 902-9042
Email: jfpajarillo@psalm.gov.ph

In her capacity as Data Room Manager, Ms. Pajarillo is responsible for organizing the Data Room and ensuring compliance with this Document. She is also responsible for overseeing other Data Room staff (the “*Data Room Administrators*”).

Location

The location of the Data Room is as follows:

5th Floor, Bankmer Building
6756 Ayala Avenue
Makati City, Philippines
Telefax: (632) 848-0253; Telephone: (632) 902-9042

Period and Operating Hours

The Due Diligence Period which includes access to the Data Room is scheduled from 6 February 2017 until two (2) Business Days prior to the Bid Submission Deadline.

The Data Room will be opened between the hours of 8:00 A.M. to 12:00 NN and 1:00 P.M. to 5:00 P.M. from Mondays to Fridays, except public holidays. Extension of the operating hours or availability of the Data Room on a different day will be at the sole discretion of the Due Diligence Coordinator.

Services & Facilities

1. A number of services and facilities will be made available to Bidders in the Data Room:
 - a) A telephone, which may be used by Bidders to make local calls only (i.e. within Metro Manila), but not for remote access to e-mail or to the internet;
 - b) A fax machine. Request for both incoming and outgoing facsimiles should be directed to the Data Room Manager. The PBAC reserves the right to impose reasonable telecommunication charges;

- c) Electrical outlets. Mobile telephones and laptop computers will be allowed in the Data Room. Cameras, scanners, and video recorders are strictly not allowed; and
 - d) Wi-Fi Access
2. The Data Room is designated as a “Non-Smoking” facility.
 3. Bidders will be responsible for arranging their own travel and accommodation requirements.

2.2 Admission to the Data Room

Scheduling of Data Room Visit

Bidders should communicate with the Data Room Manager to arrange a suitable period within the Due Diligence Period for access to the Data Room. Bidders may continue to conduct on-the-ground due diligence in the form of site visits during the Due Diligence Period. The PBAC will make every effort to accommodate the requested schedules of Bidders, however, no assurance of such accommodation can be given. Bidders should complete Form 2: “Data Room Visit Request” to indicate their preferred time and submit the completed form to the Due Diligence Coordinator at least three (3) Business Days before the scheduled visit. The PBAC reserves the right to shorten the access period to the Data Room provided that the PBAC will exert efforts to provide all Bidders with equal time to access the Data Room.

Nominated Persons

Bidders are required to nominate the individual members of their management and staff as well as their advisers and external consultants, attorneys, accountants and engineers (collectively, the “*Nominated Persons*”) who will have access to the Data Room and/or conduct due diligence. A register of Nominated Persons should be made available at least three (3) Business Days before the scheduled visit to the Data Room and only those Nominated Persons will be admitted to the Data Room. Form 3: “Data Room Access List” must be completed and returned to the Due Diligence Coordinator within the time indicated above.

Additionally, Bidders should nominate one person as the principal contact person of the Nominated Persons (the “*Due Diligence Representative*”) who will be the primary contact person for the purpose of due diligence. All day-to-day liaisons will be coordinated through the Due Diligence Representative. Contact details (in Manila) of the Due Diligence Representative including name, phone (both mobile and landline) and fax numbers, e-mail addresses and the address for delivery of documents should be provided to the Due Diligence Coordinator in accordance with Form 3.

No Nominated Person will be admitted to the Data Room unless he or she is covered by a duly executed Confidentiality Agreement.

The PBAC reserves the right (without limitation) to exclude Nominated Persons from accessing the Data Room if they breach any of the requirements of the Bidding Procedures, Confidentiality Agreement, Undertaking, or this Document for any reason whatsoever.

Bidders are responsible for the safety of their personnel and security of their equipment and belongings.

Bidder Identification Number

All Bidders will be allocated a Bidder Identification Number (“BIN”). This number must be used in all correspondences.

Access to the Data Room

All Nominated Persons are required to register in the Data Room for each day of access. Nominated Persons should identify themselves by providing a copy of their business cards to the Data Room Administrators upon the first sign-in for identification purposes.

Access to the Data Room will strictly be limited to Nominated Persons and will be confined to the dates and times indicated in the subsection captioned “*Periods and Operating Hours*” in Section 2.1 above. A maximum of seven (7) Nominated Persons may be present in the Data Room at any one time. Any increase to this limit will be at the sole discretion of the Data Room Manager.

Termination and Closure

The PBAC reserves the right, at any time, to close the Data Room or terminate the Due Diligence Process and Bidders shall not have any claim whatsoever against the PBAC in this respect.

2.3 Documentation

Use of Documents

Each Nominated Person must fill out Form 4: “Data Room Document Check-Out” and give such list to the Data Room Administrators when removing materials from the cabinets or shelves in the Data Room. Each Nominated Person may check out up to ten (10) items at a time. The Data Room Administrators may further limit the number of items permitted to be checked out at any single time in the event that the due diligence team consists of a large number of persons.

The use of the Data Room documents is subject to the following conditions:

1. The removal of any document from the Data Room is strictly prohibited.
2. Nominated Persons in the Data Room are prohibited from writing on or otherwise marking any of the documents contained in the Data Room.
3. Facsimile machines, modems, cameras, tape recorders, scanners, photocopying equipment, photographic equipment or any other form of communication or recording device, with the exception of mobile phones, dictaphones, laptop computers and calculators, will not be permitted in the Data Room. Laptop computers are permitted only for the purpose of taking notes and accessing the internet and may not be used for any data transfer to or from any other source while in the Data Room.
4. All materials must be returned to the Data Room Administrators and signed-in by the end of each day.

Additional Documents

Certain documents, due to their voluminous nature, or for control reasons, are not available in the Data Room. Where this is the case they are indicated in the Data Room Index. These documents may include operating and maintenance manuals, equipment specifications, drawings, land titles and evidence of land rights. These documents may be located at the plant site. Access to these documents can be arranged through the Data Room Manager. Costs incurred shall be for the account of the Bidder.

Copying of Documents

The PBAC expects that Bidders will have sufficient personnel available to review the data during their respective Data Room hours.

When in the Data Room, Bidders may request, at their expense, black and white photocopies of pages from documents viewed in the Data Room. Bidders will be charged for photocopies at the rate of ₱ 3.00 per page. Photocopying requests will be on a “first-come, first-served” basis. Such photocopied documents must be picked-up from the Data Room. PSALM will not cause the delivery of such photocopied documents.

Requests for photocopies should be submitted to the Data Room Administrators per the Photocopy Request (Form 5). Requests for photocopies should be made by flagging information (by sticker and/or clip).

If the transaction does not proceed, a letter will be sent to Bidders requesting for the return of or destruction of all notes, documents, or other records made of the Confidential Information in the Data Room and the erasure of all soft copy files or computer disks containing such Confidential Information. Bidders will be required to sign a certificate to declare compliance with the return or destruction of documents.

Updating of Contents of Data Room

Bidders are advised to regularly visit the Data Room for any additional document/s that may be placed by PSALM.

PSALM shall not have any obligation to notify Bidders of any additional document/s placed in the Data Room.

2.4 Conduct

No document may be removed, added, marked, altered, modified, varied (including the sequence thereof), damaged or destroyed in any way.

The Data Room Manager or any of her/his Administrators or their representatives in attendance at the Data Room is instructed only to supervise the operation of the Data Room. Bidders are not permitted to ask any questions other than where a certain document may be found. Questions can be submitted in writing using Form 6: “Additional Info/Question.”

For security reasons, Bidders shall remove all their belongings from the Data Room at the end of each day.

2.5 Confidentiality Agreement

Under the terms and conditions of the Confidentiality Agreement previously executed by Bidders, information obtained from the Data Room is to be used solely for the purposes specified therein and for no other purposes whatsoever.

Bidders must comply with the terms of the Confidentiality Agreement entered into by them in relation to their Nominated Persons. In addition, any member of the Bidder's due diligence team who is not an employee of the Bidder (i.e., outside advisors, consultants, attorneys, engineers, etc.) shall comply with and is bound by the terms of the aforesaid Confidentiality Agreement. By signing on to the attendee register maintained by the Data Room Manager, all Nominated Persons agree to be bound by the Confidentiality Agreement. Also, all Nominated Persons conducting due diligence outside the Data Room, are bound by the Confidentiality Agreement.

2.6 Questions & Additional Information Requests

Requests for additional information, or questions related to information provided in the Data Room, should be restricted to material and significant items. It is requested, therefore, that the Due Diligence Representative collates, coordinates, reviews and approves each request for additional information before submission.

Questions or requests for additional information should be made using Form 6: "Additional Info/Question" and submitted to the Data Room Manager. Such request should be made with reasonable specificity. Each request will sequentially be numbered. Only requests submitted using this procedure will be considered.

The PBAC and its representatives reserve the right to deny any request for additional information. If requested materials were available during Data Room operating hours, they will be included in a supplementary index and be made accessible by all Bidders. Should the requested materials become available after a bidder has left, a hard copy shall be picked up at the Data Room by the Bidder's Due Diligence Representative.

Any requests for additional information must be made during the due diligence period but prior to the Pre-bid Conference through the Due Diligence Coordinator or Data Room Manager. Requests can be made via fax or email but an original copy must be submitted to the Data Room.

3. Site Visits

The Due Diligence Coordinator will make every effort to accommodate each Bidder's requests for plant site visits and an opportunity to meet with plant management and personnel. However, Bidders should understand that the main responsibility of the personnel is to ensure adequate performance of the Power Plant, therefore site visits may be difficult to schedule at certain times.

Site visits will be provided to the plant site. Visits to nearby substations and transmission line facilities may also be arranged during the visits to the plant.

If the site is to be accessed via air transport, the Due Diligence Coordinator may be requested, but shall be under no obligation to arrange such transport, however, Bidders will bear the cost associated with any such site visits. For sites accessed via land transport, Bidders may choose to arrange their own transport, or if arranged by the Due Diligence Coordinator, the expenses incurred for the site visit and cost of any such transport will also be borne by the Bidder.

Each Bidder may be represented by a maximum of seven (7) persons at the site visits.

During the scheduled site visits, Bidders will be accompanied by plant personnel who may make short presentations about the facilities and equipment. Bidders will not be provided with documents at any location during a site visit. All requests for documents shall be made to the Data Room Manager in the same manner as requesting for additional documents. However, in exceptional cases, to be determined solely by PSALM, a Bidder on a Site Visit, upon accomplishing the proper request form may be furnished a copy of the requested document/s (subject to document availability). A copy of such document/s will be placed in the Data Room for the review of the other Bidders.

The Due Diligence Coordinator reserves the right to: (i) restrict the number of site visits, the duration of each visit and the number of persons for such site visit and (ii) cancel or reschedule any site visit for reasons beyond their control like force majeure and security precautions.

All site visits must be scheduled by a written request to the Due Diligence Coordinator using Form 7: "Site Visit Request".

PSALM reserves the right to charge a fee for any succeeding site visits after the first site visit. This would include costs and expenses incurred by PSALM in the said site visits, including airfare, board, and lodging.

4. Limitation of Liability

Save in cases of gross negligence or gross and willful misconduct, PSALM, NPC, the PBAC, any of their advisors or consultants may not be held liable for any loss, injury, death, damage to persons and property during the DD Process.

Each Bidder is advised to take the necessary precautions and secure the appropriate insurance coverage for both its personnel and property during the DD Process.

5. Standard Forms

The following standard forms (as referred to within this document) are provided below:

- Form 1: Conformity
- Form 2: Data Room Visit Request
- Form 3: Data Room Access List
- Form 4: Data Room Documents Check-out
- Form 5: Photocopy Request
- Form 6: Additional Info/Question
- Form 7: Site Visit Request

Form 1: CONFORMITY

The undersigned, for and in behalf of the Bidder indicated below, hereby accepts these Data Room and Due Diligence Procedures and undertakes to faithfully comply with the same.

Name of Authorized Representative:	Date:
	Contact Nos.:
For and in behalf of: (Company Name)	Fax Nos.:
	Email Address:
<hr/> Signature	

FM-AM-DR-01-A Rev.2

Form 2: DATA ROOM VISIT REQUEST

Bidder's Identification No.:		Date:
Name and Signature of Authorized Representative:		Contact No.:
For and in behalf of: (Company Name)		Fax Number:
Mailing Address:		Email Address:
Requested Dates:		Time:
Approved Dates:		Time:
Receiving Data Room Personnel:	Date Received:	
_____	_____	
Name and Signature		

FM-AM-DR-01-B Rev.2

Form 3: DATA ROOM ACCESS LIST

Direction: This form must be filled in and submitted three (3) business days prior to the scheduled data room visit		
Bidder's Identification No.:		Date:
Name of Principal Contact Person/ Due Diligence Representative:		Contact No.:
For and in behalf of: (Bidder's Name)		Fax No:
Mailing Address:		Email Address:
NOMINATED PERSONS:		
NAME	POSITION	COMPANY
1.		
2.		
3.		
4.		
5.		
6.		
7.		
<hr/> Name & Signature of Authorized Representative		Receiving Data Room Personnel: <hr/> Printed Name Over Signature/Date

FM-AM-DR-01-C Rev.3

Form 4: DATA ROOM DOCUMENTS CHECK-OUT

Bidder's Identification No.:			Date:
NAME:			Contact No.:
For and in behalf of: (Bidder's Name)			Fax No:
INDEX NO.	DOCUMENT TITLE	NAME OF BORROWER	TIME RETURNED
<hr style="width: 50%; margin: 0 auto;"/> Signature			

FM-AM-DR-01-D Rev.2

Form 5: PHOTOCOPY REQUEST

Bidder's Identification No.:		Date:
NAME:		Contact No.:
For and in behalf of: (Bidder's Name)		Fax No:
INDEX NO.	DOCUMENT TITLE	No. of Pages
	Total	
Signature		
TO BE FILLED BY PSALM EMPLOYEE		
Photocopying Charge		
Amount in Words (Figure):		Data Room Personnel
		Printed Name and Signature

FM-AM-DR-01-E Rev.2

Form 6: ADDITIONAL INFO/QUESTION

Bidder's Identification No.:		Date:	
NAME:		Contact No.:	
For and in behalf of: (Bidder's Name)		Fax No:	
Index/Reference No.		Type of Information:	
Document Name:		<input type="checkbox"/> Assets <input type="checkbox"/> Legal & Contract <input type="checkbox"/> Litigations <input type="checkbox"/> Environmental <input type="checkbox"/> Other (Specify)	
Document Page No.:		<input type="checkbox"/> Financial <input type="checkbox"/> Info. Tech. <input type="checkbox"/> Regulatory <input type="checkbox"/> Employees and Organizations	
Request/ Question:	Answer/Response:		Date:
Prepared by:		Receiving Data Room Personnel	
_____ Signature		_____ Signature Over Printed Name/ Date	

FM-AM-DR-01-F Rev.2

Form 7: SITE VISIT REQUEST

Bidder's Identification No.:		Date:	
Due Diligence Representative:		Contact No.:	
For and in behalf of: (Bidder's Name)		Fax No:	
Requested Schedule:		Alternative Dates:	
Approved Schedule:			
NOMINATED PERSONS			
	Name	Position	Company
1.			
2.			
3.			
4.			
5.			
6.			
7.			
Requested by:		Receiving Data Room Personnel:	
<hr/> Name and Signature of Authorized Representative		<hr/> Signature Over Printed Name/ Date	

FM-AM-DR-01-G Rev.3